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Rules and Regulations

Federal Register
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Thursday, April 23, 2020

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

Disclosure of Information in Litigation

AGENCY: Office of the General Counsel, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is revising procedural requirements in regulations related to service of process of summonses, complaints, and subpoenas.

DATES: This final rule is effective on April 23, 2020.

FOR FURTHER INFORMATION CONTACT: For information about this document, contact Leo (Chip) Boucher, Assistant General Counsel for Administrative Law, (202) 282–9822.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Rule

The Department of Homeland Security (''DHS'') is revising its regulations at 6 CFR part 5, subpart C, Disclosure of Information in Litigation. DHS is making two changes.

First, historically, under these regulations, DHS's Office of the General Counsel has accepted service of process of summonses and complaints in person or by mail, at ''Office of the General Counsel, United States Department of Homeland Security, Washington, DC 20528.'' *See* 6 CFR 5.42(a). The mailing address in the applicable regulations is unclear and does not include information about service of process with respect to DHS's operational components. In addition, currently, appropriate employees of the Office of the General Counsel are not consistently available to accept in-person service at the relevant address, due to DHS's response to the current national emergency relating to the Coronavirus Disease 2019 (COVID–19) pandemic.

To address these issues, and consistent with rule 4(*i*)(2) of the Federal Rules of Civil Procedure, DHS is revising its procedures to provide for service of process of summonses and complaints by registered or certified mail to a specific address identified in the regulations. *See* revised 6 CFR 5.42(a); *see also* new appendix A to subpart C of 6 CFR part 5. The rule provides that DHS may also in its discretion accept service of process in person or by other means, as announced on the DHS website. *See* revised 6 CFR 5.42(a). The Office of the General Counsel currently does not accept service of process in person or by such other means. *See* DHS, *Office of the General Counsel, Contact, https://www.dhs.gov/office-general-counsel* (last visited Apr. 13, 2020).

Second, this rule also revises applicable procedures to clarify the appropriate address for service of subpoenas. *See* revised 6 CFR 5.43(a); new 6 CFR 5.43(g); *see also* new appendix A to subpart C of 6 CFR part 5. Like the changes described in the preceding paragraph, this rule provides DHS may in its discretion specify alternative means of service of subpoenas on the DHS website. *See* revised 6 CFR 5.43(a); new 6 CFR 5.43(g). Otherwise, the personal service requirement of rule 45(b) of the Federal Rules of Civil Procedure will continue to apply. This change supports DHS's response to the current national emergency; the Office of the General Counsel, for instance, is currently waiving personal service and accepting subpoenas by email, as announced on *https://www.dhs.gov/office-general-counsel.*

The aforementioned provisions are intended to be severable from the others, such that if any one provision is stayed, enjoined, or vacated by a court of competent jurisdiction, the others will remain in effect.

II. Regulatory History

DHS did not publish a notice of proposed rulemaking for this rule. Under 5 U.S.C. 553(b)(A), this rule is exempt from notice and public comment rulemaking requirements because the change involves rules of agency organization, procedure, or practice. In addition, under 5 U.S.C. 553(b)(B), an agency may waive the notice and comment requirements if it finds, for good cause, that notice and comment is impracticable, unnecessary, or contrary to the public interest. DHS finds that notice and comment is unnecessary under 5 U.S.C. 553(b)(B) because the changes herein are procedural in nature and will have no substantive effect on the public. In addition, to whatever extent existing regulations at 6 CFR 5.42 and 5.43 could be said to require DHS to accept in-person service of process during the current national emergency, DHS has good cause to remove any such requirement to avoid the unnecessary spread of COVID–19. For the same reasons, DHS finds that the delayed effective date provision of 5 U.S.C. 553 does not apply because this rule is not ''substantive,'' and that even if the provision did apply, good cause exists under 5 U.S.C. 553(d)(3) for making this final rule effective immediately upon publication.

III. Regulatory Analyses

DHS considered numerous statutes and Executive orders related to rulemaking when developing this rule. Below are summarized analyses based on these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (Reducing Regulation and Controlling Regulatory Costs) 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.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant

regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017). This rule involves non-substantive procedural changes; it will not impose any additional costs on the public. The benefit of the non-substantive change that updates internal agency procedures is increased clarity and accuracy of regulations for the public.

B. Small Entities

This rule is not preceded by a notice of proposed rulemaking. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

D. Environment

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and if so what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

This rule is a technical amendment that updates internal agency procedures. Specifically, the amendment updates the address and procedures for service of summonses and complaints, and for service of subpoenas, court orders, and other demands or requests for official information from the Department. Therefore, it clearly fits within categorical exclusion A3(a) ''Promulgation of rules . . . of a strictly administrative or procedural nature.'' Instruction Manual, Appendix A, Table 1. Furthermore, the rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the amendment is categorically excluded from further NEPA review.

E. Signature

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**.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

For the reason stated in the preamble, DHS amends 6 CFR part 5 as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.
Subpart A also issued under 5 U.S.C. 552
Subpart B also issued under 5 U.S.C. 552a.

■ 2. In § 5.42, revise the paragraph (a) to read as follows:

§ 5.42 Service of summonses and complaints.

(a) Only the Office of the General Counsel is authorized to receive and accept on behalf of the Department summonses or complaints sought to be served upon the Department, the Secretary, or Department employees. All such documents must be sent by registered or certified mail, to the appropriate address as indicated in appendix A to this subpart. The Office of the General Counsel may also in its discretion accept service of process in person or by registered or certified mail to other addresses, as announced on the DHS website as indicated in appendix A to this subpart. The authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

* * * * *

■ 3. In § 5.43, revise paragraph (a) introductory text and add paragraph (g) to read as follows:

§ 5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which the Department is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the Office of the General Counsel is authorized to receive and accept subpoenas (consistent with paragraph (g) of this section) or other demands or requests directed to the Secretary, the Department, or any component thereof, or its employees, whether civil or criminal in nature, for:

* * * * *

(g) Subpoenas must be delivered by personal service at the appropriate address as indicated in appendix A to this subpart, consistent with the Federal Rules of Civil Procedure, unless DHS has specified alternative means of service, in its discretion, on the DHS website as indicated in appendix A to this subpart. This paragraph (g) does not apply to other demands or requests for information under paragraph (a) of this section.

■ 4. Add appendix A to subpart C to read as follows:

Appendix A to Subpart C of Part 5—Service of Process of Summonses, Complaints, and Subpoenas

1. Office of the General Counsel—Headquarters

(a) *In general.* Pursuant to § 5.42, the Office of the General Counsel Headquarters may accept service of process on behalf of the Department, including each of its components, regardless of whether such components are otherwise listed in this appendix.

(b) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.dhs.gov/office-general-counsel,* mail summonses and complaints against the Department or its personnel in their official capacity by registered or certified mail to Office of the General Counsel, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528–0485. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to *OGC@hq.dhs.gov.*

(c) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.dhs.gov/office-general-counsel,* deliver

service of process to the following address: Office of the General Counsel, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Gate 1, Washington, DC 20016.

2. U.S. Customs & Border Protection (CBP)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.cbp.gov/service-of-process,* mail summonses and complaints against CBP or its personnel in their official capacity by registered or certified mail to the following address: Office of Chief Counsel, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, Suite 4.4–B, Washington, DC 20229. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to *CBP-Service-Intake@cbp.dhs.gov.*

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.cbp.gov/service-of-process,* deliver service of process to the following address: Office of Chief Counsel, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, Suite 4.4–B, Washington, DC 20229. To aid in prompt handling of any subpoena, parties are encouraged to also email a copy to *CBP-Service-Intake@cbp.dhs.gov.*

(c) *Field Counsel.* CBP field counsel may also accept service of process at their normal duty station, in their discretion.

3. Cybersecurity and Infrastructure Security Agency (CISA)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.cisa.gov/contact-us,* mail summonses and complaints against CISA or its personnel in their official capacity by registered or certified mail to the following address: Office of the Chief Counsel, Cybersecurity and Infrastructure Security Agency, 1616 Fort Myer Drive, Arlington, VA 22209. To aid in prompt handling, parties are encouraged to also email a copy to *CISA.OCC@cisa.dhs.gov.*

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.cisa.gov/contact-us,* deliver service of process to the following address: Office of the Chief Counsel, Cybersecurity and Infrastructure Security Agency, 1616 Fort Myer Drive, Arlington, VA 22209. To aid in prompt handling, parties are encouraged to also email a copy to *CISA.OCC@cisa.dhs.gov.*

4. Federal Emergency Management Agency (FEMA)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, mail summonses and complaints against FEMA or its personnel in their official capacity by registered or certified mail to the following address: Office of the Chief Counsel, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to *FEMA-ActionOffice-OCC@fema.dhs.gov.*

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, deliver service of process to the address indicated at 44 CFR 5.83. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to *FEMA-ActionOffice-OCC@fema.dhs.gov.*

5. Federal Law Enforcement Training Centers (FLETCs)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.fletc.gov/about/contact-us,* mail summonses and complaints against FLETC or its personnel in their official capacity by registered or certified mail to the following address: Office of Chief Counsel, Federal Law Enforcement Training Centers, 1131 Chapel Crossing Rd., Bldg. 93, Glynco, GA 31524.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.fletc.gov/about/contact-us,* deliver service of process to the following address: Office of Chief Counsel, Federal Law Enforcement Training Centers, 1131 Chapel Crossing Rd., Bldg. 93, Glynco, GA 31524.

6. United States Immigration & Customs Enforcement (ICE)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, mail summonses and complaints against ICE or its personnel in their official capacity by registered or certified mail to the following address: U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536–5900. To aid in prompt handling, parties are encouraged to email a courtesy copy of a summons or complaint properly served in accordance with local rules and this guidance to *OPLAServiceIntake@ice.dhs.gov.*

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, deliver service of process to the following address: U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536–5900. To aid in prompt handling, parties are encouraged to email a courtesy copy to *OPLAServiceIntake@ice.dhs.gov.*

7. Office of Inspector General (OIG)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.oig.dhs.gov/about/contact,* mail summonses and complaints against OIG or its personnel in their official capacity by registered or certified mail to the following address: Office of Inspector General, 245 Murray Lane SW, Stop 0305, Washington, DC 20528.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.oig.dhs.gov/about/contact,* deliver service of process to the following address: Office of Inspector General, 245 Murray Lane SW, Stop 0305, Washington, DC 20528.

8. Transportation Security Administration (TSA)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.TSA.gov/contacts,* mail summonses and complaints against TSA or its personnel in their official capacity by registered or certified mail to the following address: TSA- Office of Chief Counsel (TSA–2), 601 S 12th Street, Arlington, VA 20598–6002. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to *OCCCommunications@tsa.dhs.gov.*

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.TSA.gov/contacts,* deliver service of process to the following address: TSA- Office of Chief Counsel (TSA–2), 601 S 12th Street, Arlington, VA 20598–6002. Subpoenas or other judicial process directed to TSA or its officers/employees in an official capacity (not addressed in paragraph (a) of item 7 of this appendix) may also be sent by email to *OCCCommunications@tsa.dhs.gov.*

(c) *Field counsel.* TSA field counsel may also accept service of process at their normal duty station, in their discretion.

9. U.S. Citizenship & Immigration Services (USCIS)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.uscis.gov/about-us/contact-us,* mail summonses and complaints against USCIS or its personnel in their official capacity by registered or certified mail to the following address: USCIS, Office of the Chief Counsel, 20 Massachusetts Ave. NW, Room 4210, Washington, DC 20529. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to *uscis.serviceofprocess@uscis.dhs.gov.*

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.uscis.gov/about-us/contact-us,* deliver service of process to the following address: USCIS, Office of the Chief Counsel, 20 Massachusetts Ave. NW, Room 4210, Washington, DC 20529. To aid in prompt handling of subpoenas, parties are encouraged to also email a copy to *uscis.serviceofprocess@uscis.dhs.gov.*

10. U.S. Coast Guard (USCG)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.uscg.mil/Resources/Legal/,* mail summonses and complaints against USCG or its personnel in their official capacity by registered or certified mail to the following address: Commandant CG–LCL, US Coast Guard HQ, 2703 Martin Luther King Jr. Ave. SE, Stop 7213, Washington, DC 20593–7213.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.uscg.mil/Resources/Legal/,* deliver service of process to the following address: Commandant CG–LCL, US Coast Guard HQ

Visitor Center, Gate 4, 1790 Ash St. SE, Washington, DC 20032.

11. United States Secret Service (USSS)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at *https://www.secretservice.gov/contact/,* mail summonses and complaints against USSS or its personnel in their official capacity by registered or certified mail to the following address: Communications Center, 245 Murray Lane SW, Building T5, Washington, DC 20223, Attn: Office of Chief Counsel.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at *https://www.secretservice.gov/contact/,* deliver service of process to the following address: Communications Center, 245 Murray Lane SW, Building T5, Washington, DC 20223, Attn: Office of Chief Counsel.

Chad R. Mizelle,

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

[FR Doc. 2020–08756 Filed 4–21–20; 4:15 pm]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0404; Product Identifier 2015–SW–066–AD; Amendment 39–21112; AD 2020–09–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2008–24–04 for Eurocopter France (now Airbus Helicopters) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. AD 2008–24–04 required repetitively inspecting the lubricating pump and checking the magnetic chip detector plug (chip detector) and the main gearbox (MGB) oil-sight glass. This new AD retains the requirements of AD 2008–24–04 and allows the option of altering the MGB oil flow distribution as a terminating action for the inspections. This AD was prompted by an alteration developed by Airbus Helicopters of the MGB oil flow distribution that corrects the unsafe condition. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective May 28, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 28, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 30, 2008 (73 FR 71530, November 25, 2008).

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0404.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov in* Docket No. FAA–2017–0404; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any service information that is incorporated by reference, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Blyn, Aviation Safety Engineer, Regulations & Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *james.blyn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2008–24–04, Amendment 39–15744 (73 FR 71530, November 25, 2008) (''AD 2008–24–04'') and add a new AD. AD 2008–24–04 applied to Eurocopter France (now Airbus Helicopters) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. The NPRM published in the **Federal Register** on December 31, 2019 (84 FR 72254). The NPRM proposed to continue to require the requirements of AD 2008–24–04 of repetitively inspecting the lubricating pump and checking the chip detector and the MGB oil-sight glass. The NPRM proposed to add an option to alter the lubrication system (modification (MOD) 077222) as a terminating action for the repetitive inspections. For those helicopters that incorporate Mod 077222, the NPRM also proposed to require using mineral oil 0–155 in the combiner gearbox instead of synthetic oil 0–156. This NPRM proposed to exclude helicopters with MOD 077222 from the applicability. An owner/operator (pilot) may perform the visual checks proposed by the NPRM and must enter compliance with that paragraph into the helicopter maintenance records in accordance with Title 14 Code of Federal Regulations (14 CFR) §§ 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). A pilot may perform this check because it involves only a visual check and can be performed equally well by a pilot or a mechanic. This check is an exception to the FAA's standard maintenance regulations.

The NPRM was prompted by EASA AD No. 2007–0209R1, dated September 11, 2015 (EASA AD 2007–0209R1), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA AD 2007–0209R1 followed the issuance of service information by Airbus Helicopters to provide procedures for Airbus Helicopters MOD 077222, which improves the distribution of the oil flow between the accessory modules of the combiner gearbox and the MGB. EASA advises that Airbus Helicopters MOD 077222 provides the same level of safety as the MGB pump inspections. Accordingly, the EASA AD applies to Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters with a lubrication pump part number 355A32–0700–01, 355A32–0700–02, or 355A32–0701–00 installed, except those with Airbus Helicopters MOD 077222 installed, and requires repetitive MGB pump inspections and chip detector and MGB oil-sight glass checks, and allows MOD 077222 as optional terminating action for the repetitive inspections.

Comments

The FAA gave the public the opportunity to participate in developing this AD, but the FAA did not receive any comments on the NPRM.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the

FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all information provided by EASA and determining the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The EASA AD requires that the initial and repetitive MGB oil inspections be conducted after the last flight of each day without exceeding 10 flight hours between two successive checks. This AD requires those inspections before the first flight of each day and at intervals not to exceed 10 hours time-in-service.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Eurocopter Alert Service Bulletin (ASB) No. 05.00.51, dated July 9, 2007 (ASB 05.00.51), and Airbus Helicopters ASB No. 05.00.51, Revision 1, dated July 29, 2015. This service information contains procedures for monitoring the MGB oil pump for wear. Revision 1 of this service information omits helicopters with MOD 077222 installed.

The FAA also reviewed Airbus Helicopters Service Bulletin No. AS355–63.00.25, Revision 1, dated July 29, 2015, and Revision 2, dated June 22, 2017. This service information contains procedures for altering the lubrication system to increase oil flow between the accessory modules of the combiner gearbox and the MGB. This service information also specifies using mineral oil 0–155 in the combiner gearbox instead of synthetic oil 0–156 after completing the alteration. Airbus Helicopters identifies this alteration as MOD 077222. Revision 2 of this service information clarifies a procedure and updates a work card.

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

Other Related Service Information

The FAA reviewed Eurocopter Emergency ASB No. 05.00.40, Revision 3, dated July 9, 2007. This service information specifies inspecting the MGB magnetic plug for sludge and oil sight for color. If there is sludge or if the oil is dark or dark purple, this service information specifies removing the lubrication pump and inspecting it for certain conditions, and replacing it as necessary. Revision 3 of this service information informs operators that this service information is superseded by ASB 05.00.51.

Costs of Compliance

The FAA estimates that this AD affects 46 helicopters of U.S. Registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

- Checking the MGB oil and chip detector condition takes about 0.25 work-hour for an estimated cost of about $21 per helicopter and $966 for the U.S. fleet per check.
- Inspecting the lubricating pump takes about 1 work-hour for an estimated cost of $85 per helicopter and $3,910 for the U.S. fleet per inspection.
- Replacing the MGB and pump takes about 8 work-hours and costs about $64,000 (overhauled) in parts for an estimated cost of $64,680 per helicopter.
- Altering the lubrication system (optional MOD 077222) takes about 4 work-hours and costs about $2,335 in parts for an estimated cost of $2,675 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Will not affect intrastate aviation in Alaska, and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–24–04, Amendment 39–15744 (73 FR 71530, November 25, 2008), and adding the following new AD:

2020–09–01 Airbus Helicopters (previously Eurocopter France): Amendment 39–21112; Docket No. FAA–2017–0404; Product Identifier 2015–SW–066–AD.

(a) Applicability

This AD applies to Airbus Helicopters (previously Eurocopter France) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category, with a main gearbox (MGB) lubrication pump (pump) part number 355A32–0700–01, 355A32–0700–02, or 355A32–0701–00, except helicopters with Modification (MOD) 077222 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as insufficient lubrication within an MGB. This condition, if not detected and corrected, could result in failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of helicopter control.

(c) Affected ADs

This AD replaces AD 2008–24–04, Amendment 39–15744 (73 FR 71530, November 25, 2008).

(d) Effective Date

This AD becomes effective May 28, 2020.

(e) Compliance

You are responsible for performing each action required by this AD within the

specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Before the first flight of each day and at intervals not to exceed 10 hours time-in-service (TIS), check the MGB magnetic chip detector plug (chip detector) for any sludge. Also, check for dark oil in the MGB oil-sight glass. The actions required by this paragraph may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with Title 14 Code of Federal Regulations (14 CFR) §§ 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. ''Sludge'' is a deposit on the chip detector that is typically dark in color and in the form of a film or paste, as compared to metal chips or particles normally found on a chip detector. Sludge may have both metallic or nonmetallic properties, may consist of copper (pinion bearing), magnesium (pump case), and steel (pinion) from the oil pump, and a nonmetallic substance from the chemical breakdown of the oil as it interacts with the metal.

(i) Before further flight, if any sludge is found on the chip detector, remove, open, and inspect the pump.

(ii) Before further flight, if the oil appears dark in color when it is observed through the MGB oil-sight glass, take an oil sample. If the oil taken in the sample is dark or dark purple, before further flight, remove, open, and inspect the pump.

(2) Within 25 hours TIS, after operating both engines at normal operating revolutions per minute (RPM) for at least 20 minutes to ensure the MGB oil temperature has stabilized, inspect the oil pump for wear by following the Accomplishment Instructions, paragraph 2.B.2., steps 1. through 6., of Eurocopter Alert Service Bulletin (ASB) No. 05.00.51, dated July 9, 2007 (ASB 05.00.51), or Airbus Helicopters ASB No. 05.00.51, Revision 1, dated July 29, 2015 (ASB 05.00.51 Rev 1).

(i) Record the outside air temperature (OAT) and rotor speed (NR RPM) and plot the point at which they intersect using the graph in Figure 1 or 2 of ASB 05.00.51 or ASB 05.00.51 Rev 1.

(ii) If the point on the graph at the intersection of the recorded OAT and the NR RPM falls within:

(A) Zone 3—Before further flight, replace the MGB and pump with an airworthy MGB and pump.

(B) Zone 2—At intervals not to exceed 25 hours TIS, repeat the inspection procedures by following the Accomplishment Instructions, paragraph 2.B.2, steps 1. through 6., of ASB 05.00.51 or ASB 05.00.51 Rev 1. After being classified in ''Zone 2,'' you must obtain two successive inspections separated by at least 24 hours TIS that fall within Zone 1 before you can begin to inspect at intervals not to exceed 110 hours TIS by following paragraph (f)(2)(ii)(C) of this AD for Zone 1.

(C) Zone 1—At intervals not to exceed 110 hours TIS, repeat the inspection procedures by following the Accomplishment Instructions, paragraph 2.B.2., steps 1. through 6., of ASB 05.00.51 or ASB 05.00.51 Rev 1.

(iii) Compliance with paragraphs (f)(2)(i) and (ii) of this AD constitutes terminating action for the checks and inspections required by paragraph (f)(1) of this AD.

(3) As an optional terminating action for the requirements in this AD, alter the lubrication system for the MGB in accordance with the Accomplishment Instructions, paragraphs 3.B.2.a. through 3.B.3 of Airbus Helicopters Service Bulletin No. AS355–63.00.25, Revision 1, dated July 29, 2015, or Revision 2, dated June 22, 2017. Mineral oil 0–155 is required after compliance with this alteration.

Note 1 to paragraph (f)(3) of this AD: Airbus Helicopters identifies alteration of the lubrication system as MOD 077222.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: James Blyn, Aviation Safety Engineer, Regulations & Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9–ASW–FTW–AMOC-Requests@faa.gov.*

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

(h) Additional Information

(1) Eurocopter Emergency Alert Service Bulletin No. 05.00.40, Revision 3, dated July 9, 2007, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, use the contact information in paragraphs (j)(5) and (6).

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2007–0209R1, dated September 11, 2015. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2017–0404.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(j) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 28, 2020.

(i) Airbus Helicopters Alert Service Bulletin No. 05.00.51, Revision 1, dated July 29, 2015.

(ii) Airbus Helicopters Service Bulletin No. AS355–63.00.25, Revision 1, dated July 29, 2015.

(iii) Airbus Helicopters Service Bulletin No. AS355–63.00.25, Revision 2, dated June 22, 2017.

(4) The following service information was approved for IBR on December 30, 2008 (73 FR 71530, November 25, 2008).

(i) Eurocopter Alert Service Bulletin No. 05.00.51, dated July 9, 2007.

(ii) [Reserved]

(5) For Airbus Helicopters and Eurocopter service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(6) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

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

Issued on April 17, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08531 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0677; Airspace Docket No. 19–ACE–5]

RIN 2120–AA66

Revocation of VHF Omnidirectional Range (VOR) Federal Airway V–61 and Amendment of Area Navigation Route T–286 Due to the Decommissioning of the Robinson, KS, VOR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, delay of effective date.

SUMMARY: This action changes the effective date of a final rule published in the **Federal Register** on March 9, 2020, removing VHF Omnidirectional Range (VOR) Federal airway V–61 and extending area navigation (RNAV) route T–286 in its place due to the planned decommissioning of the Robinson, KS,

VOR navigation aid (NAVAID). The FAA is delaying the effective date to coincide with the slipped decommissioning date of the Robinson VOR to September 10, 2020, and the anticipated completion of pre-requisite air traffic control (ATC) training necessary to safely implement new air traffic procedures necessary to adopt the rule amendments.

DATES: The effective date of the final rule published on March 9, 2020 (85 FR 13481) is delayed until September 10, 2020. The Director of the Federal Register approved this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2019–0677 (85 FR 13481, March 9, 2020), removing VOR Federal airway V–61 in its entirety and extending RNAV route T–286 in its place due to the planned decommissioning of the Robinson, KS, VOR NAVAID. The effective date for that final rule is May 21, 2020. Subsequent to the final rule, due to COVID–19 pandemic concerns and response considerations, ATC facilities across the National Airspace System (NAS) have adjusted controller scheduling and reduced staffing to reduce pandemic impacts. This has resulted in controller training and briefing challenges while they perform essential ATC duties supporting the NAS. As a result, some ATC facilities affected by the rule amendments were unable to complete the required pre-requisite controller training necessary to safely implement new air traffic procedures necessary to adopt the regulatory air traffic service (ATS) route amendments, and accompanying arrival procedure actions, to support the May 21, 2020, effective date.

To facilitate the safe and continuous use of existing air traffic procedures, and allow sufficient time for ATC facilities to complete the required prerequisite training necessary to safely implement the new air traffic procedures, the planned decommissioning of the Robinson, KS, VOR has been slipped to September 10, 2020. Therefore, the rule removing V–61 and amending T–286 is delayed to coincide with that date.

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

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

Good Cause for No Notice and Comment

Section 553(b)(3)(B) of Title 5, United States Code, (the Administrative Procedure Act) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The FAA finds that prior notice and public comment to this final rule is unnecessary due to the brief length of the extension of the effective date and the fact that there is no substantive change to the rule.''

Delay of Effective Date

■ Accordingly, pursuant to the authority delegated to me, the effective date of the final rule, Airspace Docket 19–ACE–5, as published in the **Federal Register** on March 9, 2020 (85 FR 13481), FR Doc. 2020–04657, is hereby delayed until September 10, 2020.

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

Issued in Washington, DC, on April 17, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–08556 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2019–0263; FRL–10005–57]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (19–2.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which are the subject of premanufacture notices (PMNs). This action requires persons to notify EPA least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required as a result of that determination.

DATES: This rule is effective on June 22, 2020. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on May 7, 2020.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather

provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after May 26, 2020 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0263, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the agency taking?

EPA is finalizing a SNUR under TSCA section 5(a)(2) for chemical substances which were the subject of PMNs P–16–425, P–18–125, P–18–228, P–18–234, P–18–270, P–18–322, P–19–4, and P–19–34. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of June 11, 2019 (84 FR 27061) (FRL–9994–85), EPA proposed a SNUR for these chemical substances in 40 CFR part 721 subpart E. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents proposing the SNUR. The record for the SNUR was established in the docket under docket ID number EPA–HQ–OPPT–2019–0263. That docket includes information considered by the Agency in developing the proposed and final rules, public comments submitted for the proposed rule, and EPA's responses to public comments received on the proposed rule.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. As described in Unit V. of the proposed SNUR, the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

• The projected volume of manufacturing and processing of a chemical substance.

• The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

• The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

• The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors. In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the conditions of use of the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from two identifying entities on the proposed rule. The Agency's responses are described in a separate Response to Public Comments document contained in the public docket for this rule, EPA–HQ–OPPT–2019–0263.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the June 11, 2019 proposed SNUR (84 FR 27061) (FRL–9994–85), EPA provided the following information for each chemical substance:

• PMN number.

• Chemical name (generic name, if the specific name is claimed as CBI).

• Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).

• Basis for the SNUR.

• Information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.

This information may include testing not required to be conducted but which would help characterize the potential health and/or environmental effects of the PMN substance. Any recommendation for information identified by EPA was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the chemical substance. Further, any such testing identified by EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models. EPA also recognizes that whether testing/further information is needed will depend on the specific exposure and use scenario in the SNUN. EPA encourages all SNUN submitters to contact EPA to discuss any potential future testing. See Unit VIII. for more information.

• CFR citation assigned in the regulatory text section of these rules.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

The chemical substances that are the subject of these SNURs completed premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other reasonably foreseen conditions of use. EPA has preliminarily determined that the chemicals under their intended conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use for these chemicals. EPA is designating these reasonably foreseen and other potential conditions of use as significant new uses. As a result, those conditions of use are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV of the June 11, 2019 proposed rule (84 FR 27061) (FRL–9994–85), EPA identified certain reasonably foreseen conditions of use and other circumstances different from the intended conditions of use identified in the PMNs and determined that those changes could result in changes in the type or form of exposure to the chemical substances and/or increased exposures to the chemical substances and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

• To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.

• To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.

• To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

• To be able to identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

EPA designated June 6, 2019 as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of June 6, 2019 that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, that person would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and

SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed SNUR lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed SNUR will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. of the proposed SNUR may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at § 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0263.

XII. Statutory and Executive Order Reviews

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

This action establishes SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review

instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 11 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on 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, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 31, 2020.

Tala R. Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add §§ 721.11258 through 721.11266 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
§ 721.11258	2070–0012
§ 721.11260	2070–0012
§ 721.11261	2070–0012
§ 721.11262	2070–0012
§ 721.11263	2070–0012
§ 721.11264	2070–0012
§ 721.11265	2070–0012
§ 721.11266	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11258 through 721.11266 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.11258 Amino-silane (generic).
721.11260 Acetic acid, 2-oxo-, sodium salt (1:1).
721.11261 Branched alkenyl acid, alkyl ester, homopolymer (generic).
721.11262 Alkenoic acid, reaction products with bis substituted alkane and ether polyol (generic).
721.11263 Ethanol, 2-butoxy-, 1,1′-ester (generic).
721.11264 Heteromonocycle, 4,6-dimethyl-2-(1-phenylethyl)- (generic).
721.11265 Aromatic dianhydride, polymer with aromatic diamine and heteroatom bridged aromatic diamine, reaction products with aromatic anhydride (generic).
721.11266 Metal, bis(2,4-pentanedionato-kO2,kO4)- (T–4)- (generic).

§ 721.11258 Amino-silane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as amino-silane (PMN P–16–425) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) though (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11260 Acetic acid, 2-oxo-, sodium salt (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as acetic acid, 2-oxo-, sodium salt (1:1) (PMN P–18–125, CAS No. 2706–75–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture, process, or use the substance in an application that generates a mist, spray, vapor, or aerosol.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11261 Branched alkenyl acid, alkyl ester, homopolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as branched alkenyl acid, alkyl ester, homopolymer (PMN P–18–228) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture, process or use the substance in any manner that results in inhalation exposures.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11262 Alkenoic acid, reaction products with bis substituted alkane and ether polyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid, reaction products with bis substituted alkane and ether polyol (PMN P–18–234) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance involving spray application that results in inhalation exposures.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

§ 721.11263 Ethanol, 2-butoxy-, 1,1′-ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethanol, 2-butoxy-, 1,1′-ester (PMN P–18–270) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance for other than an active co-solvent for solvent-based coatings; a coalescent for industrial water-based coatings; a coupling agent and solvent for industrial cleaners, rust removers, hard surface cleaners and disinfectants; and a primary solvent in solvent-based silk screen printing inks.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11264 Heteromonocycle, 4,6-dimethyl-2-(1-phenylethyl)- (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteromonocycle, 4,6-dimethyl-2-(1-phenylethyl)- (PMN P–18–322) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to process (formulate) the substance to a concentration of greater than 5% by weight.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) and (b) (at concentrations of the substance greater than 5% by weight), § 721.125(c) (at concentrations of the substance greater than 5% by weight), and § 721.125(i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11265 Aromatic dianhydride, polymer with aromatic diamine and heteroatom bridged aromatic diamine, reaction products with aromatic anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic dianhydride, polymer with aromatic diamine and heteroatom bridged aromatic diamine, reaction products with aromatic anhydride (PMN P–19–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process or use of the substance in any manner that results in inhalation exposures.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) Limitations or revocation of certain notification requirements. The provisions of § 721.185 apply to this section.

§ 721.11266 Metal, bis(2,4-pentanedionato-kO2,kO4)- (T–4)- (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as metal, bis(2,4-pentanedionato-kO2,kO4)- (T–4)- (PMN P–19–34) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j). It is a significant new use to process or use the substance without the engineering controls described in the premanufacture notice.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2020–07397 Filed 4–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0730; FRL–10008–40–Region 3]

Air Plan Approval; Pennsylvania; Attainment Plan for the Allegheny Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). The SIP revision, submitted on October 3, 2017, provides for attainment of the 2010 sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) in the Allegheny Pennsylvania SO_2 nonattainment area (hereafter referred to as the ''Allegheny Area'' or ''Area''). The SIP submission includes an attainment plan, including an attainment demonstration showing SO_2 attainment in the Area, an analysis of reasonably available control technology (RACT) and reasonably available control measures (RACM) requirements, enforceable emission limitations and control measures, a reasonable further progress (RFP) plan, and contingency measures for the Allegheny Area. EPA is approving new SO_2 emission limits and associated compliance parameters for the four major sources of SO_2 in the Allegheny Area into the Allegheny County portion of the Pennsylvania SIP. Three of the sources (Clairton Coke Works, Edgar Thomson, and Irvin Works) are collectively known as the U.S. Steel (USS) Mon Valley Works, and the fourth

is the Harsco Metals Facility, also referred to as Braddock Recovery. EPA is also approving the base year emissions inventory for the Allegheny Area and ACHD's certification that the nonattainment new source review (NNSR) permit program meets requirements. These revisions to the Pennsylvania SIP are in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on May 26, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0730. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, 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) 814–2308. Ms. Powers can also be reached via electronic mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2010, (75 FR 35520) EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb). Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS. This designation process is described in section 107(d)(1) of the CAA. On August 5, 2013 (78 FR 47191), EPA designated 29 areas of the country, including the Allegheny Area, as nonattainment for the 2010 SO_2 NAAQS based on violating air quality monitoring data for calendar years 2009–2011.[1] The Allegheny Area is entirely within Pennsylvania and is comprised of the City of Clairton, the City of Duquesne, the City of McKeesport, the Townships of Elizabeth, Forward, and North Versailles, and the following Boroughs: Braddock, Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Glassport, Jefferson Hills, Liberty, Lincoln, North Braddock, Pleasant Hills, Port Vue, Versailles, Wall, West Elizabeth, and West Mifflin.

The Allegheny Area designation became effective on October 4, 2013. Section 191(a) of the CAA directs states to submit SIP revisions for designated SO_2 nonattainment areas to EPA within 18 months of the effective date of the designation, *i.e.,* in this case by no later than April 4, 2015. Under CAA section 192(a), these SIP submissions are required to include measures that will bring the nonattainment area into attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation. The attainment date for the Allegheny Area was therefore October 4, 2018.

Attainment plans for SO_2 must meet sections 110, 172, 191 and 192 of the CAA. The required components of an attainment plan submittal are listed in section 172(c) of title 1, part D of the CAA. EPA's regulations governing SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO_2 SIPs and fundamental principles for SIP control strategies. *Id.* at 13545–49, 13567–68. On April 23, 2014, EPA issued recommended guidance (hereafter 2014 SO_2 Guidance) for how state submissions could address the statutory requirements for SO_2 attainment plans.[2] In this guidance, EPA described the statutory requirements for an attainment plan, which include: An accurate base year emissions inventory of current emissions for all sources of SO_2 within the nonattainment area (172(c)(3)); an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (172(c)); RFP (172(c)(2)); implementation of RACM, including RACT (172(c)(1)); NNSR requirements (172(c)(5)); and adequate contingency measures for the affected area (172(c)(9)).

On March 18, 2016, effective April 18, 2016, EPA published a document that Pennsylvania and other states had failed to submit the required SO_2 attainment plans by the April 4, 2015 submittal deadline. See 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. Additionally, under CAA section 110(c), the finding triggered a requirement that EPA promulgate a federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete submittal and EPA has approved the submittal as meeting applicable requirements before the Administrator promulgates a FIP. Following Pennsylvania's submittal of ACHD's attainment plan SIP on October 3, 2017, EPA sent a letter dated October 6, 2017 to Pennsylvania finding the submittal was complete and therefore the sanctions deadline no longer applied and sanctions under section 179(a) would not be imposed as a consequence of Pennsylvania's having missed the original deadline.

II. Summary of EPA's Notice of Proposed Rulemaking

On November 19, 2018 (83 FR 58206), EPA proposed approval of Pennsylvania's October 3, 2017 SO_2 attainment plan submittal for the Allegheny Area. The notice of proposed rulemaking (NPRM) described the requirements that nonattainment plans are designed to meet and provided extensive discussion of EPA's rationale for proposing to approve the Pennsylvania submittal as meeting these requirements. Notably, the Allegheny Area attainment plan included 30-day rolling average hourly SO_2 emission limits for the following sources: Clairton Coke Works, Edgar Thomson, Irvin Works, and Harsco Metals. The NPRM included an extensive discussion of EPA's 2014 SO_2 Guidance allowing the use of 30-day rolling average hourly SO_2 emission limits, including a full discussion of EPA's rationale for concluding that properly set longer-term average SO_2 emission limits of up to 30 days (in particular, longer-term

[1] EPA is continuing its designation efforts for the 2010 SO_2 NAAQS. Pursuant to a court order issued on March 2, 2015, by the U.S. District Court for the Northern District of California, EPA must complete the remaining designations for the rest of the Country on a schedule that contains three specific deadlines. *Sierra Club, et al.* v. *Environmental Protection Agency,* 13–cv–03953–SI (2015).

[2] See ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (April 23, 2014), available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

emission limits that are comparably stringent to the 1-hour limits that would otherwise be established) can be effective in providing for attainment. The NPRM then described EPA's review of the modeling that Pennsylvania submitted to demonstrate that the limits adopted by ACHD would provide for attainment of the 2010 SO_2 NAAQS and described EPA's review of whether the submittals met other applicable requirements, such as the requirements for an emissions inventory, RFP, NNSR, and contingency measures. On this basis, EPA proposed to conclude that the SO_2 emission limits established for Clairton, Edgar Thomson, Irvin, and Harsco Metals assure attainment in the Allegheny Area. More generally, EPA proposed to approve Pennsylvania's SIP submittal as addressing the nonattainment planning requirements. The specific attainment plan requirements and EPA's rationale for proposing approval of the Allegheny Area attainment plan are explained in detail in the NPRM and will not be restated here. Five commenters submitted comments on the NPRM. One commenter supported the proposal, and one commenter provided comments that were not germane to the proposed rulemaking. The remaining three commenters submitted adverse comments that are addressed in the next section. All of the comments are included in the Docket for this rulemaking at *https://www.regulations.gov,* Docket ID Number EPA–R03–OAR–2017–0730.

III. Comments and EPA Responses

Three comment letters—one anonymous, one from the Sierra Club and one from the Clean Air Council—provided comments relevant to this rulemaking. The comments submitted by the Clean Air Council included comments that were originally submitted to ACHD in response to ACHD's proposal of the Allegheny Area attainment plan, which the Clean Air Council believed were not adequately addressed by ACHD.

Comment 1: The commenter noted that the attainment SIP for the Allegheny Area was due in April 2015, which Pennsylvania failed to meet, and that EPA subsequently issued a finding of failure to submit the SIP in March 2016. The commenter asserts that the finding triggered a requirement that EPA promulgate a FIP by March 2018, and that not only has EPA failed to issue a FIP, but EPA has also failed to enforce applicable sanctions against the State.[3]

Response 1: Pennsylvania submitted an attainment plan SIP for the Allegheny SO_2 nonattainment area on October 3, 2017. EPA had an obligation to take action on the submittal or promulgate a FIP by April 18, 2018, as required under CAA section 110(c)(1)(A). EPA acknowledges that it did not approve the SIP revision or promulgate a FIP for the Allegheny Area by this date, as noted by the commenter. EPA also notes that since issuing its proposed approval of the SIP, EPA has become subject to a court order directing it to take final action on the SIP no later than April 30, 2020. See *Center for Biological Diversity, et al.* v. *Wheeler,* No. 4:18–cv–03544 (November 26, 2019). EPA believes that the most expeditious way to bring this area into attainment is to approve the submitted SIP with the limits and restrictions adopted by ACHD, making those limits and restrictions Federally-enforceable. Completion of our proposed action to approve the SIP, which contains emissions limits and requirements that are already effective and which the subject sources are already meeting, will result in achieving Federally-enforceable emissions reductions needed to attain the NAAQS far faster than would starting from scratch to develop, adopt, and apply new emissions limits and requirements in a FIP, the requirement for which would in any case be mooted by our final approval of the SIP. Thus, it is reasonable to use the most expeditious approach to a Federally-enforceable plan to bring the Area into attainment, and that is to approve this SIP rather than promulgate a FIP. With this final action to approve the Allegheny SO_2 attainment plan SIP, we are discharging our statutory obligation under CAA section 110(k)(2) to act on the SIP, and such approval terminates our FIP obligation under section 110(c)(1)(A) for the Allegheny SO_2 nonattainment area. We are also discharging our requirement under the court order to take final action on the SIP by April 30, 2020.

EPA disagrees that sanctions are applicable in the Allegheny Area. As discussed in the Background section of this preamble, Pennsylvania submitted the Allegheny attainment SIP on October 3, 2017, which was before the deadline of October 18, 2017 for the State to correct the deficiency that started the sanctions clock. CAA section 179(a). EPA's letter dated October 6, 2017 to Pennsylvania indicated that the submittal met the completeness criteria under 40 CFR part 51, and corrected the deficiency identified in EPA's March 18, 2016 finding of failure to submit SO_2 SIPs. Under EPA's regulations implementing mandatory sanctions clocks, as of October 6, 2017, the sanctions clock for the Allegheny Area was stopped; therefore, the sanctions under section 179(a) were not imposed as a consequence of Pennsylvania having missed the original deadline for submittal of the SIP. See 40 CFR 52.31(d)(5).

Comment 2: The commenter states that under the Clean Air Act, the NAAQS ''compliance'' deadline for this area was October 4, 2018, and that it is unclear how the SIP can meet the past compliance deadline when even those limits proposed in the ACHD submission are not presently Federally-enforceable. The commenter also states that the Allegheny nonattainment area is still failing to attain the standard over five years after designation, and that EPA cannot approve an attainment plan for an area that is ''demonstrably failing to attain the standard, well-after the attainment deadline.'' The commenter cites to EPA data that shows the 2015–2017 design value as 97 ppb, or roughly 30 percent above the NAAQS, and that the ''current'' 99th percentile SO_2 hourly concentration for the Allegheny Area is 130 ppb, which would result in a 2016–2018 design value of at least 103 ppb. The commenter points out that the 99th percentile hours for 2017 and 2018 are so high that Allegheny cannot come into attainment even if the monitor shows zero SO_2 emissions for every hour in 2019, and that EPA ''confusingly states that the plan will somehow 'ensure ongoing attainment' and that the chosen control strategies 'will bring the Area into attainment by the statutory attainment date of October 4, 2018.' '' The commenter also says that EPA never addresses monitor data at all, except where monitored data plays a factor in the contingency measures for the area, and that EPA cannot approve an attainment plan that fails to actually attain the standard by the statutorily mandated deadline of October 4, 2018.

Response 2: The commenter makes an assertion that is incorrect—the CAA does not require that, before EPA can approve a SIP that provides for attainment, it must first find that the area factually attained the NAAQS as a result of the control strategy in the SIP. Nor does the CAA preclude approval of a control strategy that modeling shows will achieve NAAQS-attaining air quality merely because monitoring of historical air quality that preceded the implementation of controls that went into force still produces design values that do not reflect emissions reductions

[3] The commenter cited a FIP deadline of March 2018, however the FIP deadline was actually 24 months after the effective date of the finding, or April 18, 2018.

from those controls and that are consequently still above the NAAQS. Sections 172 and 192 of the CAA require states to submit SIP revisions that ''provide for attainment'' of the SO_2 NAAQS by the attainment date. In our proposal, we described the measures, supporting analyses, and the rationale for finding that the SO_2 attainment plan for the Allegheny Area submitted by Pennsylvania does provide for attainment. In particular, Pennsylvania's submittal provides modeling-based evidence that establishes that the control measures required on the sources of emissions in the Allegheny Area are sufficient to yield air quality that attains the NAAQS by the attainment deadline. As discussed in the proposal, the permits required that the Mon Valley Works facilities and the Harsco facility comply with the control measures needed for attainment by October 4, 2018.

The commenter submitted data showing monitored 99th percentile SO_2 concentrations from 2016 to 2018 (64 ppb, 116 ppb, and 130 ppb, respectively) that results in a design value for this three-year period of 103 ppb. The commenter further stated that regardless of the monitored values for 2019, the Area would not come into attainment because of the high 99th percentile concentrations for 2017 and 2018. The monitoring data in 2017 and 2018 cited by the commenter are accurate. However, the available monitoring data should not be interpreted as indicating that the attainment plan will fail to provide for timely attainment. The monitoring data cited by the commenter were collected before the full implementation of the measures in the Allegheny SO_2 attainment plan, which occurred by October 4, 2018. Therefore, these data measuring the air quality prior to full implementation of the measures reflected in the modeling demonstration are not a reliable indicator of whether air quality, after implementation of all modeled relevant control measures, would be expected to meet the standard at the attainment deadline. In other words, these data are not indicative of the adequacy of the plan and its modeling demonstration to provide for NAAQS attainment. Instead, as EPA explained in our 2014 SO_2 Guidance and in numerous proposed and final SIP actions implementing the SO_2 NAAQS, a key element of an approvable SO_2 attainment SIP is the required modeling demonstration showing that the remedial control measures and strategy are adequate to bring a previously or currently violating area into attainment.[4] Given the form of the 2010 SO_2 NAAQS as the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO_2 concentrations, it is often possible that the three-year period of monitored data will not reflect the actual air quality levels resulting from implementation of the newer remedial control measures implemented within that period. In such cases, as it is here, the more complete and representative analysis for informing action on a submitted SIP should focus on the results of newly implemented control measures required under the plan, rather than historical concentrations that do not reflect the results of the plan's required control measures. The former analysis explicitly addresses whether air quality will be attaining (as required) under the state's submitted plan, whereas the latter analysis may have little to no bearing on what will happen as a result of the plan. Therefore, in the context of reviewing the adequacy of those newer control measures to provide for newly attaining air quality under sections 172 and 192 of the CAA, we conclude that it is reasonable to focus on the modeling results that specifically account for those control measures and the resulting reductions in SO_2 emissions, rather than on monitored data that, in this case, do not represent air quality levels resulting from full implementation of the control measures in the attainment plan. In the Allegheny SO_2 attainment plan, ACHD's modeling shows that implementation of the measures included in the plan result in air quality that attains the NAAQS, and those measures are being met by the subject sources by the October 4, 2018 attainment date. Therefore, the SIP meets the requirement to demonstrate that it provides for timely attainment.

While the submitted modeling demonstrates attainment for the area, EPA acknowledges that some SO_2 exceedances were monitored in 2018 and 2019 that EPA believes were the result of a December 24, 2018 fire at the Clairton Coke Works which required the immediate shut down of No. 2 and No. 5 control rooms. The shutdown of the two control rooms resulted in the diversion of coke oven gas (COG) away from the desulfurization process within the facility's by-products operation, allowing SO_2 to be released from various flaring stacks into the ambient air. To mitigate the release of pollutants into the air, U.S. Steel, owner of the Clairton Coke Works, took remedial action to mitigate SO_2 emissions by using COG diluted with natural gas in the boilers. ACHD conducted a review of operational data for the period following the fire and determined that the facility was in violation of its hydrogen sulfide (H_2S) permit limit. ACHD's review of monitor data for the period following the fire showed monitored violations. ACHD concluded that the mitigation efforts by U.S. Steel did not fully compensate for the shutdown of the two control rooms and the bypass of the desulfurization process. Therefore, on February 28, 2019, ACHD issued an Enforcement Order requiring U.S. Steel to extend coking times at all the Clairton batteries, reduce usage of COG at boilers located at the Edgar Thomson facility, and reduce the SO_2 emissions from coke oven batteries, boilers, and emissions stacks from all of the Mon Valley Works facilities by either one or a combination of reducing the volume of coal in each oven, extending the coking time further, limiting production at coke oven batteries by temporarily hot idling coke ovens, or some other plan submitted to ACHD to meet ACHD's stipulated reduction of SO_2 emissions from the facility. The enforcement order required weekly compliance reports to ACHD until all repairs were completed to No. 2 and No. 5 control rooms, and 100 percent of the COG exiting the control rooms was again being desulfurized, or until June 30, 2019, whichever was later. On March 12, 2019, following discussions with U.S. Steel, ACHD issued an amended order (Enforcement Order #190202A) compelling U.S. Steel to extend the time of the coking process. The control rooms were repaired and resumed operation on April 15, 2019, and COG was again sent to the desulfurization units on that date. A second fire occurred on the morning of June 17, 2019. The second fire again shut down the No. 2 and No. 5 control rooms, but both control rooms were

[4] Air Plan Approval; KY; Attainment Plant for Jefferson County SO_2 Nonattainment Area, (Proposed rule 83 FR 56002, November 9, 2018; Final rule 84 FR 30921, June 28, 2019), and Approval and Promulgation of Air Quality Implementation Plans; Arizona; Nonattainment Plan for the Miami SO_2 Nonattainment Area (Proposed rule 83 FR 27938, June 15, 2018; Final rule 84 FR 8813, March 12, 2019).

back in operation by the evening of the same day. The data in EPA's Air Quality Systems (AQS) database for all of 2018 and 2019 shows three exceedances of the NAAQS in December 2018 [5] and seven exceedances in early 2019, shown in Table 1 as follows:

TABLE 1—MONITORED SO_2 EXCEEDANCES AT LIBERTY AND NORTH BRADDOCK MONITORS

Monitor	AQS monitor	Date of exceedance	Occurrence (hour)	Concentration, parts per million (ppm)
Liberty McKeesport, PA	42–003–0064	12/26/18	10:00	0.079
		12/26/18	11:00	0.08
		12/28/18	10:00	0.145
		1/2/19	21:00	0.081
		1/3/19	23:00	0.085
		1/8/19	4:00	0.076
		1/8/19	0:00	0.08
		3/28/19	3:00	0.082
North Braddock Braddock, PA	42–003–1301	1/7/2019	23.00	0.083
		2/4/2019	22.00	0.082

As shown in Table 1, the monitored exceedances occurred at the Liberty and North Braddock monitors between December 26, 2018 and March 28, 2019, during the time when the desulfurization units were off-line. There were no monitored exceedances that occurred that correlate to the June 2019 fire. From October 2018, when compliance with the new measures was required at the affected facilities, until the December 2018 fire, no exceedances of the standard were monitored. Based on EPA's preliminary data for 2019, since April 15, 2019, when the desulfurization units resumed operation, to the end of 2019, no additional exceedances have been monitored.[6] This indicates that the additional measures required by ACHD to achieve attainment in the Area are in fact adequate to provide for attainment.[7]

Under the CAA, a determination of whether an area has failed to attain is a separate action from the review of an attainment demonstration SIP. EPA's attainment SIP review for SO_2 occurs under CAA sections 110(k), 172(c) and 192(a), while a determination of whether an SO_2 nonattainment area has failed to attain is governed by CAA section 179(c)(1). Under section 110(k)(3), EPA is required to approve a SIP submission that meets all applicable requirements of the CAA. For the reasons described in our proposal and elsewhere in this action, we have concluded that the Allegheny SO_2 attainment plan meets all such requirements, including the requirement in 172(c) and 192(a) to provide for attainment by the attainment date. This is the determination that is the subject of this final SIP approval action.

Separately, in a different action under section 179(c)(1) that is beyond the scope of this final SIP approval action, EPA must determine within six months of the attainment date whether an area has attained the NAAQS based on the area's air quality as of the attainment date. Accordingly, EPA will take a separate action to analyze the pertinent information and determine whether the Allegheny SO_2 Area attained the NAAQS by the attainment date in accordance with section 179(c)(1).

Comment 3: One commenter states that the contingency measures in the attainment plan are ''hazy and unspecified'' and that the ''thorough analysis to identify the sources of the violation and bring the area back into compliance with the NAAQS'' is ''wholly insufficient to address NAAQS exceedances and ensure attainment, and that EPA nowhere explains why such contingency measures are not already triggered by the continuing levels of SO_2 in the Allegheny area.'' Another commenter states that ACHD should do more than what is described in its contingency measures, particularly as the 2014 SO_2 Guidance states that an air agency is not precluded from requiring additional contingency measures that are enforceable and appropriate for a particular source category, and should include a ''comprehensive program to identify sources of violations and undertake an aggressive follow-up for compliance and enforcement, provide specific contingency measures, as well as including specific contingency measures.''

Response 3: As EPA explained in the 2014 SO_2 Guidance, SO_2 presents special considerations, compared to other criteria pollutants.[8] First, for some of the other criteria pollutants, the analytical tools for quantifying the relationship between reductions in precursor emissions and resulting air quality improvements remain subject to significant uncertainties, in contrast with procedures for directly-emitted pollutants such as SO_2. Second, emission estimates and attainment analyses for other criteria pollutants can be strongly influenced by overly optimistic assumptions about control efficiency and rates of compliance for many small sources. This is not the case for SO_2.

In contrast, the control efficiencies for SO_2 control measures are well understood and are far less prone to uncertainty. Because SO_2 control measures are, by definition, based on what is directly and quantifiably necessary to attain the SO_2 NAAQS, it would be unlikely for an area to implement the necessary emission controls yet fail to attain the NAAQS.

[5] Nine other monitored exceedances occurred between February through August 2018, however, these exceedances happened prior to the establishment of new limits, and occurred prior to and are not related to the fires at Clairton, which occurred outside of these time frames. The reports showing the exceedances in Table 1 have been added to the docket for this rulemaking action.

[6] The 2019 data is preliminary and will not be certified until May 2020.

[7] 2018 fourth quarter reports for Clairton, Edgar Thompson, and Irvin showing no deviations from permit requirements (except for the period during the December 2018 fire) are provided in the docket. The Clairton report shows that the COG provided to the pipeline to fuel the other facilities, including Harsco Metals, met the permit limit.

[8] See EPA's 2014 SO_2 Nonattainment Guidance, p. 41. See also SO_2 Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, EPA–452/R–94–008, February 1994, p. 6–40. See General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 at 57 FR 13498 (April 16, 1992).

Therefore, for SO_2 programs, EPA has explained that ''contingency measures'' can mean that the air agency has a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an ''aggressive'' follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of the revised SIP. EPA believes that this approach continues to be valid for the implementation of contingency measures to address the 2010 SO_2 NAAQS.[9]

As noted in the NPRM, Section 7 of the Allegheny attainment plan details the requirements whenever the SO_2 NAAQS is exceeded. It requires ACHD to, within 10 days of a violation, complete an analysis to determine the source and the conditions that contributed to the violation. The culpable source would then be required to submit, within 10 days of notification by ACHD, a written system audit report that details the operating parameters of all SO_2 emissions units for the time periods during which the violation occurred, along with recommended control strategies for any unit that may have contributed to the violation. Following a 30-day evaluation period and a 30-day consultation period with the source, additional control measures will be implemented as expeditiously as possible to return the area to compliance. Further, the installation permits for the four sources of SO_2 in the Area, which are incorporated by reference into the Allegheny portion of the Pennsylvania SIP, require SO_2 compliance testing, monitoring, and reporting to assure compliance with the permit limits, including any instances of non-compliance with the conditions of the permit and the corrective action taken to restore compliance.

Also, ACHD has a comprehensive program to identify potential sources causing SO_2 NAAQS violations, as specified in ACHD Article XXI, Part I, Regulations 2109.01 through 2901.06, and 2901.10 (Enforcement). Under these regulations, ACHD is authorized to take any action it deems necessary or proper for the effective enforcement of any provision of Article XXI and the rules and regulations promulgated under the article. Any violation authorizes ACHD to pursue the issuance of an enforcement order as authorized under the Article (for corrective action or shut down of a source or part of a source), the revocation of any applicable license or installation or operating permit, or initiation of criminal proceedings, civil penalty, or injunctive relief. Also, the permits for the four main sources of SO_2 include a requirement to record all instances of non-compliance with the conditions of the permits upon occurrence along with the corrective action taken to restore compliance. As explained in response to comment 2 of this action, following implementation of all the control measures contained in this attainment plan on October 4, 2018, the Allegheny Area did not experience any SO_2 NAAQS exceedances except for those exceedances directly traceable to the two fires and shutdowns of the desulfurization unit at the Clairton Coke Works. ACHD took immediate enforcement action to minimize emissions resulting from the first fire, in accordance with the contingency measures outlined in its attainment plan, and the desulfurization unit shutdown because of the second fire lasted only a few hours. ACHD's implementation of some of the contingency measures contained in its attainment plan in response to the first fire at Clairton shows that the source-specific enforcement response in the plan can be effective at preventing further exceedances of the SO_2 NAAQS. Since the restart of the desulfurization unit at Clairton and the return to typical operations at Clairton, there have been no further recorded exceedances of the SO_2 NAAQS in the Allegheny Area. Thus, the Allegheny Area is currently meeting the 2010 SO_2 NAAQS without implementation of the contingency measures in the plan, so there is no need to trigger contingency measures at this time. If there are no further unforeseen breakdowns in SO_2 emission controls at the four facilities, the modeling shows that the existing control measures in the plan are adequate to ensure attainment of the 2010 SO_2 NAAQS.

Comment 4: The commenter asserts that EPA's reliance on long-term emission limits ensures that attainment will not be achieved because the 2010 SO_2 NAAQS is a short-term, 1-hour standard, and the proposed 30-day averaging period for the Clairton and Irvin Plants are fundamentally incapable of protecting the standard. The commenter asserts that because the NAAQS is evaluated through reference to the 4th-highest daily maximum ambient concentration annually, ambient air quality conditions can be rendered unsafe by as few as four hours of elevated emissions over the course of a year, thus making an emission limit with an averaging period of longer than one hour unlikely to be able to protect this short-term standard. The commenter argued that spikes in emissions could cause short-term elevations in ambient SO_2 levels sufficient to violate the NAAQS while nonetheless averaging out over longer periods such that the 30-day average permit limit is ''complied'' with. To support this contention, the commenter provided language making similar points excerpted from two EPA letters that were included in the attachments to the commenter's December 19, 2018 comment letter on the NPRM, specifically an August 12, 2010 comment letter from EPA Region 7 to Kansas regarding the Sunflower Holcomb Station Expansion Project, and a February 1, 2012 comment letter from EPA Region 5 to Michigan regarding a draft construction permit for the Detroit Edison Monroe Power Plant. The commenter concluded that the 30-day average emission limit proposed for the major sources are 720 times the NAAQS and should be revised to adequately protect the NAAQS. The commenter states the proposed long-term limits should be rejected in favor of a plan with 1-hour emission limits to protect the 1-hour NAAQS.

Response 4: EPA disagrees with the commenter's statement that the proposed 30-day limits at Clairton and Irvin are fundamentally incapable of protecting the 1-hour SO_2 NAAQS. EPA believes as a general matter that properly set, longer-term average limits are comparably effective in providing for attainment of the 1-hour SO_2 standard as are 1-hour limits. EPA's 2014 SO_2 Guidance sets forth in detail the reasoning supporting its conclusion that the distribution of emissions that can be expected in compliance with a properly set longer-term average limit is likely to yield overall air quality protection that is as good as a corresponding hourly emissions limit set at a level that provides for attainment.

EPA's 2014 SO_2 Guidance specifically addressed this issue as it pertains to requirements for SIPs for SO_2 nonattainment areas under the 2010 NAAQS, especially with regard to the use of appropriately set comparably stringent limitations based on averaging times as long as 30 days. EPA found that a longer-term average limit which is comparably stringent to a short-term average limit is likely to yield comparable air quality; and that the net effect of allowing emissions variability over time but requiring a lower average emission level is that the resulting worst-case air quality is likely to be comparable to the worst-case air quality resulting from the corresponding higher

[9] See EPA's 2014 SO_2 Nonattainment Guidance, p. 41.

short-term emission limit without variability. See 2014 SO_2 Guidance.

Any accounting of whether a 30-day average limit provides for attainment must consider factors reducing the likelihood of exceedances as well as factors creating risk of additional exceedances. To facilitate this analysis, EPA used the concept of a critical emission value (CEV) for the SO_2-emitting facilities which are being addressed in a nonattainment SIP. The CEV is the continuous 1-hour emission rate which is expected to provide for the average annual 99th percentile maximum daily 1-hour concentration to be at or below 75 ppb, which in a typical year means that fewer than four days have maximum hourly ambient SO_2 concentrations exceeding 75 ppb. See 2014 SO_2 Guidance.

EPA recognizes that a 30-day limit can allow occasions in which emissions exceed the CEV, and such occasions yield the possibility of exceedances occurring that would not be expected if emissions were always at the CEV. At the same time, the establishment of the 30-day average limit at a level below the CEV means that emissions must routinely be lower than they would be required to be with a 1-hour emission limit at the CEV. On those critical modeled days in which emissions at the CEV are expected to result in concentrations exceeding 75 ppb, emissions set to comply with a 30-day average level which is below the CEV may well result in concentrations below 75 ppb. Requiring emissions on average to be below the CEV introduces significant chances that emissions will be below the CEV on critical days, so that such a requirement creates significant chances that air quality would be better than 75 ppb on days that, with emissions at the CEV, would have exceeded 75 ppb.

The NPRM provides an illustrative example of the effect that application of a limit with an averaging time longer than one hour can have on air quality.[10] This example illustrates both (1) the possibility of elevated emissions (emissions above the CEV) causing exceedances not expected with emissions at or below the CEV and (2) the possibility that the requirement for routinely lower emissions would result in avoiding exceedances that would be expected with emissions at the CEV. In this example, moving from a 1-hour limit to a 30-day average limit results in one day that exceeds 75 ppb that would otherwise be below 75 ppb, one day that is below 75 ppb that would otherwise be above 75 ppb, and one day that is below 75 ppb that would otherwise be at 75 ppb. In net, the 99th percentile of the 30-day average limit scenario is lower than that of the 1-hour limit scenario, with a design value of 67.5 ppb rather than 75 ppb. Stated more generally, this example illustrates several points: (1) The variations in emissions that are accounted for with a longer-term average limit can yield higher concentrations on some days and lower concentrations on other days, as determined by the factors influencing dispersion on each day, (2) one must account for both possibilities, and (3) accounting for both effects can yield the conclusion that a properly set longer-term average limit can provide as good or better air quality than allowing constant emissions at a higher level. As noted in the NPRM, and as described in Appendix B of the 2014 SO_2 Guidance, EPA expects that an emission profile with a comparably stringent 30-day average limit is likely to have a net effect of having a lower number of exceedances and better air quality than an emissions profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value. Thus, EPA continues to assert that appropriately set 30-day emission limits can be protective of the 1-hour SO_2 standard.

Regarding the examples cited by the commenter to support the contention that only one-hour limits are protective of the NAAQS, EPA's April 2014 guidance acknowledges that EPA had previously recommended that averaging times in SIP emission limits should not exceed the averaging time of the applicable NAAQS. The specific examples of earlier EPA statements cited by the commenter (*i.e.,* those contained in Exhibits 1 and 2 of Appendix A of the comment submission) all pre-date the release of EPA's April 2014 SO_2 Guidance. As such, these examples only reflect the Agency's development of its policy for implementing the 2010 SO_2 NAAQS as of the dates of their own issuance. At the time of their issuance, EPA had not yet addressed the specific question of whether it might be possible to devise an emission limit with an averaging period longer than 1-hour, with appropriate adjustments that would make it comparably stringent to an emission limit shown to attain 1-hour emission levels, that could adequately ensure attainment of the SO_2 NAAQS. None of the pre-2014 EPA documents cited by the commenter address this question; consequently, it is not reasonable to read any of them as rejecting that possibility. However, EPA's April 2014 guidance specifically addressed this issue as it pertains to requirements for SIPs for SO_2 nonattainment areas under the 2010 NAAQS, especially with regard to the use of appropriately set comparably stringent limitations based on averaging times as long as 30 days (see p. 2). EPA developed this guidance pursuant to a lengthy stakeholder outreach process regarding implementation strategies for the 2010 NAAQS, which had not yet concluded (or in some cases even begun) when the documents cited by the commenter were issued. As such, EPA's April 2014 Guidance was the first instance in which the Agency provided recommended guidance for that component of this action. Consequently, EPA does not view those prior EPA statements as conflicting with the Agency's guidance addressing this specific question of how to devise a longer-term limit that is comparably stringent to a 1-hour CEV that has been modeled to attain the NAAQS. Moreover, EPA notes that the commenter has not raised specific objections to the general policy and technical rationale EPA provided in its proposed approval or in EPA's April 2014 SO_2 Guidance for why such longer-term averaging-based limits may in specific cases be adequate to ensure NAAQS attainment.

Additionally, ACHD requires supplementary limits to restrict excessive frequency or magnitude of elevated emissions. As explained in the April 2014 SO_2 Guidance, in addition to establishing a rate that is comparably stringent to the 1-hour average emission limit, a second important factor in assessing whether a longer-term average limit provides appropriate protection against NAAQS violations is whether the source can be expected to comply with a long term average limit in a manner that minimizes the frequency of occasions with elevated emissions and magnitude of emissions on those occasions. The 2014 SO_2 Guidance states that use of long term average limits is most defensible if the frequency and magnitude of such occasions of elevated emissions will be minimal, and that supplemental limits on the frequency and/or magnitude of occasions of elevated emissions can be a valuable element of a plan that protects against NAAQS violations. Limits against excessive frequency and/or magnitude of elevated emissions could further strengthen the justification for the use of longer-term average limits,

[10] For the full discussion of the hypothetical example, see NPRM, November 19, 2018 (83 FR 58206) at page 58209 at *https://www.regulations.gov,* Docket ID Number EPA–R03–OAR–2017–0730.

with one option being shorter averaging times. Towards this end, ACHD established 24-hour average limits to supplement the 30-day average limits. A discussion of ACHD's evaluation of the limits and a tabular comparison of hourly emissions values to the 30-day, the 24-hour, and CEV limits may be found in the NPRM.

Comment 5: EPA relies on conversion factors from CEV calculated by reference to the sulfur content of the fuel the facilities use. Such content can vary widely, depending on the fuel mix the facility chooses to buy. However, nothing in the proposal requires that the historical fuel mix be maintained, meaning that variability could increase, and increase substantially, in the future, underscoring the inadequacy of long-term emission limits.

Response 5: In the 2014 SO_2 Guidance, EPA notes that it is important to recognize that some sources may have variable emissions, for example due to variations in fuel sulfur content as the commenter notes, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that stringent hourly limits are never exceeded. It is this variability in emissions that EPA believes justifies the use of longer-term average limits.

EPA guidance provides for states to use historic data to assess the emissions variability that can be anticipated upon implementation of the plan. The state is to analyze these data to obtain a best estimate of the degree of adjustment needed for the state's longer-term limit to be comparably stringent to the one-hour limit that it would otherwise be adopting. EPA does not believe that imposing limits on variability is either appropriate or feasible. First, EPA's guidance for assessing variability is to use three to five years of data, which suggests that a limit on variability might require a similar amount of data. A limit based on three to five years of data would almost certainly not be practically enforceable. Second, a limit on variability would necessarily impose limits on the operation of the facility. As a general matter, EPA prefers to avoid restricting the operation of facilities, so long as EPA has reasonable confidence that air quality requirements are being met. The commenter gives no reason to believe that variability will increase and provides no recommendations on how to address the practical problems that limiting variability would entail. Furthermore, page 31 of EPA's 2014 SO_2 Guidance acknowledges the possibility that variability can change and provides EPA's views on how to address such situations: ''If the EPA approves an attainment plan but subsequently learns that emissions variability at a source is exceeding the expected variability, such that the plan proves not to provide the expected confidence that the NAAQS is being attained, the EPA will use its available authority to pursue any necessary corrections of the plan.'' However, at this time, EPA believes that ACHD has identified 1-hour limits that would provide for attainment and has submitted 30-day average limits (supplemented with 24-hour limits) that present evidence indicates are comparably stringent, and so EPA is concluding that these limits suffice to assure attainment.

Comment 6: The commenter expresses bafflement as to why EPA's November 19, 2018 NPRM did not definitively verify that certain controls required by the plan to be installed and operational no later than October 4, 2018 were actually installed and operating, especially when EPA relied upon the installation and operation of these controls when approving the attainment plan.

Response 6: The ACHD installation permits for Clairton, Edgar Thomson, Irvin, and Harsco required compliance on or before October 4, 2018. These facilities were required by that date to comply with the SO_2 emission limitations and other requirements for monitoring and recordkeeping set forth in the permits. The NPRM for this action did not include information on the sources' actual compliance with the required permit limits as of October 4, 2018. However, the issue in this rulemaking is whether compliance with the plan would result in timely attainment, as shown by the modeling. Whether such compliance or such attainment actually occurred is best addressed by the Clean Air Act's enforcement authorities and a determination of attainment under section 179(c)(1) of the CAA.

Comment 7: A commenter states that section V.D. of the proposed SIP requires Vacuum Carbonate Units (VCU) to be implemented at only two facilities, rather than at all facilities in the Allegheny Area, and opines that though this would allow the Area to meet the requirement for compliance, it does not comprise all reasonably available control measures on SO_2 emissions. The commenter further states that if a VCU is a reasonably available measure for some plants, it should be reasonable to many, if not all, of the facilities in the Area. To protect the nearby residents, the commenter thinks that as a minimum, all measures which can be reasonably enforced should be applied to all emitting facilities in the Allegheny Area.

Response 7: Section 172 (c)(1) of the CAA provides that ''Such plan shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' EPA intends to continue defining RACT for SO_2 as that control technology which will achieve the NAAQS within statutory timeframes. See General Preamble at 57 FR 13498, 13547 (April 16, 1992). CAA section 172(c)(6) requires plans to include enforceable emission limitations and control measures as may be necessary or appropriate to provide for attainment by the attainment date. The commenter has failed to consider that VCUs were already pre-existing at these process lines and that RACT for SO_2 is that which is necessary to attain the NAAQS. While additional controls may be reasonably available at other plants, the VCU upgrades at the two process lines at the Clairton facility show attainment of the 2010 SO_2 NAAQS by the attainment date, and thus further controls are not necessary to satisfy the requirement for RACT.

Emission reductions needed to reach attainment in the Allegheny Area, as determined through air dispersion modeling, are dependent on the control measures implemented at the existing sources at USS Mon Valley Works (upon which property Harsco Metals is located), which are the primary sources of SO_2 in the nonattainment area. The 100 and 600 VCU upgrade was initiated at the Clairton Coke Works to reduce the content of H_2S in the COG sent to all the Mon Valley Works plants and Harsco. The 100 VCU upgrade was completed at the Clairton Coke Works in 2016, leading to significant decreases in sulfur content in COG. An upgrade for the 600 VCU added redundant controls for the COG line. All the USS Mon Valley Works facilities and Harsco must also provide source monitoring results to demonstrate continuous efficient operation of the VCU system. The reduction of H_2S content in the COG produced at Clairton was needed for the USS Mon Valley Works plants and Harsco to comply with their permit limits. Emission limits at all four facilities were established through enforceable installation permits (See Appendix K of Pennsylvania's October

3, 2017 SIP submittal).[11] The collective emission limits and related compliance parameters (*i.e.,* testing, monitoring, record keeping and reporting) will be incorporated into the SIP as part of the attainment plan in accordance with CAA section 172. The emission limits for each of the SO_2-emitting USS Mon Valley and Harsco facilities are listed in Tables 3, 4 and 5 of the proposal. The compliance parameters include continuous process monitoring of H_2S content and flow rate of the COG at the Clairton facility and the four lines which feed the Edgar Thompson, Irvin, and Harsco facilities, as well as record-keeping, reporting, and stack testing requirements at all facilities.

ACHD nonetheless evaluated potential RACT at other sources in the Allegheny Area including Koppers Inc.—Clairton Plant, Clairton Slag—West Elizabeth Plant, Eastman Chemical Resins Inc.—Jefferson Plant, and Kelly Run Sanitation—Forward Township, each of which have less than 5 tons per year (tpy) of allowable SO_2 emissions. In addition, ACHD examined several RACM options for area, nonroad and mobile sources of SO_2 in the Area. ACHD determined that no additional controls beyond the emission limits at the four main SO_2-emitting facilities in the Allegheny Area are needed to provide for attainment of the SO_2 NAAQS in the Area. Because of this, additional controls on other SO_2 sources in the Area are not required RACT for the Allegheny Area.[12]

Comment 8: The commenter believes that the boundaries of the Allegheny Area may be drawn too narrowly, due to insufficient monitoring for SO_2 throughout Allegheny County. The commenter specifically notes that there is no monitoring station for SO_2 near Springdale, where the Cheswick Generating Station, the largest source of SO_2 in the County, is located. The commenter believes that ACHD's continuing failure to address the insufficient monitoring in Allegheny County means that the monitoring data is not fully representative of air quality in the nonattainment area. The commenter asks EPA to require ACHD to gather sufficient information regarding ambient levels of SO_2 near Springdale, or otherwise provide sufficient evidence that there is no possibility of the Area being in nonattainment with the NAAQS.

Response 8: EPA notes that the boundaries of the Allegheny Area were determined in 2013 as part of the process of designating the Area as nonattainment, and therefore the boundaries of the Area are not being reconsidered in this action. EPA issued its final rule identifying the first round of designations for the 2010 SO_2 NAAQS on August 5, 2013 (78 FR 47191). In the first round of SO_2 designations, EPA explained that the designations were based on recorded air quality monitoring data at existing monitor locations. Areas designated as nonattainment with the NAAQS were designated based on the design value at existing monitors that showed violations of the 1-hour SO_2 standard during the three-year period of 2009–2011. EPA designated as nonattainment 29 areas, including the Allegheny Area, in the August 5, 2013 action. In accordance with section 107(d)(1)(B)(ii) of the CAA, the boundaries of the Allegheny Area were also determined as part of the designations process. EPA determined at that time that the Allegheny Area should not include the portion of the County containing the Cheswick plant. EPA's technical support document (TSD) for the August 5, 2013 final rule provides the rationale for determining both the nonattainment designation and the boundaries of the Allegheny County area. As explained in the TSD, the Liberty monitor in Allegheny County showed violations of the 2010 SO_2 NAAQS, based on certified 2009–2011 air quality data and additional data from 2012 provided by Pennsylvania and ACHD. EPA concluded that, based on the supporting information relating to emissions, air quality data, meteorology, geography and jurisdictional boundaries provided by Pennsylvania and ACHD in response to EPA's 120-day letters, only a portion of Allegheny County should be initially included in the Allegheny Area, and that the remaining portion of the Area would be evaluated in a separate round of designations. Prior to finalizing the Round 1 designations, EPA provided the public with an opportunity to comment upon the proposed designations, including the boundaries of the designated area. 78 FR 11124, 11125–26 (February 15, 2013). The commenter's opportunity to express concerns about the boundaries of the Allegheny Area was during this public comment period, and therefore this comment is untimely and not germane to this final action. The commenter was again given an opportunity to comment on the air quality status of the remaining portion of Allegheny County that was not included in the Round 1 designation when EPA sought public input on the ''Round 3'' designations for SO_2, which included the portion of Allegheny County containing the Cheswick plant. 82 FR 41903, 41905 (September 5, 2017).

On January 9, 2018 at 83 FR 1098, EPA published in the **Federal Register**, a final rule with Round 3 designations for the 2010 SO_2 NAAQS for numerous areas of the U.S., including the remaining portion of Allegheny County where the Cheswick plant is located. EPA designated this remaining portion as ''unclassifiable,'' meaning that under CAA section 107(d)(1) the area cannot be classified as meeting or not meeting the NAAQS or as contributing to a nearby area that does not meet the NAAQS based on available information. 834 FR 1154 January 9, 2018; 40 CFR 81.339. No one challenged EPA's designation of the remaining portion of Allegheny County. Therefore, EPA believes that this comment regarding the boundaries of the Allegheny Area is untimely and not germane to this rule.

Regarding the portion of the comment questioning the sufficiency of the SO_2 monitoring network in Allegheny County, and in particular near the Cheswick plant, EPA notes that the proper place to challenge any lack of monitors is when ACHD public notices its Annual Network Monitoring Plan for public comment. This action does not reopen EPA's previous designations made under the 2010 SO_2 standard, however, for informational purposes only, the following information from the 2013 Allegheny Area Round 1 designations TSD is provided herein. As part of the analysis for the 2013 Round 1 designation of the Allegheny Area, EPA evaluated the Cheswick Power Plant. Cheswick's emissions have been significantly reduced since installation and operation of its SO_2 control equipment, comprised of a wet flue gas desulfurization (FGD) unit installed in 2010. In the analysis, EPA looked at Cheswick's 2011 and 2012 SO_2 emissions from the Clean Air Markets Division (CAMD) database, which indicated a large decrease in annual SO_2 emissions between 2011 and 2012, primarily due to increased control efficiency at the plant. In 2011, Cheswick's coal-fired unit ran for 6,160 hours at an annually averaged emission rate of 0.71 pounds per Million british thermal units (lbs/MMbtu). In 2012, Cheswick's coal unit ran slightly less at 5,715 hours with an annually averaged emission rate of 0.15 lbs/MMbtu. In light of Cheswick's lower emission rates, its distance of approximately 24 kilometers from the Liberty monitor, and minimal change in the monitored values at the Liberty monitor, EPA did

[11] ACHD's SIP submittal can be found at *https://www.regulations.gov,* Docket ID Number EPA–R03–OAR–2017–0730.

[12] See Footnote 8 of this preamble.

not include this source in the Allegheny nonattainment area. EPA therefore defined the nonattainment area boundaries for the Allegheny Area based on the information available at the time of the initial designations and is not reopening that designation in this final SIP approval for the Allegheny area.

Comment 9: The commenter believes that ACHD should install and operate an SO_2 monitor at the Glassport location, which was discontinued in 2006 but showed higher levels of SO_2 than the Liberty monitor while it was operating. The commenter states that the lack of a monitor at this location could become material to whether the area is determined to be in attainment, and that while EPA prefers air modeling over air monitoring for purposes of SO_2 attainment demonstrations, this does not apply to attainment determinations. The commenter cites EPA's Final rule for the SO_2 NAAQS, at 75 FR 35520, 35553 (June 22, 2010), in which EPA indicated it was still considering under what circumstances it may be appropriate to rely on monitoring data alone to make attainment determinations. The commenter refers to the requirement that design values for purposes of an attainment determination are necessarily based on actual data from an ambient air quality monitoring site, thus the failure to reactivate the Glassport monitor may become relevant to an accurate determination of air quality in this area.

Response 9: As noted in EPA's response to comment 2 of this action, a determination of whether an area has attained or failed to attain the NAAQS is a separate action from the review of an attainment demonstration SIP and is outside the scope of this action approving the SIP. EPA's SO_2 attainment SIP review occurs under CAA sections 110(k), 172(c) and 192(a), while a determination of attainment/nonattainment of the NAAQS is governed by CAA section 179(c)(1). Under section 110(k)(3), EPA is required to approve a SIP submission that meets all applicable requirements of the CAA. For the reasons described in our proposal and elsewhere in this action, we have concluded that the Allegheny Area attainment plan meets all such requirements, including the requirement in 172(c) and 192(a) to provide for attainment by the attainment date. This is the determination that is the subject of this final SIP approval action. EPA will take a separate action to analyze the pertinent information and determine whether the Allegheny Area attained the NAAQS by the attainment date, in accordance with section 179(c)(1) of the CAA.

Also, although the former Glassport monitor may have recorded higher levels of ambient SO_2 emissions than the Liberty monitor, those readings were taken before the new SO_2 limits were imposed on the USS Mon Valley Works and Harsco facilities as part of the attainment plan. The modeling analysis submitted by ACHD with its attainment plan shows that with these new limits at these facilities, the entire nonattainment area would attain the 2010 SO_2 NAAQS, including at the former Glassport monitor location.

Comment 10: A commenter claims that ACHD should evaluate impacts of its transported emissions of SO_2 on other states' attainment with the NAAQS, and that SO_2 is a precursor to the formation of fine particulates ($PM_{2.5}$). The commenter claims that ''the Department'', *i.e.,* ACHD, does not discuss the impact of sources in Allegheny County on levels of SO_2 or $PM_{2.5}$ outside this nonattainment area, but does discuss the impact of upwind sources (outside the County) on SO_2 levels in the Allegheny County nonattainment area. In addition, ACHD also included modeling of upwind sources outside the nonattainment area. The commenter cites to the attainment plan's statement that some sources outside of the NAA have been included in the modeling demonstration in order to properly account for transported emissions into the nonattainment area. The commenter states that a plan must include adequate provisions prohibiting any source from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to a NAAQS as required under section 110(a)(2)(D) of the CAA. In ACHD's Response to Comments document dated June 13, 2017, the commenter claims that the Department avoids the question by asserting that ''SO_2 as a precursor to $PM_{2.5}$ is better addressed via $PM_{2.5}$ modeling using photochemical modeling, and development of an attainment demonstration for the 2012 $PM_{2.5}$ NAAQS for Allegheny County is underway.'' Comment #45, page 19–20. The commenter also states that ACHD incorrectly made an assertion that the $PM_{2.5}$ attainment plan was underway when responding to comments concerning transported emissions from Allegheny County during the state public comment period, and that ACHD was over two years late in meeting the CAA requirements to address the nonattainment with the 2012 $PM_{2.5}$ standard, asserting that ACHD only made revisions to its NNSR regulations after EPA issued a finding of failure to submit required nonattainment area requirements.

Response 10: Because the comment pertains to emissions that contribute significantly to nonattainment in, or interfere with maintenance by, any other state, EPA assumes that the commenter is referring specifically to the CAA requirements under section 110(a)(2)(D)(i)(I), and not the other elements of section 110(a)(2)(D) (namely 110(a)(2)(D)(i)(II), which pertains to measures required under part C to prevent significant deterioration of air quality or to protect visibility, and 110(a)(2)(D)(ii), which pertains to requirements for interstate and international pollution abatement). Section 110(a)(2)(D)(i)(I) of the CAA requires that SIPs contain adequate provisions to prohibit any emissions source or activity in a state from contributing significantly to nonattainment in, or interfering with maintenance by, any *other state* with respect to a primary or secondary NAAQS. The section 110(a)(2)(D)(i)(I) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. The requirements under section 110(a)(2)(D)(i)(I), where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Therefore, for the purposes of an attainment plan, EPA disagrees that the showing of noninterference with another state's SIP under CAA 110(a)(2)(D)(i)(I) is an element that must be addressed in a section 172(c) plan submitted for the purpose of attainment of a NAAQS within that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing an attainment plan. Thus, EPA does not believe that the CAA's section 110(a)(2)(D)(i)(I) interstate transport requirements should be construed to be applicable requirements for purposes of approval of the Allegheny Area attainment SIP submittal.

The requirements for nonattainment area SIPs are addressed in CAA sections 110(k), 172(a), and 192(a), and consist of an attainment plan, including an attainment demonstration, a base year emissions inventory, RFP, RACM/RACT, and contingency measures. EPA's evaluation of whether an attainment plan submittal is approvable hinges on the approvability of these nonattainment area requirements. In taking action on infrastructure SIPs

under section 110(a)(2) of the CAA, of which the transport element is a part, EPA has long noted the separate requirements and the different time frames for submission of infrastructure SIPs and nonattainment area SIPs. In its attainment SIP, ACHD appropriately considered emissions from outside the nonattainment area in the modeling analysis to determine necessary limits at the SO_2 emitting facilities within the Allegheny County nonattainment area. However, an analysis of the impacts of any SO_2 or $PM_{2.5}$ emissions from sources in the Allegheny Area upon downwind areas in other states, is outside the scope of this action to approve the Allegheny Area attainment plan for the SO_2 NAAQS. Such an analysis would be a required part of any Pennsylvania submittal for an infrastructure SIP under section 110(a)(2). Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of approval of an attainment plan.

EPA also disagrees that nonattainment area requirements related to the $PM_{2.5}$ NAAQS must be addressed in the Allegheny Area's SO_2 attainment plan. While SO_2 is a precursor to $PM_{2.5}$, the SO_2 attainment plan was submitted and is being approved to show attainment with the 2010 1-hour SO_2 NAAQS. EPA agrees with ACHD's response to the comment that the $PM_{2.5}$ attainment plan will have to address all $PM_{2.5}$ precursors, including SO_2, and that the $PM_{2.5}$ modeling analysis is better suited to determining SO_2's impact as a precursor to $PM_{2.5}$ when analyzing what is needed for $PM_{2.5}$ attainment. Finally, EPA's findings of failure to submit the $PM_{2.5}$ attainment plan for the 2012 $PM_{2.5}$ NAAQS, and whether or not attainment planning for $PM_{2.5}$ in Allegheny County is underway, are not relevant to this action to approve the Allegheny Area attainment plan for SO_2.

Comment 11: The commenter suggested that there may be other measures and control strategies to facilitate attainment of the SO_2 NAAQS, and that EPA should require ACHD to develop additional requirements for emissions reductions from these facilities. The commenter included several suggestions for additional emission reductions, including the use of lower-sulfur coal, a lower percentage of allowable leaking doors at the Clairton facility, and efficiency initiatives.

Response 11: EPA agrees that it may be appropriate for the facilities to continue exploring operational and process improvements to reduce SO_2 emissions. However, EPA has determined that the submittal, including the measures in the facility permits submitted by Pennsylvania for incorporation into the Allegheny County portion of the Pennsylvania SIP, represent the level of controls and measures *necessary* for the Allegheny Area to attain the SO_2 NAAQS, and it is therefore not necessary to compel adoption of additional measures in order to approve the SIP. ACHD's modeling analysis shows these measures will achieve attainment of the SO_2 NAAQS in the Allegheny Area. See also the discussion of RACM/RACT for the Allegheny Area in EPA's response to comment 7 of this action.

Comment 12: ACHD should have imposed immediate deadlines for implementing proposed control strategies and should not have waited until the attainment date. This postponement of compliance with control strategies until the exact attainment date contradicts EPA's policy relating to attainment plans. The commenter claims that EPA requires the state permitting agency to generate at least one calendar year of compliance information, prior to the attainment date. The commenter referenced EPA's 2014 SO_2 Guidance, which states that ''EPA would expect states to require sources to begin complying with the attainment strategy in the SIP no later than January 1, 2017. By this means, the plans would be able to provide at least l calendar year of air quality monitoring data (and at least 1 calendar year of compliance information which, when modeled, would show attainment) before the applicable attainment deadline, indicating that the plan is in fact providing for attainment.'' In ACHD's Response to Comments document dated June 13, 2017, it states that ''[t]he design, construction, and implementation of all projects for this SIP necessitate the longer schedule than prescribed by the general NAAQS schedule,'' without citing any evidence. EPA should require more of an explanation from the Department for the delay in requiring control measures, which is inconsistent with EPA's guidance document.

Response 12: EPA's 2014 SO_2 Guidance, as cited by the commenter, sets forth the expectation that one year of compliance or monitored data would be available as supporting evidence that modeling performed for the attainment plan, and the control measures adopted by the attainment plan, provide for attainment. In the case of the measures for the sources in the Allegheny Area that were needed for attainment, EPA proposed approval of the plan based on ACHD's submitted modeling demonstration showing that the measures would provide for attainment. Although one year of compliance data was not available at the time of the proposal, EPA believes it was appropriate, despite the Guidance recommendation on monitoring and compliance data, to propose our action. As explained in our 2014 SO_2 Guidance and in numerous proposed and final SIP actions implementing the SO_2 NAAQS, a key element of an approvable SIP is the required modeling demonstration showing that the remedial control measures and strategy are adequate to bring a previously or currently violating area into attainment.[13] The 2014 SO_2 Guidance addresses the best case scenario, but does not fit the current situation, so EPA has to use its judgment as to whether the lack of one year of monitored data which reflects the implementation of the control measures prior to the attainment date, under these circumstances, invalidates the modeling showing that these controls can achieve attainment. As part of this analysis, EPA looked at the AQS data for the Liberty monitor, which is included in the docket for this final rule. This data shows that after October 4, 2018, the date by which the control measures in the attainment plan were required at the Mon Valley Works and Harsco facilities, there were no exceedances between October 4, 2018 and December 23, 2018, which was the day just preceding the day of the fire at the Clairton Plant. As discussed previously, outside of the time frame during which the desulfurization plant at Clairton was not operational due to the fire on December 24, 2018, there were no monitored violations at the Liberty monitor. Preliminary data for 2019 also shows that outside of the time frame for the control outage from the December 2018 fire, no monitored violations have occurred. EPA believes that although the 2019 data is preliminary, the October through December 2018 data and the 2019 preliminary data suggests that compliance with the measures have been effective in showing that the measures provide for attainment. The three quarters of preliminary data for 2019 is included in the docket for this final rule. Fourth quarter 2019 data is normally submitted into AQS by March 31, 2020, and certification of data is required by May 1, 2020. Because actual monitored data (that was not impacted by the fires) show no exceedances after the October 4, 2018 deadline to meet the new measures, it is not necessary or

[13] See 2014 SO_2 Guidance, p. 9.

useful to look back at the reasons the measures were not required sooner.

The portion of the 2014 SO_2 Guidance referenced by the commenter is there for the purpose of recommending what is preferred for a determination of attainment under CAA section 179(c), rather than what is necessary for assessing whether an attainment plan would provide for attainment by the attainment date under section 172(c) of the CAA. Therefore, the lack of one year of monitored data before the attainment date does not invalidate this attainment plan approval action.

Comment 13: The commenter provided a preliminary evaluation of ambient air quality monitoring data for the three-year period of 2016–2018, which suggests that the Allegheny Area will be in nonattainment due to data at the Liberty monitor. The commenter cites a predicted design value of 101 ppb, based on the average of the fourth-highest maximum hourly values for 2016, 2017, and 2018. The commenter asked EPA to provide an evaluation whether the design value for 2016–2018 will in fact be below the NAAQS, as anticipated by ACHD. This should include substantiation regarding its projection of what the design value will be, based on monitored data. If the numbers demonstrate that it will exceed the standard, the commenter states that the Department should revise the state implementation plan to require additional emissions reductions sufficient to meet the standard.

Response 13: Although this design value was not as anticipated by ACHD when it responded to comments received on the proposed Allegheny Area attainment plan, the monitoring data available at that time should not be interpreted as indicating that the attainment plan fails to provide for attainment. The monitoring data cited by the commenter were collected before the full implementation of the measures in the Allegheny SO_2 attainment plan on October 4, 2018. Therefore, these data do not show the improvement in air quality and monitored values which were expected from full implementation of the measures used in the modeling demonstration. As such, these data are not a reliable indicator of whether air quality, after implementation of all modeled, relevant control measures, would be expected to meet the standard at the attainment deadline. In other words, these data are not indicative of the adequacy of the plan and its modeling demonstration to provide for NAAQS attainment. As noted previously, EPA's 2014 SO_2 Guidance and actions implementing the SO_2 NAAQS explain that a key element of an approvable SIP is the required modeling demonstration showing that the remedial control measures and strategy are adequate to bring a previously or currently violating area into attainment. Given the form of the 2010 NAAQS as the three-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO_2 concentrations, it is often possible that the three-year period of monitored data will contain some monitored results which preceded implementation of the newer remedial control measures. These monitored results would not reflect the air quality levels resulting from implementation of the attainment plan control measures. In such cases, as it is here, the more complete and representative analysis for informing action on a submitted SIP should focus on the results of newly implemented control measures required under the plan and the modeling demonstration based on those control measures, rather than pre-control, measured concentrations that do not reflect the results of the plan's required control measures. The former analysis explicitly addresses whether air quality will be attaining (as required) under the state's submitted plan, whereas the latter analysis may have little to no bearing on what will happen as a result of the plan. Therefore, in the context of reviewing the adequacy of those newer control measures to provide for newly attaining air quality under sections 172 and 192 of the CAA, we conclude that it is reasonable to rely on the modeling results that specifically account for those control measures and the resulting reductions in SO_2 emissions, rather than on monitored data that, in this case, do not represent air quality levels resulting from full implementation of the control measures in the attainment plan. In the Allegheny SO_2 attainment plan, ACHD's modeling shows that implementation of the measures included in the plan result in air quality that attains the NAAQS.

Comment 14: The commenter claims that the Department (or ACHD) did not adequately address the problems in the proposed revision. ACHD correctly states that ''reasonable further progress'' contemplates ''annual incremental reductions in emissions.'' However, the data provided in this section only demonstrates overall ambient reduction in SO_2 at the Liberty monitor. The data would have to show annual incremental reductions in SO_2 emissions specifically at each source, in order to demonstrate reasonable further progress. See 42 U.S.C. 7501(1). The Department confuses the concept of ''reasonable further progress'' by setting forth a chart showing declining concentrations of SO_2 at a monitoring site. But as set forth above, that is not what the statute calls ''reasonable further progress.'' See 42 U.S.C. 7501(1). The Department provides further evidence of this confusion when it asserts that ''[the] shutdown of Guardian Industries in 2015 is an additional decrease in emissions for the NAA . . . .'' Id., page 32. Comparing decreases in ambient concentrations with decreases in source emissions is like comparing apples to oranges.

At best, the Department implies there have been some emissions reductions ''due to partially-completed projects by USS (including projects that have not been quantified for this SIP).'' See Id. But the Department must quantify those emissions, and it must demonstrate ''reasonable further progress'' in this proposed plan revision. The fact that projects are only ''partially-completed,'' and the Department has not even quantified them for this plan, demonstrates that the Department has failed to show ''reasonable further progress.'' See Id.

ACHD's response to the commenter was that, for RFP, ''the definition is generally less pertinent to pollutants like SO_2 that usually have a limited number of sources affecting areas of air quality which are relatively well defined, and emissions control measures for such sources result in swift and dramatic improvement in air quality. . . . Given that source controls are in effect 'single steps' for RFP for SO_2, and the initial controls are only partially in place (for an 8-month period in 2016 for the VCU upgrades), incremental reductions cannot be classified. Emission reductions cannot be double counted by applying them to both the control strategy and RFP. As a method to indicate downward progress, concentration data was used along with quantifiable reductions in emissions.'' [14]

The commenter asserts that ACHD's argument is flawed because it is premised on the notion that there will be a swift and dramatic improvement in air quality, which remains to be seen, and also because emissions reductions cannot be double-counted by applying them to both the control strategy and RFP, and is not a defense to not doing single-counting of additional emissions reductions from means other than VCU upgrades, such as limiting leaking doors. Stated differently, just because a facility has invested in an item of capital equipment to reduce emissions does not mean that it should not be

[14] See October 3, 2017 Pennsylvania submittal, p. 79.

required to explore other opportunities for emissions reductions. The commenter believes that EPA should require more from ACHD by way of RFP and require additional emissions reductions above and beyond those achievable through recent projects.

Response 14: ACHD's response to comments on its proposed attainment plan relies on EPA's 2014 SO_2 Guidance and the discussion of the RFP requirement. As explained in the 2014 SO_2 Guidance, section 171(1) of the CAA defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by the EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date.'' 2014 SO_2 Guidance, pp. 40 and 41. The 2014 SO_2 Guidance goes on to explain that ''[a]s EPA has previously explained, this definition is most appropriate for pollutants that are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventory-wide. We have also previously explained that the definition is generally less pertinent to pollutants like SO_2 that usually have a limited number of sources affecting areas of air quality which are relatively well defined, and emissions control measures for such sources result in swift and dramatic improvement in air quality. That is, for SO_2, there is usually a single 'step' between pre-control nonattainment and post-control attainment, thus annual incremental reductions that would be required for some other pollutants, as discussed in the 2014 Guidance, would not be necessary prior to attainment. Therefore, for SO_2, with its discernible relationship between emissions and air quality, and significant and immediate air quality improvements, we explained in the General Preamble that RFP is best construed as 'adherence to an ambitious compliance schedule.' See 74 FR 13547, April 16, 1992. This means that the air agency needs to ensure that affected sources implement appropriate control measures as expeditiously as practicable in order to ensure attainment of the standard by the applicable attainment date.'' Id. The Guidance further states that, by definition, the RFP provision requires only such reductions in emissions as are necessary to attain the NAAQS. If a modeling analysis for an area shows that the SIP will timely attain the NAAQS, then the purpose of the RFP requirement will have been fulfilled, and since the modeling for this area makes that demonstration, additionally showing that the area will make RFP toward attainment has no further utility. We took this view with respect to the general RFP requirement under CAA section l 72(c)(2) in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (General Preamble) (see 57 FR 13498, 13564, April 16, 1992). See 72 FR at 20604, 2014 SO_2 Guidance, p. 54. The modeling demonstration, which takes into account the new SO_2 reduction measures at the four facilities in the Area that were required no later than October 4, 2018, shows that the SIP provides for the Allegheny Area to attain the 2010 SO_2 NAAQS by October 4, 2018. Because the modeling for the Area shows attainment of the NAAQS by the attainment date through timely compliance with the new emission limits in the permits, RFP, as interpreted for the purpose of SO_2, has been met in this Area.

Further, as noted in EPA's response to comment 2 of this action, preliminary monitoring data for 2019 (excluding the monitoring data collected during the control outage caused by the December 2018 fire at Clairton Coke Works) supports the modeling results that the SIP provides for attainment of the Area with respect to the 2010 SO_2 NAAQS.

Comment 15: The commenter believes that there should be no averaging period at all, given the complexity of the air shed in the nonattainment area, and that long-term averaging for the VCU at the Clairton facility should be rejected. The commenter also states that a better explanation of the calculations and analysis regarding the CEV should have been included in the submittal to provide EPA and the public an opportunity to assess whether the long-term average is appropriate in this case. The 2014 SO_2 Guidance sets forth the steps to establish longer-term limits that are comparably stringent, including determination of a CEV; each of these steps should be shown in the submittal to accurately assess whether there is comparable stringency. The commenter also stated that ACHD did not have enough data for its B Line VCU upgrade to determine comparable stringency values. The commenter believes that ACHD used eight months of data for this line, projected out to three to five years, as the basis of its calculations of an adjustment factor for determining long term average limits that would be comparably stringent to 1-hour limits at the CEV. The commenter believes that this amount of data is inadequate for this purpose and believes that ACHD should have used data from a comparable site having three to five years of operating data.

Response 15: The validity of long-term average limits is addressed in EPA's response to comment 4 of this action. With regard to the data used in the calculations for the determination of the CEV value, Appendix C of the 2014 SO_2 Guidance shows an example calculation and the steps needed to determine a longer-term average emission limit. Step 1 of the calculation is to conduct dispersion modeling to determine a source's 1-hour CEV that could be used as a baseline for determination of a longer-term average limit that is comparably stringent to the CEV. These values are shown in Tables 3–1 and 3–3 of the Commonwealth's submittal. Step 2 is to compile emissions data reflecting the distribution of emissions that is expected once the attainment plan is implemented. Emission distributions describe the frequency with which different emission levels occur, which may be depicted by graphing the number of hours per year (for example) that emissions are within a particular range, as a function of emission level. A key element of this step is selection of an appropriate emissions data set. This step is especially important if the attainment plan is expected to involve installation of control equipment or other similarly significant changes in operations. The choice of control strategy can have a significant effect on the emission distribution. For example, installation and operation of flue gas desulfurization equipment, particularly in the absence of requirements for continuous operation of the equipment, can lead to an emission distribution in which most emission values are significantly lower but occasional values remain relatively high, thus enlarging the difference between peak emission values and longer-term average emission values. Consequently, if the source being addressed does not currently operate flue gas desulfurization equipment but the attainment plan is likely to involve installation and operation of such equipment, the current emissions profile data for the source may not provide a suitable representation of the variability of emissions that might be expected after the attainment plan controls are in place.

The 2014 SO_2 Guidance states that in such cases, as suggested by the commenter, Step 2 would involve identifying another set of data that better reflects the source's expected emission variability, presumably from

another comparable source that is already implementing the control strategy that the target source anticipates using. In other cases, the 2014 SO_2 Guidance states that ''the air agency may determine that an area could attain through a control strategy that will not significantly change the emission distribution. Where the control strategy does not significantly change the distribution, the source's current emission distribution may be the best indicator of the source's post-control emission distribution. Irrespective of whether the future emissions variability does or does not match the historic emissions variability at a source, a critical element of Step 2 is to assure that the data used to analyze prospective emissions variability at the source properly reflects the emissions variability that might be expected at the source once the SIP is implemented''. See 2014 SO_2 Guidance, pp 31–32.

Clairton Works is a distinctive source, being the nation's largest coke works and being relatively well controlled. Thus, EPA believes that no other source could provide a data set that could represent the emissions variability resulting from burning COG from Clairton Works better than data from Clairton Works itself.

As described in Appendix D of its documentation, ACHD analyzes 2014 to 2016 data from four units at Clairton Works: Unit 1, Unit 2, Line A, and Line B. The commenter focuses in particular on the calculations for Line B, which the commenter incorrectly states are based on data for the eight months in this period after an upgrade to its sulfur removal equipment. In fact, these calculations are based on data for the entire 3-year period. EPA's 2014 SO_2 Guidance, at page 29, states, ''The EPA anticipates that data sets reflecting hourly data for at least three to five years of stable operation (*i.e.,* without changes that significantly alter emissions variability) would be needed to obtain a suitably reliable analysis.'' Thus, for Line B, the ideal data set would have reflected three to five years of data following implementation of the control upgrade. However, such a data base, by definition including data at least through April 2019, was not available to ACHD for its October 2017 submittal. Almost as good would have been a data base reflecting three to five years of data from before the control upgrade, so long as the data could be demonstrated to be reflective of variability after implementation of the control upgrade. ACHD did not explain whether or why such a data base was not available. However, ACHD did compare the emissions distributions before and after the control upgrade, concluding that the emissions after the control upgrade exhibit similar variability (albeit at around one fourth the levels) as emissions before the control upgrade. ACHD justified the use of data from the entirety of 2014 to 2016 on this basis.

As a general matter, EPA's recommendation to use data from a period without significant changes in controls is intended in part to assure that the data base purely represents variability of emissions within a specific control regime, not variability from one control regime to another. Although ACHD has provided information to support its assertions that the variability of emissions at the Line B after the control upgrade are similar to their variability before the control upgrade, this information does not address concerns about using a data base that mixes 28 months of relatively high (pre-upgrade) data with eight months of relatively low (post-upgrade) data.

EPA conducted additional analyses of ACHD's data to evaluate whether, despite these concerns, the results of ACHD's analysis of the Line B data might nevertheless provide a suitable estimation of the degree of adjustment warranted to determine comparably stringent longer-term average limits. EPA computed adjustment factors using 2014 SO_2 Guidance Appendix C methods for three scenarios: (1) Using all pertinent data for the full three years (as was done by ACHD), (2) using only pre-upgrade data, and (3) using a three year data set in which the post-upgrade data are adjusted according to the average emission reduction from the upgrade, to simulate a three-year pre-upgrade data base. A spreadsheet showing these computations is provided in the docket, and the results for these three scenarios are shown in Table 2.

TABLE 2—ADJUSTMENT FACTORS FOR LINE B COG USING ALTERNATIVE DATA SETS

Scenario	36 Months of unadjusted data (ACHD approach) (%)	28 Months of pre-upgrade data (%)	36 Months, with adjustment of post-upgrade data (%)
30-day average	83.4	82.2	78.3
24-hour average	94.4	94.2	93.5

As these results show, ACHD's results are similar to the results they would have obtained either using a 28-month data base using only pre-upgrade data or using a data base with adjustments as if all 36 months of data were at pre-upgrade levels. The data suggest that the 99th percentile values for all averaging times are, not surprisingly, during the higher, pre-upgrade period; in this respect, the analysis appears to be more sensitive to pre-upgrade variability than to post-upgrade variability, and the analysis predominantly reflects variability during a 28-month period and thus is a potentially less robust result than would be obtained with three years of data with a constant control regime. Nevertheless, these data support ACHD's assertion that post-upgrade variability is similar to pre-upgrade variability, and EPA believes more broadly that ACHD's results provide a suitable adjustment factor for determining the longer-term limits for units firing B Line COG that are comparably stringent to the 1-hour limits that otherwise would have been set.

Step 3 of EPA's recommended procedure is to use the selected data set to compute longer-term (in this case 30-day and 24-hour) average values. Step 4 is to determine the 99th percentile of the 1-hour and longer-term average values. Step 5 is to calculate the ratio of the values determined in Step 4, to be used as an adjustment factor. The values that ACHD obtained through these steps are documented in Appendix D Tables D–4–2, D–4–3, and D–4–4. The application of these adjustment factors to limits for units that fire COG from these four sources are shown in Table 3–3 of the main SIP document.

The commenter expresses concern that EPA does not have estimates of the expected frequency or magnitude of emissions in excess of the CEV. Such an analysis is complicated by the number of different emission units that burn

COG from these four sets of COG origins. Nevertheless, as stated in the NPRM, the application of 24-hour average limits as well as 30-day limits will help assure that the frequency and magnitude of emissions above the CEV will be modest. If the facility has no values that exceed the 30-day and 24-hour average limits (*i.e.,* if the facility complies with the SIP limits), then EPA expects correspondingly few values above the corresponding 1-hour value (*i.e.,* the CEV) as well.

Comment 16: The commenter requested that EPA substantially revise the NPRM before finalizing and should ensure attainment without ignoring monitor data showing nonattainment with the standard.

Response 16: EPA has concluded that a revised NPRM is not warranted because the comments do not identify a flaw in ACHD's plan which would require a plan revision in order to meet the requirements of the CAA. As previously explained in our response to comments 2 and 13 of this action, in the context of reviewing the adequacy of newer control measures to provide for newly attaining air quality under sections 172 and 192 of the CAA, we conclude that it is reasonable to focus on the modeling results that specifically account for those control measures and the resulting reductions in SO_2 emissions, rather than on monitored data that, in this case, do not represent air quality levels resulting from full implementation of the control measures in the attainment plan, which ACHD's modeling shows result in air quality that attains the NAAQS. For the reasons described in our proposal and in the preceding responses to comments, we find that the Allegheny SO_2 attainment plan meets all applicable requirements under the CAA and EPA's implementing regulations. Accordingly, we are finalizing our approval of the Allegheny SO_2 attainment plan.

IV. Final Action

EPA is approving Pennsylvania's attainment plan SIP revision for the Allegheny Area, as submitted by ACHD through PADEP to EPA on October 3, 2017, for the purpose of demonstrating attainment of the 2010 1-hour SO_2 NAAQS. Specifically, EPA is approving the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, an RFP plan, and contingency measures for the Allegheny Area and that the Pennsylvania SIP revision has met the requirements for NNSR for the 2010 1-hour SO_2 NAAQS. Additionally, EPA is approving into the Allegheny County portion of the Pennsylvania SIP the SO_2 emission limits and compliance parameters in the following permits, all of which are dated September 14, 2017: ACHD Permit 0052–1017 for the Clairton Plant; ACHD Permit 0051–1006 for the Edgar Thomson Plant; ACHD Permit 0050–1008 for the Irvin Plant, and ACHD Permit 0265–1001 for Braddock Recovery/Harsco Metals.

EPA has determined that Pennsylvania's SO_2 attainment plan for the 2010 1-hour SO_2 NAAQS for the Allegheny Area meets the applicable requirements of the CAA and is consistent with EPA's 2014 SO_2 Guidance. Thus, EPA is approving Pennsylvania's attainment plan for the Allegheny Area as submitted on October 3, 2017. This final action of this SIP submittal removes EPA's duty to implement a FIP for this Area, and discharges EPA's requirement under the court order to take final action on the SIP by April 30, 2020.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of SO_2 emission limits and compliance parameters in ACHD permits. EPA has made, and will continue to make, these materials generally available at the EPA Region III 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 EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[15]

VI. Statutory and Executive Order Reviews

A. General Requirements

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, 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 application of those requirements would be inconsistent with the CAA; 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).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

[15] 62 FR 27968 (May 22, 1997).

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 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 approving the Allegheny Area attainment plan for the 2010 SO_2 NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 17, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

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 NN—Pennsylvania

■ 2. In § 52.2020:

■ a. The table in paragraph (d)(3) is amended by adding entries for ''U.S. Steel Clairton'', ''U.S. Steel Edgar Thomson'', ''U.S. Steel Irvin'', and ''Braddock Recovery/Harsco Metals'' at the end of the table; and

■ b. The table in paragraph (e)(1) is amended by adding an entry for ''Allegheny Area 2010 SO_2 attainment plan and base year emissions inventory'' at the end of the table.

The additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(3) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
U.S. Steel Clairton	Redacted Installation Permit 0052–1017.	Allegheny	9/14/17	4/23/20, [insert **Federal Register** citation].	Sulfur dioxide emission limits and related parameters in unredacted portions of the Installation Permit.
U.S. Steel Edgar Thomson	Redacted Installation Permit 0051–1006.	Allegheny	9/14/17	4/23/20, [insert **Federal Register** citation].	Sulfur dioxide emission limits and related parameters in unredacted portions of the Installation Permit.
U.S. Steel Irvin	Redacted Installation Permit 0050–1008.	Allegheny	9/14/17	4/23/20, [insert **Federal Register** citation].	Sulfur dioxide emission limits and related parameters in unredacted portions of the Installation Permit.
Braddock Recovery/Harsco Metals.	Redacted Installation Permit 0265–1001.	Allegheny	9/14/17	4/23/20, [insert **Federal Register** citation].	Sulfur dioxide emission limits and related parameters in unredacted portions of the Installation Permit.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Allegheny Area 2010 SO_2 attainment plan and base year emissions inventory.	Cities of Clairton, Duquesne, and McKeesport; the Townships of Elizabeth, Forward, and North Versailles, and the following Boroughs: Braddock, Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Glassport, Jefferson Hills, Liberty, Lincoln, North Braddock, Pleasant Hills, Port Vue, Versailles, Wall, West Elizabeth, and West Mifflin.	10/03/17	4/23/20, [insert **Federal Register** citation].	Also see: 52.2033(d) and EPA-approved redacted permits for: U.S. Steel Clairton (0052–1017); U.S. Steel Edgar Thompson (0051–1006); U.S. Steel Irvin (0050–1008); and Braddock Recovery/Harsco Metals (0265–1001).

* * * * *

■ 3. Section 52.2033 is amended by adding paragraph (e) to read as follows:

§ 52.2033 Control strategy: Sulfur dioxide.

* * * * *

(e) EPA approves the 2010 1-hour SO_2 attainment plan for the City of Clairton, City of Duquesne, City of McKeesport, Borough of Braddock, Borough of Dravosburg, Borough of East McKeesport, Borough of East Pittsburgh,

Borough of Elizabeth, Borough of Glassport, Borough of Jefferson Hills, Borough of Liberty, Borough of Lincoln, Borough of North Braddock, Borough of Pleasant Hills, Borough of Port Vue, Borough of Versailles, Borough of Wall, Borough of West Elizabeth, Borough of West Mifflin, Elizabeth Township, Forward Township, and North Versailles Township in Pennsylvania, submitted by the Department of Environmental Protection on October 3, 2017.

[FR Doc. 2020–08573 Filed 4–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EPA–HQ–OAR–2017–0755; FRL_10007–54–OAR]

RIN 2060–AT75

Light-Duty Vehicle Greenhouse Gas Program Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing two technical corrections to the light-duty vehicle greenhouse gas (GHG) emissions standards regulations which were first promulgated in the 2012 rulemaking that established standards for model years 2017–2025 light-duty vehicles. First, EPA is correcting regulations pertaining to how auto manufacturers calculate credits for the GHG program's optional advanced technology incentives. This final rule corrects an error to ensure that auto manufacturers receive the appropriate amount of credits for electric vehicles, plug-in hybrid electric vehicles, fuel cell electric vehicles, and natural gas fueled vehicles. Second, this rule corrects an error in the regulations regarding how manufacturers must calculate certain types of off-cycle credits. Both of these corrections allow the program to be implemented as originally intended. The corrections are not expected to result in any additional regulatory burdens or costs.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0755. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Lieske, Office of Transportation and Air Quality (OTAQ), Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; telephone number: (734) 214–4584; email address: *lieske.christopher@epa.gov* fax number: 734–214–4816.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action affects companies that manufacture or sell new light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles, as defined under EPA's Clean Air Act (CAA) regulations.[1] Regulated categories and entities include:

Category	NAICS codes [A]	Examples of potentially regulated entities
Industry	336111 336112	Motor Vehicle Manufacturers.
Industry	811111 811112 811198 423110	Commercial Importers of Vehicles and Vehicle Components.
Industry	335312 811198	Alternative Fuel Vehicle Converters.

[A] North American Industry Classification System (NAICS).

B. What action is the agency taking?

EPA is finalizing two technical corrections to the light-duty vehicle greenhouse gas (GHG) emissions standards regulations first promulgated in the 2012 rulemaking that established standards for model years 2017–2025 light-duty vehicles. First, EPA is correcting an error in the regulations pertaining to how auto manufacturers must calculate credits for the GHG program's optional advanced technology incentives. The regulations previously in place resulted in some auto manufacturers receiving fewer credits than the agency intended for electric vehicles, plug-in hybrid electric vehicles, fuel cell electric vehicles, and natural gas fueled vehicles. Auto manufacturers requested through a petition letter submitted jointly by the Auto Alliance and Global Automakers in June 2016 that EPA correct the regulations to provide the intended level of credits for these technologies. Second, the regulations regarding how manufacturers must calculate certain types of off-cycle credits contained an error and were inconsistent with the 2012 final rule preamble, which raised implementation concerns for some manufacturers. The amendments finalized in this action correct and clarify the calculation methodologies in the regulations. Both of these corrections allow the program to be implemented as originally intended. EPA issued a proposal to correct the errors on October 1, 2018.[2] The corrections are described in detail in Section II below and EPA response to comments is provided in additional detail in Section III.

Effective Date

This final rule is effective immediately on publication. This rule constitutes the revision of a regulation under section 202 of the Clean Air Act (CAA) and as such it is covered by the rulemaking procedures in section 307(d) of the CAA. See CAA section 307(d)(1)(I). Section 307(d)(1) of the CAA states that: ''The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. The EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective April 23, 2020.

Section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which 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.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n*, 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). 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

[1] ''Light-duty vehicle,'' ''light-duty truck,'' and ''medium-duty passenger vehicle'' are defined in 40 CFR 86.1803–01. Generally, the term ''light-duty vehicle'' means a passenger car, the term ''light-duty truck'' means a pick-up truck, sport-utility vehicle, or minivan of up to 8,500 lbs gross vehicle weight rating, and ''medium-duty passenger vehicle'' means a sport-utility vehicle or passenger van from 8,500 to 10,000 lbs gross vehicle weight rating. Medium-duty passenger vehicles do not include pick-up trucks.

[2] 83 FR 49344, October 1, 2018.

determined that this rule relieves a restriction because it corrects a calculation error that does not allow manufacturers to claim the appropriate number of credits. Finalization of this rule would provide manufacturers the flexibility EPA intended when the credits program was originally promulgated.

In addition, section 553(d)(3) of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause.'' 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.'' Gavrilovic, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because Model Year 2019 credit information is due on May 1, 2020, and manufacturers may need to purchase or use the additional credits generated by the corrected methodology to demonstrate their performance with the 2019 standards. As described above, the effect of this rule is not adverse and manufacturers likely do not need additional time to prepare for the effective date of this action's revisions, so a delayed effective date is not necessary for reasonable notice. In addition, the corrections to the calculations align with the preamble language in the 2012 rulemaking, so affected parties have had sufficient notice that the corrected methodology is how the program was meant to function. On balance, the potential short-term need for the additional credits generated by the corrected methodology outweighs any unanticipated need for further notice.

Accordingly, EPA is making this rule effective immediately upon publication.

C. What is the agency's authority for taking this action?

EPA is finalizing technical amendments to provisions of the light-duty vehicle GHG regulations under section 202 (a) of the Clean Air Act (CAA) ((42 U.S.C. 7521 (a)).

D. What are the incremental costs and benefits of this action?

EPA does not expect the corrections finalized in this action to result in any significant changes in regulatory burdens, costs, or benefits.

II. Technical Corrections

This rule corrects two technical provisions in the regulations for the model year (MY) 2017–2026 greenhouse gas (GHG) emissions standards. The first correction addresses how manufacturers apply advanced technology vehicle multipliers during credit calculations to ensure that credits are calculated as EPA intended in the 2012 final rule. The second correction addresses how manufacturers must calculate off-cycle credits under the program's 5-cycle credit calculation methodology.

EPA views these items as technical amendments that correct and clarify the regulations and are not changes in how the program functions. Therefore, neither of these technical amendments introduce or remove any requirements on automobile manufacturers, nor do these changes impose additional regulatory costs. We describe each of these changes in the following sections.

This final rule corrects the application of advanced technology vehicle multipliers, and an off-cycle credit calculation methodology for MY 2012 and later vehicles. We note that in the ''Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks'' Part 2 Final Rule issued by EPA and the National Highway Traffic Safety Administration (NHTSA) regarding GHG and Corporate Average Fuel Economy (CAFE) standards for Model Years (MY) 2021 to 2026, EPA extended multipliers for dedicated and dual-fuel natural gas vehicles (NGVs) for model years 2022–2026. As discussed below, EPA has modified the regulations to ensure that credits attributable to this new multiplier are calculated correctly, consistent with the proposal, as well as for the multipliers established for various alternative fueled vehicles previously for MYs 2017–2021.

A. Correction of the Advanced Technology Multiplier Regulations

1. Multiplier Credit Calculation Methodology

As part of the 2012 rule, EPA adopted temporary incentive multipliers for certain advanced technology vehicles, including battery electric vehicles (BEVs), plug-in hybrid electric vehicles (PHEVs), fuel cell vehicles (FCVs), and compressed natural gas (CNG) vehicles.[3] The multipliers allow manufacturers to count these lower CO_2 emitting vehicles as more than one vehicle in their fleet average compliance calculations. For example, the 2.0 multiplier for MY 2017 BEVs would allow a manufacturer to count every MY 2017 BEV produced as two vehicles produced. As part of the finalized SAFE Part 2 rule, EPA extended the availability of multipliers for dedicated and dual-fuel NGVs to MY 2022–2026. The multipliers are shown for reference in Tables 1 and 2 below.

TABLE 1—THE PRODUCTION MULTIPLIERS, BY MODEL YEAR, FOR ELECTRIC VEHICLES AND FUEL CELL VEHICLES[4]

Model year	Production multiplier
2017	2.0
2018	2.0
2019	2.0
2020	1.75
2021	1.5

TABLE 2—THE PRODUCTION MULTIPLIERS, BY MODEL YEAR, FOR PLUG-IN HYBRID ELECTRIC VEHICLES, DEDICATED NATURAL GAS VEHICLES, AND DUAL-FUEL NATURAL GAS VEHICLES[5]

Model year	Production multiplier
2017	1.6
2018	1.6
2019	1.6
2020	1.45
2021	1.3
2022–2026 (dedicated and dual-fuel natural gas vehicles only)	2.0

In 2016, EPA and NHTSA received a joint petition from the Alliance of Automobile Manufacturers and the Association of Global Automakers regarding various aspects of the CAFE and GHG programs.[6] Item 8 of the petition, titled ''Correct the Multiplier for BEVs, PHEVs, FCVs, and CNGs,'' correctly notes that ''the equation through which the number of earned credits is calculated is inaccurately stated in the regulations'' and that credits would be inadvertently lost due to the error. As proposed, EPA is modifying the regulations so that the credits are calculated correctly in all cases such that no manufacturers would inadvertently lose credits. These advanced vehicle technology

[3] 77 FR 62812–62816 (October 15, 2012) and 40 CFR 86.1866–12(b).

[4] 40 CFR 86.1866–12(b)(1).

[5] 40 CFR 86.1866–12(b)(2).

[6] ''Petition for Direct Final Rule with Regard to Various Aspects of the Corporate Average Fuel Economy Program and the Greenhouse Gas Program,'' Alliance of Automobile Manufacturers and the Association of Global Automakers, June 20, 2016.

multipliers do not apply to the NHTSA CAFE program.

The uncorrected regulations regarding the application of the multipliers stated that ''[T]the actual production of qualifying vehicles may be multiplied by the applicable value according to the model year, and the result, rounded to the nearest whole number, may be used to represent the production of qualifying vehicles when calculating average carbon-related exhaust emissions under § 600.512 of this chapter.'' [7] The calculations are done separately for the passenger car and light truck fleets. The following shows the application of this regulatory text in equation form: [8]

$$CO2\ Credits = \left(S - E_{adj}\right) \times VLM\ \times P \div 1{,}000{,}000\ [Megagrams]$$

$$S = \frac{\Sigma\ \text{Target} \times Volume}{\Sigma\ \text{Volume}}\ [g/mile];\ E_{adj} = \frac{\Sigma\ CREE \times Volume_{adj}}{\Sigma\ Volume_{adj}}\ [g/mile]$$

Where:
S = Production weighted fleet average standard
E_{adj} = Production weighted fleet average carbon related exhaust emissions (CREE) [9] with the multiplier(s) applied to the advanced technology production in the CREE average value calculation
VLM = Vehicle lifetime miles (195,264 for cars and 225,865 for light trucks)
P = Annual total vehicle production (for either cars or light trucks)
Target = Model type footprint target
Volume = Model type vehicle production
$Volume_{adj}$ = Model type vehicle production with multiplier(s) applied to advanced technology vehicle production

Under the uncorrected regulations at 40 CFR 86.1865–12(k)(4), the multiplier for advanced technology production is applied by modifying the way the CREE (E_{adj} in the equation above) is calculated. The petitioners noted that applying the multiplier only to E_{adj} does not produce the intended credit. The petitioners provided an example of the incorrect calculation for a manufacturer producing 5,000 battery electric vehicles (BEVs), which have a CREE of zero, showing that such a manufacturer would not receive any additional credits from the multiplier because the E_{adj} term would remain zero (regardless of the multiplier or how many vehicles were produced) and the fleet average standard term (*i.e.,* the footprint-based standard) remains unchanged because the multiplier does not affect the fleet average standard calculation.

Example 1a below shows the calculation of credits without the multiplier and Example 1b shows the calculation with the uncorrected application of the multiplier using the 5,000 BEV example, assuming a footprint-based standard of 210 g/mile and a multiplier of 2.0.

Example 1a: Calculation of Credits Without the Multiplier

$C0_2$ *Credits* = (210 − 0) × 195,264 × 5,000 ÷ 1,000,000 = 205,027 Megagrams

Example 1b: Uncorrected Application of the Multiplier

$C0_2$ *Credits* = (210 − 0) × 195,264 × 1,000,000 = 205,027 *Megagrams*

Where the production weighted fleet average carbon related exhaust emissions, or E_{adj}, with the multiplier applied is calculated as follows:

$$E_{adj}\ = \frac{0 \times 5{,}000 \times 2.0}{5{,}000 \times 2.0} = 0\ g/mile$$

In order for the calculation to produce the correct result, the multiplier must be applied not only to the advanced technology vehicle production in the CREE average value, E_{adj}, calculation but also to the advanced technology vehicle production in the average standard calculation and the advanced technology vehicle production portions of the total production. The calculation of credits in megagrams with the multiplier correctly applied, and as EPA is finalizing today, is represented by the following equations:

$$CO2\ Credits_{adj} = \left(S_{adj} - E_{adj}\right) \times VLM\ \times P_{adj} \div 1{,}000{,}000\ [Megagrams]$$

$$S_{adj} = \frac{\Sigma\ \text{Target} \times Volume_{adj}}{\Sigma\ Volume_{adj}}\ [g/mile];\ E_{adj} = \frac{\Sigma\ CREE \times Volume_{adj}}{Volume_{adj}}\ [g/mile]$$

[7] See 40 CFR 86.1866–12(b)(3) (2018).

[8] The descriptions of the terms in the above equations have been simplified somewhat for illustrative purposes compared to the regulations being finalized in this rule. See the language at 40 CFR 86.1866–12(b) for the detailed regulatory provisions.

[9] Vehicle and fleet average compliance is based on a combination of CO_2, hydrocarbon (HC), and carbon monoxide (CO) emissions. This is consistent with the carbon balance methodology used to determine fuel consumption for the labeling and CAFE programs. The GHG regulations account for these total carbon emissions appropriately and refer to the sum of these emissions as the ''carbon related exhaust emissions'' (CREE).

Where:

S_{adj} = Production weighted fleet average standard with the multiplier(s) applied to the advanced technology vehicle production in the footprint target calculation

E_{adj} = Production weighted fleet average CREE with the multiplier(s) applied to the advanced technology production in the CREE value calculation

VLM = Vehicle lifetime miles (195,264 for cars and 225,865 for light trucks)

P_{adj} = Annual vehicle production with the multiplier(s) applied to the advanced technology vehicle production

Target = Model type footprint target

$Volume_{adj}$ = Model type vehicle production with multiplier(s) applied to advanced technology vehicle production

Using the corrected methodology, manufacturers would determine the additional credits associated with using the multiplier(s) by calculating fleet credits with and without the multiplier applied (the credits without the multiplier applied are shown below as term C). The credits calculated without the multiplier would be subtracted from the credits calculated with the multiplier with the difference reflecting the additional credits attributable to the multiplier.

Credits due to multiplier = $(S_{adj} - E_{adj} \times VLM \times P_{adj} \div 1{,}000{,}000 - C$ [*Megagrams*]

Applying the above corrected equation to Example 1a produces the expected credits due to the multiplier. As shown using Example 1a from above, the correct application of the 2.0 multiplier doubles the resulting credit in this example, which is what EPA intended and manufacturers expected when the program was established in the 2012 rule.

Example 1a: Calculation of Credits Without the Multiplier

CO_2 *Credits*(*C*) = $(210 - 0) \times 195{,}264 \times 5{,}000 \div 1{,}000{,}000 = 205{,}027$ *Megagrams*

Example 1c: Correct Application of the Multiplier

CO_2 *CreditsM* = $(210 - 0) \times 195{,}264 \times (5{,}000 \times 2.0) \div 1{,}000{,}000 = 410{,}054$ *Megagrams*

Where the production weighted fleet average standard and fleet average carbon related exhaust emissions, or E_{adj}, are calculated with the multiplier as follows:

$$Sadj = \frac{210 \times 5{,}000 \times 2.0}{5{,}000 \times 2.0} = 210\ g/mile$$

$$Eadj = \frac{0 \times 5{,}000 \times 2.0}{5{,}000 \times 2.0} = 0\ g/mile$$

And finally, the credits due to application of the multiplier are:

Credits due to multiplier = $410{,}054 - 205{,}027 = 205{,}027$

Example 2 below provides an example calculation for a fleet that consists of both conventional and advanced technology vehicles. The example consists of a fleet mix of two conventional vehicle models, one plug-in hybrid electric (PHEV) model, and one battery electric vehicle (BEV) model, where the PHEV multiplier is 1.6 and the EV multiplier is 2.0.

TABLE 3—EXAMPLE 2 FLEET MIX

Vehicle model	Production	Footprint target (CO_2 g/mi)	CREE (CO_2 g/mi)	Multiplier
Conventional 1	10,000	300	320	N/A
Conventional 2	8,000	210	210	N/A
PHEV	5,000	210	50	1.6
BEV	5,000	210	0	2.0
Total	28,000			

Example 2a: Calculation of Credits for Mixed Fleet With No Multiplier

CO_2 *Credits*(*C*) = $(242 - 183) \times 195{,}264 \times 28{,}000 \div 1{,}000{,}000 = 322{,}576$ *Megagrams*

Where the production weighted fleet average standard (S) and fleet average CREE (E) terms are calculated as follows:

$$S = \frac{(300\times10{,}000)+(210\times8{,}000)+(210\times5{,}000)+(210\times5{,}000)}{28{,}000} = 242\ g/mile$$

$$E = \frac{(320\times10{,}000)+(210\times8{,}000)+(50\times5{,}000)+(0\times5{,}000)}{28{,}000} = 183\ g/mile$$

Example 2b: Uncorrected Application of the Multiplier

CO_2 Credits = (242 − 147) × 195,264 × 28,000 ÷ 1,000,000 = 519,402 *Megagrams*

Where the production weighted fleet average Standard (S) and adjusted CREE with the multiplier applied (E_{adj}) are calculated as follows:

$$S = \frac{(300\times10{,}000)+(210\times8{,}000)+(210\times5{,}000)+(210\times5{,}000)}{28{,}000} = 242\ g/mile$$

$$E_{adj} = \frac{(320\times10{,}000)+(210\times8{,}000)+(50\times5{,}000\times1.6)+(0\times5{,}000\times2.0)}{36{,}000} = 147\ g/mile$$

Example 2c: Calculation of Credits for Mixed Fleet Using Corrected Multiplier Methodology

CO_2 Credits with multiplier = (235 − 147) × 195,264 × 36,000 ÷ 1,000,000 = 618,596 *Megagrams*

Where the production weighted fleet average S_{adj} and E_{adj} terms and the P_{adj} terms, are calculated using the multiplier as follows:

$$S_{adj} = \frac{(300\times10{,}000)+(210\times8{,}000)+(210\times5{,}000\times1.6)+(210\times10{,}000\times2.0)}{36{,}000} = 235\ g/mile$$

$$E_{adj} = \frac{(320\times10{,}000)+(210\times8{,}000)+(50\times5{,}000\times1.6)+(0\times5{,}000\times2.0)}{36{,}000} = 147\ g/mile$$

$$P_{adj} = 10{,}000 + 8{,}000 + (5{,}000 \times 1.6) + (5{,}000 \times 2.0) = 36{,}000$$

Under the corrected methodology, manufacturers would use the above approach to calculate Megagrams of credits with and without the multipliers applied and report the difference to EPA as the credits attributed to the use of the advanced technology multipliers. In the above Example 2, the credits attributable to the multipliers are 618,596 − 322,576 = 296,020. The previously established incorrect methodology, which applied the multiplier only to the CREE term, would provide fewer credits (519,402 − 322,576 = 196,826 Mg) for this example.

The descriptions of the terms in the above equations have been simplified somewhat for illustrative purposes

compared to the regulations. See the language at 40 CFR 86.1866–12(b) finalized in this action for the detailed regulatory provisions. Previously, § 86.1866–12(b)(3) simply modified the CREE term in the equation in § 86.1865–12(k)(4) to incorporate the multiplier. Now, since the multiplier should have been applied as discussed above, the revised regulations add additional steps to the calculation process. First, manufacturers will use the new equation to calculate the total number of credits generated with multipliers included. Then, manufacturers will subtract from that calculation the credits calculated without the multipliers applied, using the equation that already exists in § 86.1865–12(k)(4). The result provides the credit attributable to the multipliers to be reported to EPA as part of the credits portion of the year end compliance report.

EPA received comments from the Alliance of Automobile Manufacturers (the Alliance) and Fiat Chrysler Automobiles (FCA) that while they agree with the corrections, for some manufacturers the uncorrected methodology provides more credits than the corrected methodology. The commenters requested that EPA allow automakers to optionally retain usage of the uncorrected formula because the possibility that the corrected methodology could in certain cases lessen the credits due to multipliers is counter to the premise of the proposal and would cause harm to automakers who have made compliance plans in reliance on the uncorrected formula.

EPA believes these comments have merit. After reviewing actual MY2017 fleet data, it is clear that for several manufacturers, the correction would in fact reduce credits associated with the multiplier, which would be contrary to EPA's stated intent in the proposal. EPA also agrees that retroactively reducing credits associated with the multiplier for some manufacturers would be problematic and inconsistent with the 2012 rule's stated desire to incentivize production of advanced technology vehicles. MYs 2017–2019 are completed, and MY 2020 is well underway and MY2021 has begun for some manufacturers. Manufacturers may be counting on credit levels based on the uncorrected methodology for their product planning out to MY 2021, the last year the multiplier credits are available (aside from the additional NGV multipliers discussed below). Accordingly, EPA is allowing the continued use of the original, uncorrected methodology through MY 2021 to ensure that this rulemaking maintains the incentive anticipated by the 2012 rule and also the incentive anticipated by manufacturers in their product planning. EPA will grant manufacturers the higher of the two credit values. These and other comments regarding the advanced technology multiplier calculations are discussed in more detail in section III.A., below.

For the extension of NGV multiplier for MYs 2022–2026 contained in the SAFE Part 2 final rule, the regulations finalized today require the use of the corrected methodology. These multipliers will function precisely the same as the multipliers for MYs 2017–2021, and require use of the corrected formula for the same reasons. Moreover, the potential product planning issues noted above for MYs 2017–2021 do not exist for these recently adopted multipliers since manufacturers would not yet have had the opportunity to incorporate them into product plans and because manufacturers knew of EPA's proposal to fix the multiplier calculations and could anticipate this correction.

The advanced technology multiplier incentive was available starting with the 2017 model year. Manufacturers are required to report all credit information by May 1 of the year following the end of the model year, which, for model year 2017, was May 1, 2018. EPA recognizes that the timing of this rulemaking precluded the ability to finalize the multiplier-based credits by the deadline, and, given this, the submissions made by manufacturers by May 1, 2018 were evaluated using the then-existing incorrect multiplier. For the 2017 model year reporting, EPA asked that manufacturers enter all their test data as they normally would (which needed to be done for CAFE calculations anyway), and that reports be submitted on time, with fleet credits calculated from the values as determined by EPA's then-existing regulatory calculation. Manufacturers followed this same reporting convention for MY 2018 as well. In March 2019, EPA released its 2018 EPA Automotive Trends Report where EPA estimated MY 2017 multiplier credits for manufacturers using the corrected methodology being finalized today.[10] The recently released 2019 EPA Trends Report provides an estimate of credits using the corrected methodology for MY 2018.[11]

The regulations adopted in this rule provide that manufacturers will calculate credits using both methodologies and report the higher of the two resulting credit values for model years 2017–2021. For ease of implementation, for MYs 2017–2021, EPA intends to also incorporate the new corrected calculation methodology in the compliance system and retain the uncorrected methodology such that manufacturers will be granted automatically the higher of the two calculated credit levels, as discussed above. Manufacturers will enter their test data into the compliance system as usual and the compliance system will calculate the credit values using the two methodologies and EPA will provide manufacturers with the higher of the two credit levels. EPA expects that there would be no reason for a manufacturer to select the methodology that provides fewer credits and this approach for implementation will simplify the compliance system for both EPA and the manufacturers. For model years 2017 through 2019, where manufacturers have already submitted fleet data, EPA would already have the data within its compliance system necessary to calculate credits associated with the multiplier. As discussed in Section III.A. below, while individual manufacturers may have relied on these credits for compliance, EPA estimates that allowing manufacturers to use either methodology would add less than 0.5 g/mile overall to the fleetwide credit level associated with the multiplier for MY 2017 compared to a fleetwide average standard of 258 g/mile and we expect that difference to decline over time. For MYs 2022–2026, EPA intends to incorporate the new corrected calculation methodology in its compliance reporting system as the only calculation methodology.

2. Rounding in the Multiplier Credit Calculations

EPA also received comments from the Association of Global Automakers (Global Automakers) concerning how rounding is done in the calculations. They pointed out that how EPA specifies rounding of values in the regulation can make a nontrivial difference in the resulting Megagrams of credits. They suggested either of two approaches: (1) No rounding of any interim results, including of the inputs to the term labeled ''C'' above, or (2) an alternate approach that they specified as follows:

$$Credits[Mg] = \Sigma\{(Target - CREE) \times (Multiplier - 1) \times Volume\} \times VLM \div 1{,}000{,}000$$

[10] The 2018 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975, EPA–420–R–19–002, March 2019.

[11] The 2019 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975, EPA–420–R–20–006, March 2020.

EPA finds that this alternate calculation approach in theory results in values that are correct and are consistent with the goals of the program; however, in practice it cannot be implemented using the data that is currently reported to EPA by manufacturers. This is because the approach requires target values (which are derived from vehicle footprint values) to be aligned with CREE values (which are tied to model types), as shown in the equation above. Footprint data is collected by EPA for the purpose of calculating the unique fleet-wide GHG standards for each manufacturer, and CREE values are collected for the purpose of calculating the fleet average GHG emissions for each manufacturer. These sets of data, with their two distinct purposes, are not currently linked at the vehicle level in a way that allows footprint target values to be compared to model type CREE values. For example, the 2017 Honda Civic sedan had three footprints (thus three CO_2 targets) reflecting 16-, 17-, and 18-inch wheels, and production of these three was spread across five unique model types. Because each set of data (footprint and model type) is used for different and specific purposes, each set contains what is needed for that purpose and little more. Thus, the footprint data is not reported by model type, and the model type data is not reported by footprint, and EPA has no direct way to determine, for example, how many 2.0-liter manual transmission Civic sedans were produced with each wheel size. Some manufacturers may be able to do this, but others may segregate the data similar to EPA's approach. EPA is thus not adopting the Global Automakers' suggested approach in favor of one that does not require changing or complicating the data collection process for manufacturers.

EPA agrees that rounding can make a difference. The example shown by Global Automakers demonstrated a case where rounding caused the ''loss'' of credits relative to not using any rounding, but the nature of rounding is that it can—and will—go both ways. There is an equal number of scenarios where rounding will give a manufacturer more credits than the unrounded case.

The commenter did not suggest and EPA is not changing the existing rules for rounding a manufacturer's fleet CO_2 standard or fleet average GHG value in the base program. These values, and the fleet credits (in Megagrams) calculated from these values will continue to be rounded to the whole number, as has been the case since the first year of EPA's GHG program. Using the Example 2 fleet from above (this example fleet was used in the NPRM and also used by the Global Automakers' in its comments), the fleet standard is 242 g/mi, the fleet average is 183 g/mi, and from these values the fleet generates 322,576 Megagrams of credits. This was the case prior to the 2017 model year when multipliers were not used, and EPA intends to maintain this calculation in the 2017 and later model years to determine the credits earned by the ''base'' fleet, before multipliers are considered. The example fleet is repeated below in Table 4 for reference followed by the base fleet calculation of credits with no multiplier for the example fleet (also shown above in Example 2a).

TABLE 4—EXAMPLE OF ROUNDING IN THE MULTIPLIER CALCULATIONS

Vehicle model	Production	Footprint target (CO_2 g/mi)	CREE (CO_2 g/mi)	Multiplier
Conventional 1	10,000	300	320	1
Conventional 2	8,000	210	210	1
PHEV	5,000	210	50	1.6
BEV	5,000	210	0	2.0
Total	28,000			

Calculation of base fleet credits before multipliers are considered, including rounding the fleet average and fleet standard to the nearest whole number:

$$CO_2\ Credits\ (C) = (242 - 183) \times 195{,}264 \times 28{,}000 \div 1{,}000{,}000 = 322{,}576\ Megagrams$$

In response to the comments from Global Automakers, EPA is specifying that calculation of the multiplier-based credits is to be done without rounding, except that the resulting Megagrams of multiplier-based credits for a fleet will be rounded to the whole number (as is the case for all other types of credits). EPA believes this approach provides additional accuracy in the multiplier credit calculations, addressing the concerns raised by the commenter, in a way that is implementable within the structure of the existing GHG program.

Fundamentally, there are three steps to determining multiplier-based credits (separate from calculating base fleet credits, as shown above), including the rounding convention for the multiplier calculation being adopted in this rule, as follows:

1. Calculate fleet credits from the fleet with no multipliers applied, using unrounded intermediate values. Then round the resulting Megagrams to the whole number. In the example, the result will be 322,186 Megagrams.

$$CO_2\ Credits\ (C) = (242.142857142857 - 183.214285714286) \times 195{,}264 \times 28{,}000 \div 1{,}000{,}000 = 322{,}186\ Megagrams$$

2. Calculate fleet credits with the multipliers applied using unrounded intermediate values. In other words, apply the multiplier to the calculation of a standard and a fleet average value, and in the equation for Megagrams of credits, use these values (unrounded) as well as a production volume value that includes the unrounded impact of the multiplier. Then round the resulting Megagrams to the whole number. Note that the example above does not illustrate the possible prevalence of the multiplier impact because of the even numbers that were selected for the example. The production volume becomes 36,000, the calculated standard becomes 235 g/mi, and the fleet average—the only fractional value resulting from the multiplier—becomes 146.667 (shown to three digits). The result of this calculation is 620,940 Megagrams of credits.

$$CO_2\ Credits\ (C) = (183.913043478261 - 114.782608695652) \times 195{,}264 \times 36{,}000 \div 1{,}000{,}000 = 620{,}940\ Megagrams$$

3. Subtract the credits determined in #1 (322,186) from the credits determined in #2 (620,940), and the result is 298,754 Megagrams of credits due to the multiplier impact. These credits, like other credits, get added to the manufacturers base fleet deficit or

credits (in this case 322,576 Megagrams) to determine the manufacturer's model year credit position.

B. Correction of Error in the Off-Cycle Technology Credit Calculation Provision

EPA's GHG emissions standards allow manufacturers to generate credits toward compliance through the application of off-cycle technologies. In model years 2017 and later, fuel economy off-cycle credits equivalent to EPA CO_2 credits are also available in the CAFE program. Off-cycle technologies are those that result in real-world emissions reductions that are not fully captured on the 2-cycle emissions tests used for compliance with the GHG standards (*i.e.,* the city and highway test cycles). EPA originally adopted the off-cycle credits program as part of the 2010 rulemaking establishing the MY 2012–2016 standards.[12] EPA later modified the off-cycle program in 2012 as part of the MY 2017–2025 standards rule.[13] One of the methodologies for manufacturers to demonstrate off-cycle emissions reductions is by conducting 5-cycle testing [14] with and without the off-cycle technology applied (*i.e.,* A/B testing).[15] The original program established in 2010 did not allow off-cycle credits for technologies that showed significant benefits on the 2-cycle segment of the 5-cycle test. The regulations established by the MY 2012–2016 rule stated that the ''CO_2-reducing impact of the technology must not be significantly measurable over the Federal Test Procedure and the Highway Fuel Economy Test.'' [16] As such, the regulations did not require manufacturers to subtract 2-cycle reductions from the 5-cycle benefits when deriving the off-cycle credit because the 2-cycle benefit would necessarily be negligible.

The program as revised by the MY 2017–2025 rule allows for the possibility that some qualifying technologies could have a small 2-cycle benefit but a larger off-cycle benefit. The 2012 rule stated ''EPA is removing the ''not significantly measurable over the 2-cycle test'' criteria'' allowing for credits for qualifying off-cycle technologies ''providing small reductions on the 2-cycle tests but additional significant reductions off-cycle.'' [17] EPA stated ''[t]he intent of the off-cycle provisions is to provide an incentive for CO_2 and fuel consumption reducing off-cycle technologies that would otherwise not be developed because they do not offer a significant 2- cycle benefit and that the program would ''encourage innovative strategies for reducing CO_2 emissions beyond those measured by the 2-cycle test procedures.'' [18] It is plain from the proposed and final rules that the revised off-cycle credit program was intended to provide credits for the incremental benefit of the off-cycle technology that was not captured on the 2-cycle test. For example, EPA provided extensive discussion of how it developed the standards based on its evaluation of various technologies and their effectiveness as demonstrated on the 2-cycle test.[19] EPA further stated that the off-cycle credits were intended to recognize GHG reductions in excess of the benefits already reflected in the standards.[20] For example, for the menu credits for waste heat recovery and active aerodynamics, two technologies that do have some emission reduction benefit over the 2-cycle tests, EPA derived the credits by estimating the 5-cycle benefit and then subtracting out the 2-cycle benefit.[21]

However, EPA inadvertently did not make the associated change in the regulations to require that the 2-cycle benefit be subtracted from the 5-cycle benefit for those off-cycle credits which are based on a manufacturer-specific 5-cycle technology demonstration. This could lead to double counting of the 2-cycle benefit of the technology, which is also included in the 2-cycle tailpipe emissions results of the vehicle used to determine compliance with the standards. EPA made clear in the 2012 final rule that such ''windfall credits'' would be inappropriate.[22] Accordingly, manufacturers have not formally requested, and EPA has not granted, new 5-cycle-based credits since identifying this issue. When the regulations are corrected this credit pathway will resume for manufacturers. This issue has been raised by manufacturers seeking clarification from the agency. EPA is addressing this oversight and the potential double-counting issue by correcting the regulations as proposed such that the 2-cycle benefit is subtracted from the 5-cycle benefit of the off-cycle technology. EPA is adding to the regulations the equation below to ensure that credits derived from the 5-cycle methodology are calculated properly. See the revised regulatory language in 40 CFR 86.1869–12(c) for the complete regulatory text. EPA received only supportive comments regarding the proposed correction. Comments regarding the off-cycle credit calculation are discussed in Section III.B., below.

Under the regulatory correction, manufacturers would calculate the off-cycle credit in grams per mile using the following formula, rounding the result to the nearest 0.1 grams/mile:

$$Credit = (A - B) - (C - D)$$

Where:

Credit = the off-cycle benefit of the technology or technologies being evaluated, subject to EPA approval

A = the 5-cycle adjusted combined city/highway carbon-related exhaust emission value for the vehicle without the off-cycle technology;

B = 5-cycle adjusted combined city/highway carbon-related exhaust emission value for the vehicle with the off-cycle technology;

C = 2-cycle unadjusted combined city/highway carbon-related exhaust emissions value for the vehicle without the off-cycle technology; and

D = 2-cycle unadjusted combined city/highway carbon-related exhaust emissions value for the vehicle with the off-cycle technology.

Through this new regulatory equation, the ''C'' and ''D'' terms make clear that the 2-cycle emissions value of the off-cycle technology is subtracted from the 5-cycle emissions value (''A'' and ''B'' terms), which was the intent of the program.

III. Public Comments

EPA received comments on the proposed rule from several entities. In this section, we summarize these comments and present our responses to each.

A. Comments on EPA's Proposed Corrections to the Advanced Technology Incentive Multiplier

1. Support for Proposed Revisions

The Alliance, Global Automakers, FCA, Tesla, and Edison Electric Institute provided comments fully supportive of the corrected calculation methodology proposed by EPA. Global Automakers commented with suggestions regarding how rounding is handled in the credit

[12] 75 FR 25438–25440 (May 7, 2010) and 75 FR 25697–25698.

[13] 77 FR 62726–62738, 77 FR 62832–62840, and 40 CFR 86.1869–12.

[14] The 5-cycle methodology is currently used to determine fuel economy label values. EPA established the 5-cycle test methods to better represent real-world factors impacting fuel economy, including higher speeds and more aggressive driving, colder temperature operation, and the use of air conditioning.

[15] 77 FR 62837.

[16] 75 FR 25698.

[17] 77 FR 62835.

[18] 77 FR 62832.

[19] 76 FR 74942 (December 1, 2011) & 77 FR 62726

[20] 77 FR 62650 and 77 FR 62836.

[21] Joint Technical Support Document: Final Rulemaking for 2017–2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, August 2012, EPA–420–R–12–901 pp. 5–65 and 5–82.

[22] 77 FR 62836.

calculations, as discussed below in Section III.A.3.

2. Optional Use of Uncorrected Multiplier Calculation Methodology

EPA received comments from the Alliance and FCA that while they agree with the corrections, for some manufacturers the uncorrected methodology provides more credits in some cases than the corrected methodology. The commenters requested that EPA allow automakers to optionally retain usage of the uncorrected formula because the corrected methodology could lessen the credits due to multipliers. They commented that providing fewer credits would be counter to the intent of the proposal and would cause harm to automakers who have made compliance plans in reliance on the uncorrected formula.

EPA believes these comments have merit and, as noted in Section II.A above, is allowing for the continued use of the uncorrected methodology in addition to the corrected methodology and EPA will grant manufacturers the higher of the two credit values. The regulations adopted in this rule provide that manufacturers will calculate credits using both methodologies and report the higher of the two resulting credit values for model years 2017–2021. As discussed above in Section II.A.1, while the regulations specify that manufacturers will calculate credits using both methodologies, for ease of implementation, EPA's compliance system will also calculate the credits using both methodologies. Model years 2017 and 2018 are completed and model year 2019, and for many manufacturers 2020, are underway. EPA agrees that retroactively reducing credits associated with the multiplier for some manufacturers would be problematic, as that was not the intent of the proposal or the 2012 rule. Manufacturers may be counting on credit levels based on the uncorrected methodology for their product planning out to MY 2021, the last year the multiplier credits are available. EPA recently released its 2018 EPA Automotive Trends Report where EPA estimated that the corrected methodology provides manufacturers with about 2 g/mile of advanced technology multiplier credits on a fleet average basis for model year 2017 compared to a fleet average standard of 258 g/mile.[23] EPA estimates that allowing manufacturers to use either methodology would add less than 0.5 g/mile to the fleetwide credits level associated with the multiplier for MY 2017. As production volumes of advanced technology vehicles increase and diversify across vehicle footprints from primarily small footprint vehicles to include larger footprint vehicles, EPA expects the difference in credits calculated with the two methodologies to diminish.

3. Rounding in Multiplier Credit Calculations

Global Automakers commented that depending on total volume, CO_2 level and EV/PHEV penetration rate, the end credit value can nontrivially vary due to rounding effects. Global Automakers recommended that the multiplier credits be calculated either without rounding or in a separate calculation, following a similar precedent for calculating A/C credits and off-cycle credits. Global Automakers provided a suggested equation they believed would best address the rounding issue based on applying the multiplier on a model-by-model basis.

In response to the comments from Global Automakers, EPA is specifying that calculation of the multiplier-based credits is to be done without rounding, except that the resulting Megagrams of multiplier-based credits for a fleet will be rounded to the whole number (as is the case for all other types of credits) as discussed in Section II.A. above.

4. Need for a Technical Correction

The Union of Concerned Scientists (UCS) commented that the uncorrected regulations reflect EPA's original intent and that the proposal is not a ''correction'' but rather a change in policy. UCS points to text from the MY 2012–2016 NPRM which states ''[t]hese proposed advanced technology credits are in the form of a multiplier that would be applied to the number of vehicles sold, such that each eligible vehicle counts as more than one vehicle in the manufacturer's fleet average.''

EPA does not agree with UCS that the proposal represented a change in policy and maintains that it is a technical correction. EPA notes that although EPA proposed multiplier incentives in the MY2012–2016 rule, EPA did not finalize those incentives. Nevertheless, the intent of the policy was clear in the MY2012–2016 final rule which stated ''For example, combining a multiplier of 2.0 with a zero grams/mile compliance value for an EV would allow that EV to be counted as two vehicles, each with a zero grams/mile compliance value, in the manufacturer's fleet average calculations. In effect, a multiplier of 2.0 would double the overall credit associated with an EV, PHEV, or FCV'' for a manufacturer with these fleet characteristics. 75 FR 25435. This intended outcome is not consistent with the credits calculated with the incorrect calculation methodology but is consistent with the corrected methodology being finalized today.

EPA's intent is also clear in the 2012 rulemaking where in multiple places the preamble consistently states, ''This multiplier approach means that each EV/PHEV/FCV/CNG vehicle would count as more than one vehicle in the manufacturer's compliance calculation.'' 77 FR 62650 and repeated at 62778, 62811, 62812. These statements are consistent with the clarifications adopted in this rulemaking. At no point did the rulemaking contemplate limiting or restricting multiplier credits for some manufacturers.

UCS also commented that EPA used the uncorrected calculation in the MY2017–2025 rule analysis estimating the impact of the multipliers and that this provides further evidence of EPA's intent in the MY2017–2025 rulemaking establishing the multipliers. UCS comments that they were not able to assess how EPA calculated the impacts of the multipliers but believes that the estimates are based on the uncorrected methodology, providing further evidence of EPA's intent. In response, the methodology used to estimate the impact of the multipliers is provided in the Regulatory Impact Analysis for the MY2012–2017 final rule.[24] The impacts analysis provided in the RIA for the MY2012–2017 final rule did not use either the corrected or uncorrected equations directly to estimate potential impacts. The estimate was based on a fleetwide scenario using several simplifying assumptions. However, EPA did base the projected impacts on an estimate that included applying the multiplier to a projection of the total number of EVs in the fleet which is consistent with the corrected methodology.

UCS commented that EPA significantly underestimated the impacts of the multipliers in the MY 2012–2017 Final Rule and that compliance with state ZEV regulations would result in significantly more EV sales than EPA originally projected. UCS further commented that the proposed change to the program would result in significant erosion of program

[23] The 2018 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975, EPA–420–R–19–002, March 2019.

[24] Regulatory Impact Analysis: Final Rulemaking for 2017–2025 Light-duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, p. 4–132, EPA–420–R–12–016, August 2012.

benefits. In response, EPA clearly acknowledged in the MY 2017–2025 final rule that the multipliers would decrease the program benefits to the extent that manufacturers produced the advanced technology vehicles. The final rule states ''The agency recognizes that the temporary regulatory incentives will reduce the short-term benefits of the program.'' [25] EPA's 2012 RIA estimate of the impact of the multipliers was meant to be illustrative, but its policy intent was clear and the correction included in this rulemaking is consistent with that policy intent. EPA does not believe that it would be appropriate to maintain an error in the regulations to effectively deny some manufacturers the level of credits that both EPA and the manufacturers believed would be available since the policy was adopted by EPA in the 2012 final rule. Any change in the program to change policy, for example to reduce credits associated the multipliers, would need to be considered through rulemaking where EPA would provide a full assessment of such a proposal and an opportunity for public comment.

5. Opposition to the Multiplier Provisions

The American Fuel & Petrochemical Manufacturers (AFPM) commented opposing multipliers in their entirety, calling on EPA to not finalize proposed changes and to eliminate the multipliers. AFPM noted that it also opposed the use of multipliers in their comments on the 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards. AFPM commented that the multiplier credits are not based on sound science because EPA is arbitrarily ignoring the numerous GHG emissions from the production, transmission, and distribution of electricity and the production of EVs. AFPM also commented that the proposed correction would have costs associated with it because the additional credits associated with the correction have a market value and could be traded (sold) to other manufacturers. AFPM commented that the multipliers are subsidies not based on any emission reductions, nor did EPA consider the existing local, state, federal, and utility policies that already subsidize EVs. AFPM commented that EPA should conduct a Regulatory Impact Analysis for the rulemaking.

In response, EPA believes AFPM comments regarding eliminating multiplier credits are outside the scope of this rulemaking. EPA did not propose or request comments on eliminating multiplier credits or otherwise make any policy changes regarding the availability of multiplier credits. EPA only proposed a regulatory correction to allow credits to be calculated as intended by the 2012 final rule that established the multipliers. EPA therefore does not believe it must revisit the issues raised by AFPM. EPA fully considered all comments in the 2012 final rule establishing the multiplier credits which were established through a full notice and comment rulemaking. EPA did not propose in the technical amendments rule to reopen the basic question of whether or not multiplier credits should be part of the GHG program. EPA fully considered program costs in the 2012 rule that included the multiplier credits. AFPM argues that the multiplier technical amendment has costs associated with the correction due to the market value of the credits attributable to the correction. However, EPA does not agree that there are costs associated with the technical amendments rule as EPA did not propose and is not adopting any significant change to its policy regarding those credits. Therefore, EPA has not conducted a new Regulatory Impact Analysis for this technical amendments rulemaking. EPA acknowledged in the 2012 final rule that the multiplier credits were incentives to promote the production of advanced technology vehicles, that the incentives were not based on real-world emissions reductions, and that the incentives would result in a loss of emissions reductions to the extent that vehicle manufacturers produced advanced technology vehicles, and EPA provided an estimate of the additional emissions that would occur from the use of the multipliers.

6. Process Concerns About Extension of Comment Period

Minnesota Pollution Control Agency and Minnesota Department of Transportation provided joint comments that they continue to have concerns about the U.S. Environmental Protection Agency's (EPA) process for reviewing, amending, and revising its vehicle GHG emissions standards and that the process does not live up to the standards set by the Administrative Procedure Act to provide the public with adequate time and information to participate meaningfully in the rulemaking process. Specifically, on the technical amendments proposal, the organizations commented ''While we appreciate the additional time the EPA provided to review this proposal, it is inappropriate to provide a comment period extension after the close of the comment period. It wastes commenter resources trying to develop comments during the stated period. Reopening the comment period does little or no good because the commenters' resources have already been spent attempting to meet the original deadline.''

In response, EPA initially provided a 30-day comment period for the technical amendments rule. The comment period opened on October 1, 2018 and initially closed on October 31, 2018. In response to a request for a comment period extension received on October 18, 2018, EPA reopened the comment period to in effect extend the comment period by an additional 30 days.[26] EPA released the pre-publication version of the **Federal Register** document re-opening the comment period on October 30, 2018, the last day of the initial comment period, on its website and the document was published in the **Federal Register** on November 8, 2018. EPA strives to respond to requests for comment period extensions as quickly as possible, because we recognize that commenters often plan to file comments on the last day. In this case, while EPA acknowledges the **Federal Register** document re-opening the comment period was published after the initial comment period ended, the extension was announced on EPA's website less than two weeks after the request was received, and EPA's intention was to be responsive to a request for an extension of the comment period. While the timing of the **Federal Register** notice may have limited the usefulness of the additional time for public comment for this commenter, EPA does not agree that the original comment period, or the re-opening of the comment period, was inconsistent with the Administrative Procedure Act. EPA notes that Minnesota Pollution Control Agency and Minnesota Department of Transportation did not raise any substantive issues concerning the proposed technical corrections. The commenter raised concerns with how the technical corrections could affect the analyses in the SAFE vehicles NPRM, as discussed below.

7. Relationship of This Rule to the SAFE Vehicles Rule

Minnesota Pollution Control Agency and Minnesota Department of Transportation commented ''It is also unclear how this proposed amendment to the existing GHG standards would affect the analysis conducted for the proposed Safer Affordable Fuel Efficient

[25] 77 FR 62812.

[26] 83 FR 55837, November 8, 2018.

(SAFE) Vehicles rule (83 FR 42986). While the SAFE rule proposed to eliminate incentives and flexibilities in the GHG standards for 2020–2026, the updates proposed in these technical amendments could potentially affect the cost-benefit analyses conducted for the SAFE rule.''

UCS similarly commented that ''While the two amendments proposed by the Agency may seem minor, they cannot simply be viewed in isolation—rather, they must be considered in context with other changes to the program, including the notice of proposed rulemaking (NPRM) to freeze standards at model year (MY) 2021 levels through MY2026.'' UCS commented further that ''The agencies are seeking comment on these flexibilities explicitly as part of the 2021–2026 NPRM, including the petition to which the technical amendments are responding (83 FR 42998). Any impacts of these proposed amendments will have affect not only [sic] the current rules, but also those under consideration, potentially leading to significant reductions in emissions which the Agency has not yet considered under either rulemaking.'' UCS provides comments on the overall potential impacts of some of the expanded flexibilities and that the environmental impacts of the proposed amendments have not been considered by the Agency under either rulemaking.

In response, as described in the proposal, there are no significant costs or environmental impacts because the technical amendments rulemaking does not change the intended policy, it only makes a technical correction to the regulations to allow manufacturers to generate the appropriate level of credits. These corrections do not affect any analyses that would be conducted for the SAFE vehicles rule because they do not represent a policy change to the program, they only allow the program to operate as originally intended. EPA also notes that the original multiplier incentives (*i.e.,* those established in the 2012 rule) are temporary and only apply to model years 2017–2021, whereas the SAFE vehicles proposal affects model years 2021–2026. Therefore, any potential overlap is limited to model year 2021. For the MY 2022–2026 NGV multiplier, the SAFE rule did not project the use of NGVs to meet the 2022–2026 standards, so the new NGV multiplier had no impact on any analysis in the SAFE Rule. EPA does not believe that UCS' comments on possible program changes considered in the SAFE vehicles rule are relevant to this technical amendments rule. UCS noted that it also submitted its comments to the docket for the SAFE vehicles rule in addition to the docket for the technical amendments rule.

B. Comments on EPA's Proposed Correction to Off-Cycle Technology Credits Provisions

The Alliance, Global Automakers, FCA, and UCS supported the correction to the 5-cycle calculation methodology as proposed. The Alliance, Global Automakers, and FCA commented that EPA needs to further address two areas in the technical correction. They commented that EPA should specify that it will award all technologies that have a difference between 5-cycle and 2-cycle testing methodology as long as the off-cycle credit value is equal to or greater than 0.05 g/mile, regardless of the observed benefit using the 2-cycle method and that EPA should clearly define the term ''baseline technology (item and efficiency).'' Commenters believe that clarifying this term will help manufacturers determine what a baseline technology is and the associated baseline off-cycle credit value.

UCS commented that EPA should ''clarify a threshold for 'not in widespread use' to ensure that the newly streamlined off-cycle credit process does not result in unwarranted credits for baseline technologies while providing the certainty requested by industry to encourage deployment of new and novel non-safety off-cycle technologies. Such clarification could also respond to automaker request for clarity on the definition of a 'baseline' technology.''

In response to the above comments, the NPRM did not propose or request comments on establishing new thresholds or baselines in the regulations to determine what technologies are eligible for off-cycle credits; and therefore, EPA believes the comments are outside the scope of the technical amendments rulemaking. Given the diversity of views on this topic, as expressed by the commenters noted above, and the potential complexity of the policy issues involved, EPA believes such regulatory changes would need to be done through a notice and comment rulemaking that includes a full discussion and technical assessment of the topic and opportunity for public comment. EPA will continue to use the current regulations as well as the detailed discussion in the 2012 final rule preamble to determine what technologies are eligible for off-cycle credits on a case-by-case basis.[27]

IV. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

This final action merely clarifies and corrects existing regulatory language. EPA does not believe there will be costs associated with this rule. Also, EPA does not anticipate that this rule will create additional burdens to the existing requirements. As such, a regulatory impact evaluation or analysis is unnecessary.

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

This action is not subject to Executive Order 13771 because it merely clarifies and corrects existing regulatory language and is not expected to result in costs or additional burdens.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0104. This action will not impose any new information collection burden under the PRA, since it merely clarifies and corrects existing regulatory language.

D. Regulatory Flexibility Act (RFA)

I certify that this action would not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule merely clarifies and corrects existing regulatory language. We therefore anticipate no costs and therefore no

[27] See 40 CFR 86.1869–12 and preamble discussion at 77 FR 62835–62837 and 77 FR 62726–62736.

regulatory burden associated with this rule. Further, small entities are generally exempt from the light-duty vehicles greenhouse gas standards unless the small entity voluntarily opts into the program. See 40 CFR 86.1801–12(j). For MY 2017 to present, no small entities have opted into the program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed $100 million in any one year.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This rule only corrects and clarifies regulatory provisions that apply to light-duty vehicle manufacturers. Tribal governments would be affected only to the extent they purchase and use regulated vehicles. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule merely corrects and clarifies previously established regulatory provisions.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This final action merely clarifies and corrects existing regulatory language.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs agencies to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action modifies existing regulations to correct errors in the regulations and therefore involves technical standards previously established by EPA. The amendments to the regulations do not involve the application of new technical standards. EPA is continuing to use the technical standards previously established in its rules regarding the light-duty vehicle GHG standards for MYs 2017–2025. See 77 FR 62960.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action makes technical corrections to a previously established regulatory action and as such does not have any impact on human health or the environment.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Andrew Wheeler,

Administrator.

Environmental Protection Agency

40 CFR Chapter I

For the reasons set forth in the preamble, the Environmental Protection Agency is amending part 86 of title 40, Chapter I of the Code of Federal Regulations as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 86.1865–12 is amended by redesignating paragraph (k)(5)(v) as paragraph (k)(5)(vi) and by adding a new paragraph (k)(5)(v) to read as follows:

§ 86.1865–12 How to comply with the fleet average CO_2 standards.

* * * * *

(k) * * *

(5) * * *

(v) Advanced technology vehicle credits earned according to the provisions of § 86.1866–12(b)(3).

* * * * *

■ 3. Section 86.1866–12 is amended by revising paragraphs (b) introductory text and adding paragraph (c) to read as follows:

§ 86.1866–12 CO_2 credits for advanced technology vehicles.

* * * * *

(b) For electric vehicles, plug-in hybrid electric vehicles, fuel cell vehicles, dedicated natural gas vehicles, and dual-fuel natural gas vehicles as those terms are defined in § 86.1803–01, that are certified and produced for U.S. sale in the specified model years and that meet the additional specifications in this section, the manufacturer may use the production multipliers in this paragraph (b) when determining additional credits for advanced technology vehicles. Full size pickup trucks eligible for and using a production multiplier are not eligible for the performance-based credits described in § 86.1870–12(b).

* * * * *

(c) Calculating multiplier-based credits for advanced technology vehicles: This paragraph (c) describes the method for calculating credits using the production multipliers in paragraph (b) of this section. Production multipliers must be used according to this paragraph (c) and must not be used in calculating fleet average carbon-related exhaust emissions under 40 CFR part 600 or § 86.1865–12(i), or in any elements of the equation used for the calculation of CO_2 credits or debits in § 86.1865–12(k)(4). Calculate credits for advanced technology vehicles for a given model year, and separately for passenger automobiles and light trucks,

using the following equation, subtracting the credits calculated for the base fleet from the credits calculated for the fleet with multipliers applied. No credits are earned if the result is a negative value. All values expressed in megagrams shall be rounded to the nearest whole number.

$$Credits\ [Mg] = [Credits_{adj}] - [Credits_{base}]$$

(1) For model year 2017–2021 multipliers, determine adjusted fleet credits ($Credits_{adj}$) in megagrams using one of the following methods, where the resulting $Credits_{adj}$ is rounded to the nearest whole number. Use the method that returns the highest total megagrams. For 2022 and later model years, determine adjusted fleet credits ($Credits_{adj}$) in megagrams using only Method 1 in paragraph (c)(1)(i) of this section, where the resulting $Credits_{adj}$ is rounded to the nearest whole number. Note that the adjusted CO_2 standard (S_{adj}) and the adjusted fleet average carbon-related exhaust emissions (E_{adj}) are determined solely for the purpose of calculating advanced technology vehicle credits in this section; the official CO_2 standard applicable to the fleet will continue to be the value calculated and rounded according to § 86.1818–12(c), and the official fleet average carbon-related exhaust emissions applicable to the fleet will continue to be the value calculated and rounded according to 40 CFR 600.510–12(j). In addition, note that the rounding requirements in this section differ from those specified for the official fleet standards calculated under § 86.1818–12 and for the official fleet average carbon-related exhaust emissions calculated under 40 CFR 600.510–12.

(i) Method 1: All values that determine fleet credits are adjusted using the applicable multipliers.

$$Credits_{adj}\ [Mg] = \left[\frac{(S_{adj} - E_{adj}) \times P_{adj} \times VLM}{1{,}000{,}000}\right]$$

Where:

S_{adj} = adjusted CO_2 standard calculated according to the method described in § 86.1818–12(c), except that the actual production of qualifying vehicles under this section shall be multiplied by the applicable production multiplier, and no rounding shall be applied to the result.

E_{adj} = adjusted production-weighted fleet average carbon-related exhaust emissions calculated according to the method described in 40 CFR 600.510–12(j), except that the actual production of qualifying vehicles under this section shall be multiplied by the applicable production multiplier, and no rounding shall be applied to the result.

P_{adj} = total adjusted production of passenger automobiles or light trucks, except that the actual production of qualifying vehicles under this section shall be multiplied by the applicable production multiplier, and no rounding shall be applied to the result.

VLM = vehicle lifetime miles, which for passenger automobiles shall be 195,264 and for light trucks shall be 225,865.

(ii) Method 2: Multipliers are applied only to calculation of the fleet average carbon-related exhaust emissions.

$$Credits_{adj}\ [Mg] = \left[\frac{(S_{base} - E_{adj}) \times P_{base} \times VLM}{1{,}000{,}000}\right]$$

S_{base} = CO_2 standard calculated according to the method described in § 86.1818–12(c), except that no rounding shall be applied to the result.

E_{adj} = adjusted production-weighted fleet average carbon-related exhaust emissions calculated according to the method described in 40 CFR 600.510–12(j), except that the actual production of qualifying vehicles under this section shall be multiplied by the applicable production multiplier, and no rounding shall be applied to the result.

P_{base} = total production of passenger automobiles or light trucks.

VLM = vehicle lifetime miles, which for passenger automobiles shall be 195,264 and for light trucks shall be 225,865.

(2) Determine base fleet credits in megagrams using the following equation and rounding the result to the nearest whole number. Do not adjust any production volume values with a multiplier. Note that the CO_2 standard (S_{base}) and the fleet average carbon-related exhaust emissions (E_{base}) are determined solely for the purpose of calculating advanced technology vehicle credits in this section and do not replace the official fleet values; the official CO_2 standard applicable to the fleet will continue to be the value calculated and rounded according to § 86.1818–12(c), and the official fleet average carbon-related exhaust emissions applicable to the fleet will continue to be the value calculated and rounded according to 40 CFR 600.510–12(j). In addition, note that the rounding requirements in this section differ from those specified for the official fleet standards calculated under § 86.1818–12 and for the official fleet average carbon-related exhaust emissions calculated under 40 CFR 600.510–12.

$$Credits_{base}\ [Mg] = \left[\frac{(S_{base} - E_{base}) \times P_{base} \times VLM}{1{,}000{,}000}\right]$$

S_{base} = CO_2 standard calculated according to the method described in § 86.1818–12(c), except that no rounding shall be applied to the result.

E_{base} = production-weighted fleet average carbon-related exhaust emissions calculated according to the method described in 40 CFR 600.510–12(j), except that no rounding shall be applied to the result.

P_{base} = total production of passenger automobiles or light trucks.

VLM = vehicle lifetime miles, which for passenger automobiles shall be 195,264 and for light trucks shall be 225,865.

■ 4. Section 86.1869–12 is amended by revising paragraphs (c)(1) through (3) to read as follows:

§ 86.1869–12 CO_2 credits for off-cycle CO_2-reducing technologies.

* * * * *

(c) * * *

(1) Testing without the off-cycle technology installed and/or operating.

(i) Determine carbon-related exhaust emissions over the FTP, the HFET, the US06, the SC03, and the cold temperature FTP test procedures according to the test procedure provisions specified in 40 CFR part 600 subpart B and using the calculation procedures specified in 40 CFR 600.113–12. Run each of these tests a minimum of three times without the off-cycle technology installed and operating and average the per phase (bag) results for each test procedure.

(ii) Calculate the FTP and HFET carbon-related exhaust emissions from the FTP and HFET averaged per phase results.

(iii) Calculate the combined city/highway carbon-related exhaust emission value from the FTP and HFET values determined in paragraph (c)(1)(ii) of this section, where the FTP value is weighted 55% and the HFET value is weighted 45%. The resulting value is the 2-cycle unadjusted combined city/highway carbon-related exhaust emissions value for the vehicle without the off-cycle technology.

(iv) Calculate the 5-cycle weighted city/highway combined carbon-related exhaust emissions from the averaged per phase results, where the 5-cycle city value is weighted 55% and the 5-cycle highway value is weighted 45%. The resulting value is the 5-cycle adjusted combined city/highway carbon-related exhaust emission value for the vehicle without the off-cycle technology.

(2) Testing with the off-cycle technology installed and/or operating.

(i) Determine carbon-related exhaust emissions over the FTP, the HFET, the US06, the SC03, and the cold temperature FTP test procedures according to the test procedure provisions specified in 40 CFR part 600 subpart B and using the calculation procedures specified in 40 CFR 600.113–12. Run each of these tests a minimum of three times with the off-cycle technology installed and operating and average the per phase (bag) results for each test procedure.

(ii) Calculate the FTP and HFET carbon-related exhaust emissions from the FTP and HFET averaged per phase results.

(iii) Calculate the combined city/highway carbon-related exhaust emission value from the FTP and HFET values determined in paragraph (c)(2)(ii) of this section, where the FTP value is weighted 55% and the HFET value is weighted 45%. The resulting value is the 2-cycle unadjusted combined city/highway carbon-related exhaust emissions value for the vehicle with the off-cycle technology.

(iv) Calculate the 5-cycle weighted city/highway combined carbon-related exhaust emissions from the averaged per phase results, where the 5-cycle city value is weighted 55% and the 5-cycle highway value is weighted 45%. The resulting value is the 5-cycle adjusted combined city/highway carbon-related exhaust emission value for the vehicle with the off-cycle technology.

(3) Calculate the off-cycle credit in grams per mile using the following formula, rounding the result to the nearest 0.1 grams/mile:

$$Credit = (A - B) - (C - D)$$

Where:

Credit = the off-cycle benefit of the technology or technologies being evaluated, subject to EPA approval;

A = the 5-cycle adjusted combined city/highway carbon-related exhaust emission value for the vehicle without the off-cycle technology, as calculated in paragraph (c)(1)(iv) of this section;

B = 5-cycle adjusted combined city/highway carbon-related exhaust emission value for the vehicle with the off-cycle technology, as calculated in paragraph (c)(2)(iv) of this section;

C = 2-cycle unadjusted combined city/highway carbon-related exhaust emissions value for the vehicle without the off-cycle technology, as calculated in paragraph (c)(1)(iii) of this section; and

D = 2-cycle unadjusted combined city/highway carbon-related exhaust emissions value for the vehicle with the off-cycle technology, as calculated in paragraph (c)(2)(iii) of this section.

* * * * *

[FR Doc. 2020–07098 Filed 4–22–20; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 328

[Docket ID FEMA–2020–0018]

RIN 1660–AB01

Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use

Correction

In rule document 2020–07659, appearing on pages 20195 through 20200 in the issue of Friday, April 10, 2020 make the following correction.

On page 20200, in the third column, on the second line from the bottom, ''Filed 4–8–20'' should read ''Filed 4–7–20''.

[FR Doc. C1–2020–07659 Filed 4–22–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 96

[AU Docket No. 19–244; FCC 20–18; DA 20–330; FRS 16634]

Auction of Priority Access Licenses for the 3550–3650 MHz Band; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 105

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes the procedures and deadlines for the upcoming auction of Priority Access Licenses for the 3350–3650 MHz Band. The *Auction 105 Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements governing participation in Auction 105 by providing details regarding the procedures, terms, conditions, dates, and deadlines, as well as an overview of the post-auction application and payment processes. This document also summarizes a subsequent announcement of changes to various dates associated with Auction 105 made in light of COVID–19 pandemic.

DATES: Applications to participate in Auction 105 must be submitted prior to 6:00 p.m. ET on May 7, 2020. Upfront payments for Auction 105 must be received by 6:00 p.m. ET on June 19, 2020. Bidding in Auction 105 is scheduled to begin on July 23, 2020.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Mary Lovejoy in the Auctions Division of the Office of Economics and Analytics at (202) 418–0660. For general auction questions, the Auctions Hotline at (717) 338–2868. For Priority Access License questions, Jessica Quinley in the Mobility Division of the Wireless Telecommunications Bureau at (202) 418–1991.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 105 Procedures Public Notice,* AU Docket No. 19–244, FCC 20–18, adopted on February 28, 2020, and released on March 2, 2020. This summary incorporates the revised schedule for the auction as announced in a subsequent public notice, AU Docket No. 19–244, DA 20–330, released

on March 25, 2020. The complete text of these documents, including attachments and any related documents, are available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, located in Room CY–A257, of the FCC Headquarters, 445 12th Street SW, Washington, DC 20554, except when FCC Headquarters is otherwise closed to visitors. *See, e.g., Public Notice, Restrictions on Visitors to FCC Facilities,* March 12, 2020. The complete text of both public notices is also available on the Commission's website at *www.fcc.gov/auction/105* or by using the search function for AU Docket No. 19–244 on the Commission's ECFS web page at *www.fcc.gov/ecfs.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. General Information

A. Introduction

1. With the *Auction 105 Procedures Public Notice,* the Commission established the procedures for the upcoming auction of Priority Access Licenses (PALs) in the Citizens Broadband Radio Service in the 3550–3650 MHz Band (Auction 105).

2. The bidding for new licenses in Auction 105 is scheduled to commence on July 23, 2020. The *Auction 105 Procedures Public Notice* provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 105 bidding, and an overview of the post-auction application and payment processes. Dates and deadlines that were announced in the *Auction 105 Procedures Public Notice* were revised in a subsequent announcement, and this summary includes those revised dates.

B. Background and Relevant Authority

3. In the *2015 3.5 GHz Report and Order,* 80 FR 34119, June 23, 2015, the Commission made available 150 megahertz of spectrum in the 3550–3700 MHz band (3.5 GHz band) for both licensed and licensed-by-rule use. In that Order, the Commission established licensing and operating rules for the 3.5 GHz band, including the assignment of up to seven Priority Access Licenses (PALs) per geographic license area through the use of competitive bidding. Each PAL consists of a 10-megahertz unpaired channel within the 3550–3650 MHz band. In the *2018 3.5 GHz Report and Order,* 83 FR 63076, December 7, 2018, the Commission adopted a county-based geographic license area for PALs, as well as a 10-year renewable license term, and it affirmed the Commission's prior decision to permit licensees to aggregate no more than four PALs per license area.

4. On September 27, 2019, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended, the Commission released the *Auction 105 Comment Public Notice,* 84 FR 56743, October 23, 2019, seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 105. The Commission received comments from 17 parties in response to the *Auction 105 Comment Public Notice,* and 12 reply comments. These comments are available under proceeding 19–244 in the Commission's Electronic Comment Filing System (ECFS). The ECFS home page is publicly accessible at: *www.fcc.gov/ecfs.* In the *Auction 105 Procedures Public Notice,* the Commission resolved all open issues raised in the *Auction 105 Comment Public Notice* and addressed the comments received.

5. Prospective applicants should familiarize themselves with the Commission's general competitive bidding rules, including recent amendments and clarifications thereto, as well as Commission decisions regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective applicants also should familiarize themselves with the Commission's rules regarding Citizens Broadband Radio Service. Applicants must be thoroughly familiar with the procedures, terms, and conditions contained in the *Auction 105 Procedures Public Notice* and any future public notices that may be released in this proceeding.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental information to applicants. Additionally, the Wireless Telecommunications Bureau (Bureau) and the Office of Economics and Analytics (OEA) retain the authority to establish further procedures during the course of the auction. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 105. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the Commission's FCC Auctions internet site at *www.fcc.gov/auctions.* Additionally, documents are available at the Commission's headquarters during normal business hours.

C. Description of Licenses To Be Offered in Auction 105

7. Auction 105 will offer seven PALs in each county-based license area. For purposes of this auction, counties shall be defined using the United States Census Bureau's data reflecting county legal boundaries and names valid through January 1, 2017. Information regarding PALs, including a map and list of 2017 counties, can be found at *https://www.fcc.gov/35-ghz-band-overview.* Each PAL consists of a 10-megahertz unpaired channel within the 3550–3650 MHz band. Auction 105 will offer a total of 22,631 PALs. A summary of the licenses offered in Auction 105 is available in Attachment A to the Auction 105 Comment Public Notice, which is available on the Auction 105 website at *www.fcc.gov/auction/105.* PALs are 10-year renewable licenses. A Priority Access Licensee may hold up to four 10-megahertz channel licenses (out of a total of seven) within the band in any license area at any given time.

8. A frequency coordinator called a Spectrum Access System (SAS) will assign the specific channel for a particular licensee on a dynamic basis. An individual PAL will not be identified by specific spectrum blocks. Although a Priority Access Licensee may request a particular channel or frequency range from an SAS following the auction, bidders should be mindful that licensees are not guaranteed a particular assignment. Potential bidders should also understand that an SAS may dynamically reassign a PAL to a different channel as needed to accommodate a higher priority Incumbent Access user. To the extent feasible, an SAS will assign geographically contiguous PALs held by the same Priority Access Licensee to the same channels in each geographic area and assign multiple channels held by the same Priority Access Licensee to contiguous channels in the same License Area. An SAS may, however, temporarily reassign individual PALs to non-contiguous channels to the extent necessary to protect incumbent users from harmful interference or if necessary, to perform its required functions. On January 27, 2020, the Bureau and the Office of Engineering and Technology certified the following SASs to begin full commercial

operations: CommScope, Federated Wireless, Inc., Google, and Sony, Inc.

9. Each Priority Access Licensee must register its Citizens Broadband Radio Service Devices (CBSDs) with an SAS before operating those devices in the band. A CBSD registration includes its geographic location, antenna height, CBSD class, requested authorization status, FCC identification number, call sign, user contact information, air interface technology, unique manufacturer's serial number, sensing capabilities (if supported), and information on its deployment profile. An SAS relies on this information to coordinate access for Priority Access Licensees and General Authorized Access (GAA) users, and an SAS Administrator may charge Priority Access Licensees and GAA users a reasonable fee for its services.

D. Auction Specifics

1. Auction Title and Start Date

10. The auction of PALs in the 3550–3650 MHz band will be referred to as Auction 105. Bidding in Auction 105 will begin on Thursday, July 23, 2020. The initial schedule for bidding rounds in Auction 105 will be announced by public notice at least one week before bidding in the auction starts.

11. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Dates and Deadlines

12. The following dates and deadlines apply to Auction 105:

Auction Application Tutorial Available (via internet).	No later than March 9, 2020.
Short-Form Application (FCC Form 175):	
Filing Window Opens	April 23, 2020, 12:00 p.m. Eastern Time (ET).
Short-Form Application (FCC Form 175):	
Filing Window Deadline.	May 7, 2020, 6:00 p.m. ET.
Upfront Payments (via wire transfer).	June 19, 2020, 6:00 p.m. ET.
Bidding Tutorial Available (via internet).	No later than July 9, 2020.
Mock Auction	July 20, 2020.
Bidding Begins in Auction 105.	July 23, 2020.

3. Requirements for Participation

13. Those wishing to participate in Auction 105 must: Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET on May 7, 2020, following the electronic filing procedures set forth in the FCC Form 175 Instructions (available in the Education section of the Auction 105 website at *www.fcc.gov/auctions/105*); submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on June 19, 2020; and comply with all provisions outlined in the *Auction 105 Procedures Public Notice* and applicable Commission rules.

II. Applying To Participate in Auction 105

A. General Information Regarding Short-Form Applications

14. An application to participate in Auction 105, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for spectrum licenses. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 105 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate. Eligibility to participate in Auction 105 is based on an applicant's short-form application and certifications, and on the applicant's submission of a sufficient upfront payment for the auction. In the second phase of the process, each winning bidder must file a more comprehensive post-auction, long-form application (FCC Form 601) for the licenses it wins in the auction, and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission. Being deemed qualified to bid in Auction 105 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a designated entity bidding credit.

15. A party seeking to participate in Auction 105 must file an FCC Form 175 electronically via the Auction Application System prior to 6:00 p.m. ET on May 7, 2020, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 as of the filing date will be used to determine whether the applicant may request the claimed bidding credit. An applicant that files an FCC Form 175 for Auction 105 will be subject to the Commission's rule prohibiting certain communications. An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on May 7, 2020. The prohibition will end for applicants on the post-auction down payment deadline for Auction 105.

16. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and it must confirm that it is legally, technically, financially, and otherwise qualified to hold a license. If an Auction 105 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, then its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

17. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

18. Applicants are cautioned that, because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information. The Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.

19. An applicant must designate at least one individual as an authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.

20. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. If a party submits multiple short-form applications for an auction, then only one application may form the basis for

that party to become qualified to bid in that auction.

21. A party is generally permitted to participate in a Commission auction only through a single bidding entity. The filing of applications in Auction 105 by multiple entities controlled by the same individual or set of individuals generally will not be permitted. This restriction applies across all applications, without regard to the geographic areas selected. There is a limited exception to the general prohibition of the filing of multiple applications by commonly controlled entities for qualified rural wireless partnerships and individual members of such partnerships. Under this limited exception, each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction.

22. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 105 to determine whether each application complies with the application requirements and whether the applicant has provided all required information concerning the applicant's qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. That public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (*i.e.,* have timely filed an application that is deemed complete after the deadline for correcting any identified deficiencies), and must make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

23. An applicant should consult the Commission's rules to ensure that all required information is included in its short-form application. To the extent the information in the *Auction 105 Procedures Public Notice* does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auction 105 (see the Education section of the Auction 105 website at *www.fcc.gov/auction/105*) and/or use the contact information provided to consult with Commission staff to better understand the information it must submit in its short-form application.

B. License Area Selection

24. An applicant must select all the county-based license areas on which it may want to bid from the list of available counties on its FCC Form 175. An applicant must carefully review and verify its county selections before the FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline. The FCC Auction Bidding System (bidding system) will not accept bids for blocks located in counties that the applicant did not select in its FCC Form 175. The auction application system, however, will provide an applicant the option to select ''all counties.''

C. Disclosure of Agreements and Bidding Arrangements

25. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. A controlling interest includes all individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. The applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understandings to which it (or any party that controls it or that it controls) is a party. If, after the FCC Form 175 filing deadline, an auction applicant enters into any agreement relating to the licenses being auctioned, then it is subject to these same disclosure obligations. All applicants must maintain the accuracy and completeness of the information in their pending auction application.

26. If parties agree in principle on all material terms prior to the application filing deadline, then each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.

27. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants). A joint bidding arrangement includes any arrangement relating to the licenses being auctioned that addresses or communicates, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangement relating to the post-auction market structure.

28. This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers, where at least one party to the arrangement is an applicant for the auction. The Commission considers AT&T, Sprint, T-Mobile, and Verizon Wireless to be nationwide providers for the purpose of implementing the Commission's competitive bidding rules in Auction 105. A ''non-nationwide provider'' refers to any provider of communications services that is not a nationwide provider.

29. Non-nationwide provider may enter into an agreement to form a consortium or a joint venture (as applicable) that results in a single party applying to participate in an auction. A designated entity can participate in one consortium or joint venture in an auction, and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture. A non-nationwide provider may enter into only one agreement to form a consortium or joint venture (as applicable), and such consortium or joint venture shall be the exclusive bidding vehicle for its members in the auction. The general prohibition of joint bidding arrangements excludes certain agreements, including those that are solely operational in nature. Under the Commission's rules, agreements that are solely operational in nature are those that address operational aspects of providing a mobile service, such as agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements, provided that any such agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including

specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid) or post-auction market structure.

30. The Commission's rules require each applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.

31. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175, certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

32. A winning bidder will be required to disclose in its FCC Form 601 post-auction application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed. This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

D. Ownership Disclosure Requirements

33. Each applicant must comply with the applicable part 1 ownership disclosure requirements and provide information required by sections 1.2105 and 1.2112, and, where applicable, section 1.2110, of the Commission's rules. In completing FCC Form 175, an applicant must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

34. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FCC Registration Number (FRN) the applicant is using to submit its FCC Form 175 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. Applicants are encouraged to submit an FCC Form 602 ownership report or update any ownership information on file with the Commission in an FCC Form 602 ownership report prior to starting an application for Auction 105 to ensure that their most recent ownership information is pre-filled into their short-form applications. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

E. Foreign Ownership Disclosure Requirements

35. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. Section 310 applies to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in section 310(b), then it may seek to participate in Auction 105 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission. Additional information concerning foreign ownership disclosure requirements is provided in the FCC Form 175 Filing Instructions.

F. Information Procedures During the Auction Process

36. The Commission is limiting information available in Auction 105 in order to prevent the identification of bidders placing particular bids until after the bidding has closed. The Commission will not make public until after bidding has closed: (1) The license areas that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

37. Once the bidding begins in Auction 105, under the limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding will include for licenses in each geographic area, the supply, the aggregate demand, the price at the end of the last completed round, and the price for the next round. The identities of bidders placing specific bids and the net bid amounts (reflecting bidding credits) will not be disclosed until after the close of bidding.

38. Bidders will have access to additional information related to their own bidding and bidding eligibility through the Commission's bidding system. For example, bidders will be able to view their own level of eligibility, both before and during the auction.

39. After the close of bidding, bidders' county selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available.

40. The direct or indirect communication to other applicants or the public disclosure of non-public information (*e.g.,* reductions in eligibility, identities of bidders) could violate the Commission's rule prohibiting certain communications. To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the U.S. Securities Exchange Commission, the applicant should consult with the Commission staff in the

Auctions Division before making such disclosure.

G. Prohibited Communications and Compliance With Antitrust Laws

41. The rules prohibiting certain communications set forth in section 1.2105(c) apply to each applicant that files a short-form application (FCC Form 175) in Auction 105. Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

1. Entities Subject to Section 1.2105(c)

42. An applicant for purposes of this rule includes all controlling interests in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10% or more of the entity, and all officers and directors of that entity. A party that submits an application becomes an applicant under the rule at the application deadline, and that status does not change based on later developments. Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an ''applicant'' for purposes of the rule and remains subject to the prohibition on certain communications until the Auction 105 down payment deadline.

43. The Commission considers AT&T, Sprint, T-Mobile, and Verizon Wireless to be nationwide providers for the purposes of the prohibited communications rule for Auction 105.

2. Prohibition Applies Until Down Payment Deadline

44. Section 1.2105(c)'s prohibition of certain communications begins at an auction's short-form application filing deadline and ends at the auction's down payment deadline after the auction closes, which will be announced in a future public notice.

3. Scope of Prohibition of Communications; Prohibition of Joint Bidding Agreements

45. Section 1.2105(c) of the Commission's rules prohibits certain communications between applicants for an auction, regardless of whether the applicants seek permits or licenses in the same geographic area or market. The rule also applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant non-nationwide providers. The rule further prohibits joint bidding arrangements, including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rules prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. Applicants may communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

46. The prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant. Applicants must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying applicants is released.

47. Parties subject to section 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

48. Section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. A communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate to both: (1) The licenses being auctioned and (2) bids or bidding strategies or post-auction market structure.

49. Business discussions and negotiations that are unrelated to bidding in Auction 105 and that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant are not prohibited by the rule. Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 105 will not violate the rule. In contrast, communicating how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.

50. Each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing

agreements, and other transactional agreements.

51. Bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

52. When completing a short-form application, each applicant should avoid any statements or disclosures that may violate section 1.2105(c). An applicant should avoid including any information in its short-form application that might convey information regarding its county selections, such as referring to certain markets in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant's county selections, or using applicant names that refer to licenses being offered.

53. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate section 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

4. Communicating With Third Parties

54. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

55. In the case of an individual, the objective precautionary measure of a firewall is not available. An individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. Whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

56. Potential applicants may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice before the short-form application deadline. The same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including counties selected on the short-form application, is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

57. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a section 1.2105 violation. Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 105 could also violate the rule.

5. Section 1.2105(c) Certifications

58. By electronically submitting its FCC Form 175 auction application, each applicant certifies its compliance with section 1.2105(c) of the rules. If an applicant has a non-controlling interest with respect to more than one application, the applicant must certify that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

6. Duty To Report Prohibited Communications

59. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

7. Procedures for Reporting Prohibited Communications

60. A party reporting any information or communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

61. Parties must file only a single report concerning a prohibited

communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 105 Procedures Public Notice.* Such reports must be filed with the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief and sent to *auction105@fcc.gov.* If you choose to submit a report in hard copy, contact Auctions Division staff at *auction105@fcc.gov* or (202) 418–0660 for guidance.

62. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with ''Request for Confidential Treatment Attached'' or ''Not for Public Inspection.'' Any such request must cover all the material to which the request applies. Such parties are encouraged coordinate with the Auctions Division staff about the procedures for submitting such reports.

8. Winning Bidders Must Disclose Terms of Agreements

63. Each applicant that is a winning bidder will be required to provide as part of its long-form application any agreement or arrangement it has entered into and a summary of the specific terms, conditions, and parties involved in any agreement it has entered into. Such agreements must have been entered into prior to the filing of short-form applications. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

9. Additional Information Concerning Prohibition of Certain Communications in Commission Auctions

64. A summary listing of documents issued by the Commission and the Bureau/OEA addressing the application of section 1.2105(c) is available on the Commission's auction web page at *www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications.*

10. Antitrust Laws

65. Applicants remain subject to the antitrust laws. Compliance with the disclosure requirements of section 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

66. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating further in Auction 105 and in future auctions, among other sanctions.

H. Provisions for Small Businesses and Rural Service Providers

67. In Auction 105, bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). A bidding credit represents an amount by which a bidder's winning bid will be discounted. These bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175. Each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the part 1 rules.

68. Applicants applying for designated entity bidding credits should take due account of the requirements of the Commission's rules and implementing orders regarding *de jure* and *de facto* control of such applicants. These rules include a prohibition, which applies to all applicants (whether they seek bidding credits or not), against changes in ownership of the applicant that would constitute an assignment or transfer of control. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements.

1. Small Business Bidding Credit

69. For Auction 105, bidding credits will be available to eligible small businesses and consortia thereof. Under the service rules applicable to the PALs to be offered in Auction 105, the level of bidding credit available is determined as follows: A bidder with attributed average annual gross revenues that do not exceed $55 million for the preceding three years is eligible to receive a 15% discount on its winning bid; a bidder with attributed average annual gross revenues that do not exceed $20 million for the preceding three years is eligible to receive a 25% discount on its winning bid.

70. Small business bidding credits are not cumulative; an eligible applicant may receive either the 15% or the 25% bidding credit on its winning bid, but not both. The Commission's unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for at least the same level of small business bidding credit. Thus, for example, the Commission's unjust enrichment provisions would not apply to a winning bidder that uses the 15% small business bidding credit and seeks to transfer control of its license to an entity that qualifies for either the 15% small business bidding credit or the rural service provider bidding credit. The provisions would apply, however, if that same winning bidder uses the 25% small business bidding credit, unless the proposed transferee also qualifies for the 25% small business bidding credit.

71. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding three years for each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 105. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 105, the identity and the attributable gross revenues of any such disclosable interest holder must be disclosed. This attribution rule will be applied on a license-by-license basis. As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 105. If an applicant is applying as a consortium of small businesses, then the disclosures described in this paragraph must be provided for each consortium member.

2. Rural Service Provider Bidding Credit

72. An eligible applicant may request a 15% discount on its winning bid using a rural service provider bidding credit, subject to the cap discussed below. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas, defined as counties with a population density of 100 or fewer persons per square mile. An applicant seeking a rural service provider bidding credit must provide the number of subscribers served as of the short-form application deadline. An applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service. For instance, a subscriber receiving both wireline and telephone service and broadband would be counted as a single subscriber.

73. Each applicant seeking a rural service provider bidding credit must disclose the number of its subscribers, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 105. To the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 105, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed. Eligible rural service providers may form a consortium. If an applicant is applying as a consortium of rural service providers, then the disclosures described in this paragraph, including the certification, must be provided for each consortium member.

3. Caps on Bidding Credits

74. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to certain caps on the total amount of bidding credit discounts that any eligible applicant may receive. The Commission adopted a $25 million cap on the total amount of bidding credit discounts that may be awarded to an eligible small business, and a $10 million cap on the total amount of bidding credit discounts that may be awarded to an eligible rural service provider in Auction 105. No winning designated entity bidder will receive more than $10 million in bidding credit discounts in total for licenses won in counties located within any Partial Economic Area (PEA) with a population of 500,000 or less. To the extent an applicant seeking a small business bidding credit does not claim the full $10 million in bidding credits in those smaller markets, it may apply the remaining balance to its winning bids on licenses in larger markets, up to the aggregate $25 million cap.

4. Attributable Interests

a. Controlling Interests and Affiliates

75. An applicant's eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50% of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis based on the totality of the circumstances. The following are some common indicia of *de facto* control: The entity constitutes or appoints more than 50% of the board of directors or management committee; the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and the entity plays an integral role in management decisions.

76. Applicants should refer to section 1.2110(c)(2) of the Commission's rules and the FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues. For example, officers and directors of an applicant are considered to have a controlling interest in the applicant.

77. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an ''identity of interest'' with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.

78. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) Meeting the applicable small business size standard, based on the controlling interest and affiliation rules, and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits. Control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole. Except under the limited provisions provided for spectrum manager lessors, the Commission's decision to discontinue its policy requiring designated entity licensees to operate as primarily facilities-based providers of service directly to the public does not alter the rules that require the Commission to consider whether any particular use agreement may confer control of or create affiliation with the applicant. Once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis

under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under section 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer either *de jure* or *de facto* control of any license it seeks to acquire with bidding credits. For instance, if an applicant has a spectrum use agreement on a particular license that calls into question whether, under the Commission's affiliation rules, the user's revenues should be attributed to the applicant for that particular license, rather than for its overall business operations, the applicant could be ineligible to acquire or retain benefits with respect to that particular license.

79. If an applicant executes a spectrum use agreement that does not comply with the Commission's relevant standard of *de facto* control, then it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of section 310(d) of the Communications Act and related regulations, which require Commission approval of transfers of control. Although in this scenario the applicant may not be eligible for a bidding credit and may be subject to the Commission's unjust enrichment rules, the applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits. If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules) goes so far as to confer control of the applicant's overall business, then the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses. The Commission applies the same *de facto* control standard to designated entity spectrum manager lessors that is applied to non-designated entity spectrum manager lessors.

b. Limitation on Spectrum Use

80. The Commission's rules, the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25% of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license. A disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a 10% or greater interest of any kind in the applicant, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee. Any applicant seeking a bidding credit for licenses won in Auction 105 will be subject to this attribution rule and must make the requisite disclosures.

81. Certain disclosable interest holders may be excluded from this attribution rule. An applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the use agreement is otherwise permissible under the Commission's existing rules. If applicable, the applicant must attach to its FCC Form 175 any additional information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule. The Commission intends to withhold from public disclosure all information contained in any such attachments until after the close of Auction 105.

c. Exceptions From Attribution Rules for Small Businesses and Rural Service Providers

82. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules. For example, in calculating an applicant's gross revenues under the controlling interest standard, the Commission will not attribute to the applicant the personal net worth, including personal income, of its officers and directors. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. Moreover, if an officer or director operates a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in section 1.2110(b)(4)(iii) of the Commission's rules are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.

83. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. The Commission will evaluate eligibility for an existing rural wireless partnership on the same basis as it would for an applicant applying for a bidding credit as a consortium of rural service providers. A partnership that includes a nationwide provider as a member will not be eligible for the benefit. Members of such partnerships that fall under this exception may also apply as individual applicants or members of a consortium (to the extent that it is otherwise permissible to do so under the Commission's rules) and seek eligibility for a rural service provider bidding credit.

84. A consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. A consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider. A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit. The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

I. Provisions Regarding Former and Current Defaulters

85. Each applicant must make certifications regarding whether it is a current or former defaulter or

delinquent. A current defaulter or delinquent is not eligible to participate in Auction 105, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. Non-tax debt owed to any Federal agency includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund, Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal ''agency'' under the Debt Collection Improvement Act of 1996. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from participating in Auction 105 under the Commission's rules. If the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in section 1.2105(a)(2)(xii)), it may be eligible to participate in Auction 105 as a former defaulter. Each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions. The term ''controlling interest'' is defined in section 1.2105(a)(4)(i) of the Commission rules.

86. An applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. The applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than $100,000, (3) the default or delinquency was paid within two quarters (*i.e.,* six months) after receiving the notice of the final payment deadline or delinquency, or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding. Notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency. The date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice. A debt will not be deemed to be in default or delinquent until after the expiration of a final payment deadline. To the extent that the rules providing for payment of a specific federal debt permit payment after an original payment deadline accompanied by late fee(s), such debts would not be in default or delinquent for purposes of applying the former defaulter rules until after the late payment deadline. Any winning bidder that fails to timely pay its post-auction down payment or the balance of its final winning bid amount(s) or is disqualified for any reason after the close of an auction will be in default and subject to a default payment. Commission staff provide individual notice of the amount of such a default payment as well as procedures and information required by the Debt Collection Improvement Act of 1996, including the payment due date and any charges, interest, and/or penalties that accrue in the event of delinquency. Such notice provided by Commission staff assessing a default payment arising out of a default on a winning bid, constitutes notice of the final payment deadline with respect to a default on a Commission license.

87. Applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

88. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has previously adopted rules, including a provision referred to as the ''red light rule'' that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. The Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

89. The Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). A prospective applicant in Auction 105 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under sections 1.2104(g) and 1.2109(c) of the Commission's rules. Each applicant should carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency. To access the Commission's Red Light Display

System, go to: *https://apps.fcc.gov/redlight/login.cfm.*

J. Optional Applicant Status Identification

90. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3), and rural telephone companies, as defined in section 1.2110(c)(4), may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

K. Modifications to FCC Form 175

1. Only Minor Modifications Allowed

91. After the initial FCC Form 175 filing deadline, an Auction 105 applicant will be permitted to make only minor changes to its application consistent with the Commission's rules. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modification to an FCC Form 175 (*e.g.,* change of county selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline. If an amendment reporting changes is a ''major amendment,'' as described in section 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application. Any change in control of an applicant will be considered a major modification, and the application will consequently be dismissed. Even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of section 1.2105(c) until the down-payment deadline for Auction 105.

2. Duty To Maintain Accuracy and Completeness of FCC Form 175

92. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 105. An applicant's FCC Form 175 and associated attachments will remain pending until the release of a public notice announcing the close of the auction. Auction 105 applicants remain subject to the section 1.2105(c) prohibition of certain communications until the post-auction deadline for making down payments on winning bids in Auction 105. An applicant's post-auction application (FCC Form 601) is considered pending from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court. An applicant for Auction 105 must furnish additional or corrected information to the Commission within five business days after a significant occurrence or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

3. Modifying an FCC Form 175

93. A party seeking to participate in Auction 105 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date. Applicants are advised to retain a copy of this confirmation page.

94. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. An applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official. During the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

95. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window, and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (*e.g.,* name, address, telephone number, etc.) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application, the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to *auction105@fcc.gov.* The email summarizing the changes must include a subject line referring to Auction 105 and the name of the applicant, for example, ''Re: Changes to Auction 105 Auction Application of XYZ Corp.'' Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

96. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (*e.g.,* correcting a misstatement of the applicant's legal classification). If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via

auction105@fcc.gov, requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

97. Any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

98. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.2105(c) or the limited information procedures adopted for Auction 105. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's county selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications.

99. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418–0660.

III. Preparing for Bidding in Auction 105

A. Due Diligence

100. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 105. The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

101. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 105 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other environmental statutes.

102. Each applicant in Auction 105 should continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in the *Auction 105 Procedures Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 105. The burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

103. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 105. Each potential bidder is responsible for undertaking research to ensure that any licenses won in the auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

104. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third-party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

B. Licensing Considerations

1. Incumbency and Sharing Issues

105. Potential applicants in Auction 105 should consider carefully the implications of the Commission's sharing scheme for the 3550–3650 MHz band. The 3550–3700 MHz band (collectively, the 3.5 GHz band) is governed by a three-tiered spectrum authorization framework. The three tiers of authorization are: Incumbent Access, Priority Access, and General Authorized Access (GAA). SASs will facilitate sharing among the three tiers of authorized users. Incumbent users receive protection from Priority Access Licensees and GAA users, while Priority Access Licensees receive protection from GAA users. The three-tiered structure is designed to accommodate a variety of commercial uses on a shared basis with incumbent federal and non-federal uses of the band. The Citizens Broadband Radio Service includes Priority Access Licensees in the 3550–3650 MHz band and GAA users throughout the 3.5 GHz band.

106. Potential applicants in Auction 105 should consider carefully the operations of incumbent licensees currently in the 3550–3650 MHz portion of the 3.5 GHz band when developing business plans, assessing market conditions, and evaluating the availability of equipment for Citizens Band Radio Service operations. Each applicant should follow closely releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 3550–3650 MHz band. Each applicant should also be aware of the exclusion zones for federal radiolocation sites posted on the National Telecommunications and Information Administration (NTIA) website, available at *https://www.ntia.doc.gov/category/3550-3650-mhz.*

107. Incumbent users, which have the highest priority, include federal radiolocation users in the 3550–3650 MHz band and non-Federal grandfathered Fixed Satellite Service (FSS) earth stations in the 3600–3650 MHz band.

108. The 3550–3650 MHz band segment is allocated for use by Department of Defense (DoD) radar systems on a primary basis and by Federal non-military Radiolocation Service on a secondary basis. Federal aeronautical radionavigation (ground-based) stations may also be authorized on a primary basis in the 3500–3650 MHz band when accommodation in the 2700–2900 MHz band is not technically or economically feasible. Non-Federal licensees, including Priority Access Licensees, may not cause harmful interference to or claim protection from federal stations in the aeronautical radionavigation (ground-based) and radiolocation services in the 3550–3650 MHz band. The NTIA may approve frequency assignments for new and modified Federal stations at current or new locations.

109. In the 3550–3650 MHz band, non-Federal stations in the Radiolocation Service that were licensed or had pending applications prior to July 23, 2015, may operate on a secondary basis to the Citizens Broadband Radio Service until the end of the equipment's useful lifetime. FSS (space-to-Earth) earth station operations in the 3600–3650 MHz band may operate on a primary basis if the Commission authorized operation prior to or granted an application filed prior to July 23, 2015, and if the FSS licensee constructed the subject earth station(s) within 12 months of the initial authorization. Any new FSS (space-to-Earth) earth stations in the 3600–3650 MHz band assigned after July 23, 2015, are authorized on a secondary basis. Regardless of primary or secondary status, all non-Federal FSS (space-to-Earth) operations in the 3600–3650 MHz band are limited to international inter-continental systems and subject to case-by-case electromagnetic compatibility analysis.

110. GAA users may operate in the 3550–3700 MHz band, but are not guaranteed protection from interference. GAA users may operate on any frequencies not in use by Priority Access Licensees (in the 3550–3650 MHz band) or Tier 1 users (across the 3.5 GHz band). The GAA tier is licensed-by-rule to permit open, flexible access to the band for the widest possible group of potential users.

2. International Coordination

111. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of the Citizens Broadband Radio Service frequencies they acquire in Auction 105 are subject to current and future agreements with the governments of Canada and Mexico. The Commission's rules require the SAS Administrators to implement the terms of any such agreements.

112. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico, and/or Canada can be agreed to, operations in the 3550–3650 MHz band must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

3. Environmental Review Requirements

113. Licensees must comply with the Commission's rules for environmental review under the NEPA, the NHPA, and other environmental statutes. Licensees and other applicants that propose to build certain types of communications facilities for licensed service must follow Commission procedures implementing obligations under NEPA and NHPA prior to constructing the facilities. Under the NEPA, a licensee or applicant must assess if certain environmentally sensitive conditions specified in the Commission's rules are relevant to the proposed facilities, and prepare an environmental assessment (EA) when applicable. This assessment may require consultation with expert agencies having environmental responsibilities, such as U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency, among others. If an EA is required, then facilities may not be constructed until environmental processing is completed. Under NHPA, a licensee or applicant must follow the procedures in section 1.1320 of the Commission's rules, the *Nationwide Programmatic Agreement for Collocation of Wireless Antennas* and the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.* Compliance with section 106 of the NHPA requires tribal consultation, and if construction of the communications facilities would have adverse effects on historic or tribally significant properties, an EA must be prepared.

4. Spectrum Aggregation Limits

114. Bidders are reminded of the Commission's spectrum aggregation limits applicable to the 3.5 GHz band. Priority Access Licensees may aggregate up to four PALs in any county license area at any given time. For purposes of applying this spectrum aggregation limit on Priority Access Licensees, the criteria in section 20.22(b) will apply in order to attribute partial ownership and other interests. The spectrum aggregation limit of 40 megahertz will ensure the availability of PALs for at least two users in the counties where there is the greatest likelihood of high demand for such spectrum.

C. Bidder Education

115. Before the opening of the short-form filing window for Auction 105, detailed educational information will be provided in various formats to would-be participants on the Auction 105 web page. The Commission directs OEA to provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175, which OEA has made available in the Education section of the Auction 105 website at *www.fcc.gov/auction/105.* OEA will provide an online application procedures tutorial for the auction, covering information on pre-bidding preparation, completing short-form applications, and the application review process.

116. In advance of the start of the mock auction, OEA will provide educational materials on the bidding procedures for Auction 105, beginning with release of a user guide for the bidding system and bidding system file formats, followed by an online bidding procedures tutorial. The educational materials shall be released as soon as reasonably possible to provide potential applicants and bidders with time to understand them and ask questions before bidding begins.

117. Parties interested in participating in Auction 105 will find the interactive, online tutorials an efficient and effective way to further their understanding of the application and bidding processes. The online tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases,

email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible in the Education section of the Auction 105 website at *www.fcc.gov/auction/105.* Once posted, the tutorials will be accessible anytime.

D. Short-Form Applications: Due Before 6:00 p.m. ET on May 7, 2020

118. In order to be eligible to bid in Auction 105, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) electronically via the Auction Application System, following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. ET on May 7, 2020. Late applications will not be accepted. No application fee is required.

119. Applications may be filed at any time beginning at noon ET on April 23, 2020, until the filing window closes at 6:00 p.m. ET on May 7, 2020. Applicants should file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on May 7, 2020.

120. An applicant must always click on the CERTIFY & SUBMIT button on the ''Certify & Submit'' screen to successfully submit its FCC Form 175 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. All calls to Technical Support are recorded.

121. Applicants are cautioned that the Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the Auction Application System. However, there are occasions when auction-related systems may be temporarily unavailable.

E. Application Processing and Minor Modifications

1. Public Notice of Applicants' Initial Application Status and Opportunity for Minor Modifications

122. After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. OEA will issue a public notice with applicants' initial application status, identifying: (1) Those that are complete and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and a paper copy will be sent by overnight delivery to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

123. After the initial application filing deadline on April 9, 2019, applicants can make only minor modifications to their applications. Major modifications (*e.g.,* change of county, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 105.

124. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. Authorizations may be sent by email to *auction105@fcc.gov.*

2. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline

125. After Commission staff review resubmitted applications and upfront payments, OEA will release a public notice identifying applicants that have become qualified bidders for the auction. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete and that have made a sufficient upfront payment.

F. Upfront Payments

126. In order to be eligible to bid in Auction 105, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6:00 p.m. ET on June 19, 2020. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate.

1. Making Upfront Payments by Wire Transfer for Auction 105

127. Upfront payments for Auction 105 must be wired to, and will be deposited in, the U.S. Treasury. Wire transfer payments for Auction 105 must be received before 6:00 p.m. ET on June 19, 2020. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the proper account at the U.S. Treasury. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The information needed to place an order for a wire transfer is set

forth in the *Auction 105 Procedures Public Notice.*

128. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418–2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to *RROGWireFaxes@fcc.gov.* On the fax cover sheet or in the email subject header, write ''Wire Transfer—Auction Payment for Auction 105''. To meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 105 before the deadline.

129. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418–7518 or Theresa Meeks at (202) 418–2945.

130. All payments must be made in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction 105 go to an account number different from the accounts used in previous FCC auctions.

131. Failure to deliver a sufficient upfront payment as instructed herein by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. Completing and Submitting FCC Form 159

132. Information that supplements the standard instructions for FCC Form 159 (Revised 2/03) is provided in the *Auction 105 Procedures Public Notice* to help ensure correct completion of FCC Form 159 for upfront payments for Auction 105. Applicants need to complete FCC Form 159 carefully, because mistakes may affect bidding eligibility and lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays. Appropriate cross-references between the FCC Form Remittance Advise and the short-form application are described in the *Auction 105 Procedures Public Notice.*

3. Upfront Payments and Bidding Eligibility

133. The Commission has authority to determine appropriate upfront payments for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on licenses. Upfront payments that are related to the inventory of licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.

134. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters. For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.

135. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the generic blocks on which it will bid. Upfront payments are based on MHz-pops, and that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid for a block, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that generic block in a county. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one block in one of the counties selected on its FCC Form 175 for Auction 105, or else the applicant will not become qualified to participate in the auction. The total upfront payment does not affect the total dollar amount the bidder may bid.

136. The Commission adopted upfront payments for generic block in a county based on $0.01 per MHz-pop, with a minimum of $500 per county. The upfront payment amount per block in each county is set forth in the Attachment A file, available at *www.fcc.gov/auction/105.* The upfront payment amounts are approximately half the minimum opening bid amounts.

137. The Commission has assigned each generic block in a county a specific number of bidding units, equal to one bidding unit per $10 of the upfront payment. The number of bidding units for one block in a given county is fixed and does not change during the auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount for the auction covering that number of bidding units. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, *see* 47 CFR 1.2106(a), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses or license areas it selected on its FCC Form 175. In order to make this calculation, an applicant should add together the bidding units for the number of blocks in counties on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

138. If an applicant is a former defaulter, it must calculate its upfront payment for the maximum amount of generic blocks in each county on which it plans to bid by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one generic block in a county, the applicant will not be eligible to participate in Auction 105.

G. Auction Registration

139. All qualified bidders for Auction 105 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form

175 and will include the SecurID® tokens that will be required to place bids.

140. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 105 that has not received this mailing by noon on July 15, 2020, should call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

141. If SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338–2868.

H. Remote Electronic Bidding via the FCC Auction Bidding System

142. Bidders will be able to participate in Auction 105 over the internet using the FCC Auction Bidding System (bidding system). Telephonic bidding will not be available for Auction 105 because it would not be feasible given the number of county-based licenses and the file upload required to submit bids. However, the Auction Bidder Line will be available during the mock auction and actual auction for bidder questions. The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder. Only qualified bidders are permitted to bid. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. A bidder cannot bid without his or her SecurID® tokens. For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 105. The SecurID® tokens can be recycled, and the Commission encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

143. The Commission makes no warranties whatsoever and shall not be deemed to have made any warranties, with respect to the bidding system, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the bidding system. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the bidding system.

144. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

I. Mock Auction

145. All qualified bidders will be eligible to participate in a mock auction, which will begin on July 20, 2020. Only those bidders that are qualified to participate in Auction 105 will be eligible to participate in the mock auction. The mock auction will enable qualified bidders to become familiar with the bidding system and to practice submitting bids prior to the auction. All qualified bidders, including all their authorized bidders, are encouraged to participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 105.

J. Auction Delay, Suspension, or Cancellation

146. At any time before or during the bidding process, OEA, in conjunction with the Bureau, may delay, suspend, or cancel bidding in Auction 105 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. This approach has proven effective in resolving exigent circumstances in previous auctions and the Commission finds no reasons to depart from it here. OEA will notify participants of any such delay, suspension, or cancellation by public notice and/or through the bidding system's announcement function. If the bidding is delayed or suspended, then OEA may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Commission emphasizes that OEA and the Bureau will exercise this authority at their discretion.

K. Fraud Alert

147. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 105 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service, Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

148. Information about deceptive telemarketing investment schemes is

available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- The FCC's Consumer Call Center at (888) 225–5322 or by visiting *www.fcc.gov/general/frauds-scams-and-alerts-guides*
- the FTC at (877) FTC–HELP ((877) 382–4357) or by visiting *www.consumer.ftc.gov/articles/0238-investment-risks*
- the SEC at (202) 942–7040 or by visiting *https://www.sec.gov/investor*

149. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (202) 835–0618.

IV. Bidding Procedures

A. Clock Auction Design

150. The Commission will conduct Auction 105 using an ascending clock auction design, in which bidders indicate their demands for generic license blocks in specific counties. The auction will proceed in a series of rounds, with bidding being conducted simultaneously for all spectrum blocks in all counties available in the auction. During each bidding round, the bidding system will announce a per-block clock price in each county, and qualified bidders will submit, for each county for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds will be open for predetermined periods of time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

151. In Auction 105, in each county, the clock price for a generic license block will increase from round to round if bidders indicate total demand in that county that exceeds the number of blocks available. The bidding rounds will continue until, for all counties, the total number of blocks that bidders demand does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block at the final price will be deemed winning bidders. No assignment phase will be held to assign frequency-specific licenses, as was done in previous spectrum auctions that used a clock format, because the frequencies associated with Priority Access Licensees' PALs will be dynamically assigned by SASs.

152. The specific bidding procedures that the Commission adopted in the *Auction 105 Procedures Public Notice* differ from the procedures proposed in the *Auction 105 Comment Public Notice* in that bidders will not be permitted to elect to bid at a Cellular Market Area (CMA) level for more populous CMAs; instead, all bidding will be on a county-level only. The auction format for Auction 105 therefore follows more closely the clock auction format used in Auctions 1002, 102, and 103. The Commission did, however, adopt its proposal to modify the bidding activity rules used in its prior clock auctions to allow an ''upper activity limit,'' which will help provide a safeguard against a bidder losing bidding eligibility under certain circumstances.

153. OEA, in conjunction with the Bureau has prepared and released an updated technical guide that provides the mathematical details of the adopted auction design and algorithms for Auction 105. The information in the updated technical guide, which may be found on the Commission's website (*www.fcc.gov/auction/105*), supplements the Commission's decisions in the *Auction 105 Procedures Public Notice.*

B. Generic License Blocks With County-Level Bidding

154. In accordance with the *2018 3.5 GHz Report and Order* and consistent with the rules governing Citizens Broadband Radio Service, 70 megahertz of spectrum designated for PALs in the 3550–3650 MHz band will be licensed in seven generic 10-megahertz blocks by county. Accordingly, in the auction, seven generic block licenses will be available for bidding in each county, for a total of 22,631 PALs.

155. *Limit on number of blocks per bidder.* The bidding system will limit to four the quantity of blocks that a bidder can demand in any given area at any point in the auction. This implements the Commission's rules limiting the aggregation for PALs to 40 megahertz (*i.e.,* four PALs) in any geographic area at any point in time. Therefore, in each bidding round, a bidder will have the opportunity to bid for up to four generic blocks of spectrum per county, subject to the eligibility rules.

156. *Bidding at the county level only; no CMA-level bidding.* In the *Auction 105 Comment Public Notice* the Commission proposed procedures that would allow bidders to bid at a CMA level for blocks in counties that comprise more populous CMAs. Under that proposal, prior to the auction bidders would have been able to elect to bid on a CMA-by-CMA level for PALs in those CMAs that are classified as Metropolitan Statistical Areas (MSAs) and that incorporate multiple counties. Those electing to bid at the CMA level would not have been permitted to bid at the county level in that CMA, and vice versa. Based on its record and in light of its experience in previous auctions, the Commission concludes that a standard ascending clock auction with county-by-county bidding will offer adequate opportunity for bidders to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans and therefore does not adopt its CMA-level bidding proposal. Bidders will be permitted to bid on a county-by-county basis only.

C. Bidding Rounds

157. Auction 105 will proceed in a series of rounds, with bidding conducted simultaneously for all spectrum blocks for all counties available in the auction. During each bidding round, the bidding system will announce a per-block price in each county, and qualified bidders will submit, for each county for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds will be open for predetermined periods of time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

158. In each county, the clock price for a generic license block will increase from round to round if bidders indicate total demand in that county that exceeds the number of blocks available. The bidding rounds will continue until, for all counties, the total number of blocks that bidders demand does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block at the final price will be deemed winning bidders.

159. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. The bidding schedule may be changed in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Such changes may include the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The bidding system will announce any such changes to the bidding schedule several rounds before the change occurs.

160. A bidder may submit its bids using the bidding system's upload function that allows bid files in a comma-separated value (CSV) format to be uploaded. The bidding system will not allow bids to be submitted unless the bidder selected the counties on its

FCC Form 175 and the bidder has sufficient bidding eligibility.

161. During each round of the bidding, a bidder may also remove bids placed in the current bidding round. If a bidder modifies its bids for blocks in a county in a round, the system takes the last bid submission as that bidder's bid for the round.

D. Stopping Rule

162. The Commission will use a simultaneous stopping rule for Auction 105, under which all blocks in all counties will remain available for bidding until the bidding stops in every county. Bidding will close for blocks in all counties after the first round in which there is no excess processed demand in any county. Consequently, it is not possible to determine in advance how long the bidding in Auction 105 will last. No bids may be withdrawn after the close of a round. Unlike an auction conducted using the Commission's standard simultaneous multiple-round auction format for bidding on frequency-specific licenses (as opposed to generic blocks), there are no provisionally winning bids in a clock auction.

E. Availability of Bidding Information

163. The Commission will make public after each round of Auction 105, for each county: (1) The supply, (2) the aggregate demand, (3) the posted price of the last completed round (which is the clock price of the previous round if demand exceeds supply; the start-of-round price of the previous round if supply exceeds demand; or the price at which a reduction caused demand to equal supply), and (4) the clock price for the next round. The identities of bidders demanding blocks in a specific county will not be disclosed until after Auction 105 concludes (*i.e.,* after the close of bidding).

164. Each bidder will have access to additional information related to its own bidding and bid eligibility. After the bids of a round have been processed, the bidding system will inform each bidder of the number of blocks it holds after the round (its processed demand) for every county and its eligibility for the next round.

165. Limiting the availability of bidding information during the auction balances the Commissions interest in providing bidders with sufficient information about the status of their own bids and the general level of bidding in all areas and license categories to allow them to bid confidently and effectively, while restricting the availability of information that may facilitate identification of bidders placing particular bids, which could potentially lead to undesirable strategic bidding.

F. Activity Rule, Activity Upper Limit, and Reducing Eligibility

166. Bidders are required to maintain a minimum, high level of activity in each clock round in order to maintain bidding eligibility, which will help ensure that the auction moves quickly and promote a sound price discovery process. The activity requirement (the activity requirement percentage) will be between 90% and 100% of a bidder's bidding eligibility in all clock rounds, as proposed. The initial activity requirement percentage will be 95%. Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

167. The Commission will use upfront payments to determine a bidder's initial (maximum) eligibility in terms of bidding units. Each spectrum block in a county will be assigned a specific number of bidding units based on the number of MHz-pops in the county. Therefore, a bidder's upfront payment will determine the maximum number of blocks as measured by their associated bidding units that a bidder can demand at the start of the auction.

168. The activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total at least the activity requirement percentage (set between 90 and 100%) of its eligibility in the round. If the activity rule is met, then the bidder's eligibility will not change in the next round. Bidding eligibility will be reduced as the auction progresses if a bidder does not meet the activity requirement. For example, with an activity requirement of 95%, the eligibility of a bidder not meeting the activity requirement would be calculated as the bidder's activity multiplied by 100/95.

169. For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's processed demands, which may not be equal to its submitted demands. For instance, if a bidder requests a reduction in the quantity of blocks it demands in a category, but the bidding system does not apply the request because demand for the category would fall below the available supply, the bidder's activity will reflect its unreduced demand. Under the ascending clock auction format, the FCC auction bidding system will not allow a bidder to reduce the quantity of blocks it demands in an individual county if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the county.

170. *Activity upper limit.* A bidder will be allowed to submit bids with associated bidding activity greater than its current bidding eligibility, noting, however, that a bidder's activity as applied by the auction system during bid processing will not exceed the bidder's current bidding eligibility. Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids that meet its activity requirement for the round. This may occur, for example, if the bidder bids to reduce its demand in county A by two blocks (with 10 bidding units each) and bids to increase its demand by one block (with 20 bidding units) in county B. If the bidder's demand can only be reduced by one block in county A (because there is only one block of excess demand), the increase in county B cannot be applied, and absent other bidding activity the bidder's eligibility would be reduced. The Commission anticipates that adopting an ''activity upper limit'' will help a bidder avoid having its eligibility reduced as a result of submitted bids that cannot be applied during bid processing. For example, depending upon the bidder's overall bidding eligibility and the activity limit percentage, a bidder could submit an ''additional'' bid or bids that would be considered (in price point order with its other bids) and applied as available eligibility permits during the bid processing. When submitting bids with associated bidding activity greater than its current bidding eligibility, a bidder would consider the price points associated with each of its bids to indicate the order in which it wishes the bidding system to consider its bid requests. Therefore, if bids submitted at lower price points cannot be applied as requested, thereby leaving the bidder with unused eligibility, then the system will consider the additional bids submitted at higher price points to use the otherwise lost eligibility. The Commission emphasizes, however, that a bidder may submit bids with associated bidding units exceeding 100% of its current bidding eligibility, but its processed activity can never exceed its eligibility.

171. After Round 1 a bidder may submit bids with bidding units totaling up to an activity upper limit equal to the bidder's current bidding eligibility for the round times a percentage (the

activity limit percentage) equal to or greater than 100%. An an initial activity limit percentage of 120% will apply to Round 2 and subsequent rounds. For round 1, the activity upper limit will be 100% of the bidder's initial bidding eligibility. In any bidding round, the auction bidding system will advise the bidder of its current bidding eligibility, its required bidding activity, and its activity upper limit.

172. OEA retains the discretion to change the activity requirement percentage and the activity limit percentage during the auction, and to set the activity limit percentage within a range of 100% and 140%. The bidding system will announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

173. *Missing bids.* Under the clock auction format, a bidder is required to indicate its demands in every round, even if its demands at the new round's prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as requests to reduce to a quantity of zero blocks for the county. If these requests are applied, or applied partially, then a bidder's bidding activity, and its bidding eligibility for the next round, may be reduced.

174. For Auction 105, as for other clock auctions, the Commission will not provide for activity rule waivers to preserve a bidder's eligibility. The adoption of an activity upper limit to permit a bidder to submit bids with bidding activity greater than its eligibility, within the precise limits set forth above, addresses some of the circumstances under which a bidder risks losing bidding eligibility and otherwise could wish to use a bidding activity waiver, while minimizing any potential adverse impacts on either bidder incentives to bid sincerely or the price-setting mechanism of the clock auction.

G. Acceptable Bids

1. Minimum Opening Bids and Reserve Price

175. The Commission established in the *Auction 105 Procedures Public Notice* minimum opening bid amounts for Auction 105. The bidding system will not accept bids lower than the minimum opening bids for each product.

176. In the first bidding round of Auction 105, a bidder will indicate how many generic license blocks in a county it demands at the minimum opening bid price. Minimum opening bid amounts are calculated based on a formula $0.02 per MHz-pop, with a minimum of $1,000. As in Auction 103, the result will be rounded as follows: Results above $10,000 will be rounded up to the nearest $1,000; results below $10,000 but above $1,000 will be rounded up to the nearest $100; and results below $1,000 will be rounded up to the nearest $10. These minimum opening bid amounts are specified in the Attachment A file.

177. The Commission established in the *Auction 105 Procedures Public Notice* an aggregate reserve price of $107,991,840 for Auction 105. Although the Commission suggested in the *Auction 105 Comment Public Notice* that no reserve price would be necessary for Auction 105, the Commission agrees, based on subsequent correspondence with NTIA, that the frequencies involved in Auction 105 contain ''eligible frequencies'' as described by the Commercial Spectrum Enhancement Act (CSEA). As required by the CSEA, the Commission provided notice of its intent to auction PALs to NTIA on or before September 5, 2018. NTIA, in turn, provided notice of estimated sharing costs and timelines for such sharing on December 20, 2019, more than six months prior to the scheduled start of bidding in Auction 105. It is therefore necessary to establish a reserve price of no less than 110% of the estimated relocation or sharing costs provided by an eligible Federal entity. NTIA's estimated total sharing costs of $98,174,400 yield an aggregate reserve price of $107,991,840. The aggregate reserve price will be met if, at the close of the auction, the total net winning bids exceed this amount.

2. Clock Price Increments

178. After bidding in the first round and before each subsequent round, the FCC auction bidding system will announce the start-of-round price and the clock price for the upcoming round—that is, the lowest price and the highest price at which bidders can specify the number of blocks they demand during the round. As long as aggregate demand for blocks in the county exceeds the supply of blocks, the start-of-round price will be equal to the clock price from the prior round. Aggregate demand for a county is equal to the total number of blocks for which bidders have processed demand. If aggregate demand equals supply at a price in a previous round, either a clock price or an intra-round price, then the start-of-round price for the next round will be equal to the price at which demand equaled supply. If demand was less than supply in the previous round, then the start-of-round price for the next round will not increase.

179. The Commission will set the clock price for blocks in a specific county for a round by adding a percentage increment to the start-of-round price. For example, if the start-of-round price for a block in a given county is $10,000, and the percentage increment is 20%, then the clock price for the round will be $12,000. The total dollar amount of the increment (the difference between the clock price and the start-of-round price) will not exceed a certain amount. The cap on the increment is set initially at $10 million and the Commission retains the discretion to adjust this cap as rounds continue. Staff will retain the authority to adjust the cap as needed to manage the auction pace and ensure that bidding proceeds in an orderly fashion.

180. The Commission will set the increment percentage within a range of 5% to 20% inclusive and will set the initial increment percentage at 10%. The Commission may adjust the increment as rounds continue.

3. Intra-Round Bids

181. A bidder may make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for blocks changes. In placing an intra-round bid, a bidder would indicate a specific price and a quantity of blocks it demands if the price for blocks should increase beyond that price. For example, if a bidder has processed demand of 3 blocks at the start of the round price of $100, but wishes to hold only 2 blocks if the price increases by more than $10 (assuming the bid increment is greater than $10), then the bidder will indicate a bid quantity of 2 at a price of $110 ($100+$10). Similarly, if the bidder wishes to reduce its demand to 0 should the price increase at all above $100, then the bidder will indicate a bid quantity of 0 at the start-of-round price of $100.

182. Intra-round bids are optional; a bidder may choose to express its demands only at the clock prices.

H. Bids To Change Demand and Bid Processing

183. A bidder that is willing to maintain the same demand in a county at the new clock price will bid for that quantity at the clock price, indicating that it is willing to pay up to that price, if need be, for the specified quantity. Bids to maintain demand will always be applied by the auction bidding system. A bidder that wishes to change the quantity it demands in a county (relative to its demand from the

previous round as processed by the bidding system) can express its demand at the clock price or at an intra-round price, but depending upon the bidder's eligibility and the aggregate demand for the county, the bidding system may not be able to apply the requested change.

184. The auction bidding system will, after each bidding round, process bids to change demand to determine the processed demand of each bidder in each county and a posted price for each county that would serve as the start-of-round price for the next round.

1. No Excess Supply Rule for Bids To Reduce Demand

185. The FCC auction bidding system will not apply a bid to reduce the quantity of blocks a bidder demands in an individual county if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the county. Therefore, if a bidder bids to reduce the number of blocks for which it has processed demand as of the previous round, then the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the ''no excess supply'' rule would be satisfied.

2. Eligibility Rule for Bids To Increase Demand

186. The bidding system will not allow a bidder to increase the quantity of blocks it demands in a product if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round. Therefore, if a bidder bids to increase the number of blocks for which it has processed demand as of the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be applied only if that would not cause the bidder's activity to exceed its eligibility.

3. Partial Application of Bids

187. A bid that involves a reduction from the bidder's previous demands will be applied partially—that is, reduced by fewer blocks than requested in the bid—if excess demand is insufficient to support the entire reduction. A bid to increase a bidder's demands will be applied partially if the bidder's eligibility for the round is insufficient to apply the total number of bidding units associated with the bidder's increased demand.

4. Processed Demands

188. After a round ends, the bidding system will process bids to change demand in order of price point, where the price point represents the percentage of the bidding interval for the round. For example, if the start-of-round price is $5,000 and the clock price is $6,000, a price of $5,100 will correspond to the 10% price point, since it is 10% of the bidding interval between $5,000 and $6,000. Bids to maintain demand are always applied before the bidding system considers bids to change demand. The bidding system will first consider intra-round bids in ascending order of price point and then bids at the clock price. The system will consider bids at the lowest price point across all counties, then look at bids at the next price point in all areas, and so on. If there are multiple bids at a single price point, the system will process bids in order of a bid-specific pseudo-random number. As it considers each submitted bid during bid processing, the bidding system will determine the extent to which there is excess demand in each county at that price point in the processing to determine whether a bidder's request to reduce demand can be applied. Similarly, the auction bidding system will evaluate the activity associated with the bidder's most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

189. Because in any given round some bidders may request to increase demands for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. Bids not applied because of insufficient aggregate demand or insufficient eligibility will be held in a queue and considered, again in order, if there should be excess supply or sufficient eligibility later in the processing after other bids are processed.

190. Once a round closes, the auction system will process bids to change demand by first considering the bid submitted at the lowest price point and determining the maximum extent to which that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied (either in full or partially), the number of licenses the bidder holds at that point in the processing will be adjusted, and aggregate demand will be recalculated accordingly. If the bid cannot be applied in full, the unfulfilled bid, or portion thereof, will be held in a queue to be considered later during bid processing for that round. The bidding system will then consider the bid submitted at the next highest price point, applying it in full, in part, or not at all, given the most recently determined demands of bidders. Any unfulfilled requests will again be held in the queue, and aggregate demand will again be recalculated. Every time a bid or part of a bid is applied, the unfulfilled bids held in the queue will be reconsidered, in the order of their original price points (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

5. Price Determination

191. The *Auction 105 Procedures Public Notice* describes the bid processing procedures to determine, based on aggregate demand, the posted price for each county for the round that will serve as the start-of-round price for the next round. The uniform price for all of the blocks in a county will increase from round to round as long as there is excess demand for blocks in the county, but will not increase if aggregate demand does not exceed the available supply of blocks.

192. If, at the end of a round, the aggregate demand for blocks in the county exceeds the supply of blocks (which is 7 for Auction 105), then the posted price will equal the clock price for the round. If a reduction in demand was applied during the round and caused demand in the county to equal supply, then the posted price will be the price at which the reduction was applied. If aggregate demand is less than or equal to supply and no bid to reduce demand was applied for the county, then the posted price will equal the start-of-round price for the round. The range of acceptable bid amounts for the next round will be set by adding the percentage increment to the posted price.

193. When a bid to reduce demand can be applied only partially, the uniform price for the county will stop increasing at that point, since the partial application of the bid will result in demand falling to equal supply. Hence, a bidder that makes a bid to reduce demand that cannot be fully applied will not face a price for the remaining demand that is higher than its bid price.

194. After the bids of the round have been processed, the FCC auction bidding system will announce clock prices to indicate a range of acceptable bids for the next round (assuming the stopping rule has not been met). Each bidder will be informed of its processed demand and the extent of excess demand for blocks in each county.

I. Winning Bids

195. Bidders with processed demand in a county at the time the stopping rule is met will become the winning bidders of licenses corresponding to that number of blocks. The final price for a generic block in a county will be the posted price for the final round.

J. Calculating Individual License Prices

196. While final auction payments for winning bidders will be calculated with bidding credit caps applied on an aggregate basis, rather than to individual licenses, the bidding system will also calculate a net per-license price for each license. Such individual prices may be needed if a licensee later incurs license-specific obligations, such as unjust enrichment payments.

197. The gross per-license price of a license will be the final price. To calculate the net price, the bidding system will apportion any applicable bidding credit discounts in proportion to the gross payment for that license.

K. Auction Results

198. The bidding system will determine winning bidders as described above. After release of the public notice announcing auction results, the public will be able to view and download bidding and results data through the FCC Public Reporting System (PRS).

L. Auction Announcements

199. Commission staff will use auction announcements to report necessary information, such as schedule changes. All auction announcements will be available by clicking a link in the bidding system.

V. Post-Auction Procedures

200. Shortly after bidding has ended in Auction 105, the Commission will issue a public notice declaring that the auction closed and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

A. Down Payments

201. Within 10 business days after release of the auction closing public notice for Auction 105, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20% of the net amount of its winning bids (less any bidding credits, if applicable).

B. Final Payments

202. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

203. Within 10 business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed post-auction application (FCC Form 601) for the license(s) they won through the auction.

204. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 105.

205. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures set forth in section 1.2107(g) of the Commission's rules. Specifically, license(s) won by a consortium must be applied for as follows: (a) An individual member of the consortium or a new legal entity comprising two or more individual consortium members must file for licenses covered by the winning bids; (b) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate FCC Form 601 for its/their respective license(s) in their legal business name; (c) in the case of a license to be partitioned or disaggregated, the member or group filing the applicable FCC Form 601 shall include the parties' partitioning or disaggregation agreement with the FCC Form 601; and (d) if a designated entity credit is sought (either small business or rural service provider), the applicant must meet the applicable eligibility requirements in the Commission's rules for the credit.

D. Ownership Disclosure Information Report (FCC Form 602)

206. Within 10 business days after release of the auction closing public notice for Auction 105, each winning bidder must also comply with the ownership reporting requirements in sections 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.

207. If a winning bidder already has a complete and accurate FCC Form 602 on file in the FCC's Universal Licensing System (ULS), then it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if it is not complete and accurate, it must submit a new one.

208. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. This record is not an FCC Form 602, but it may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application. A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

209. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85% is eligible to receive a tribal lands bidding credit as set forth in sections 1.2107 and 1.2110(f) of the Commission's rules. A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

210. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to inform the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the winning bidder will have 180 days from the close of the post-auction application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in section 1.2110(f)(3)(vii). For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices.

F. Default and Disqualification

211. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2). A default payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

212. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. The additional default payment for Auction 105 is 20% of the applicable bid for winning bids. The bidding system will calculate individual per-license prices that are separate from final auction payments, which are calculated on an aggregate basis. These prices determine the defaulted bid amount on individual licenses.

213. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, then the Commission may declare the applicant and its principals ineligible to bid in future auctions and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

G. Refund of Remaining Upfront Payment Balance

214. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the Refund Information icon found on the *Auction Application Manager* page or the Refund Form link available on the *Auction Application Submit Confirmation* page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed in the *Auction 105 Procedures Public Notice.*

VI. Procedural Matters

215. *Paperwork Reduction Act.* Neither the *Auction 105 Procedures Public Notice* nor the *Auction 105 Rescheduling Public Notice* contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

216. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Public Notice to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

217. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 105 Comment Public Notice* released in September 2019. The Commission sought public comment on the proposals in the *Auction 105 Comment Public Notice,* including comments on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA. The *Auction 105 Procedures Public Notice* establishes the procedures to be used for Auction 105 and supplements the *Initial* and *Final Regulatory Flexibility Analyses* completed by the Commission in the 2017 Notice of Proposed Rulemaking, 82 FR 56193, November 29, 2017, and the *2018 3.5 GHz Report and Order,* and other Commission orders pursuant to which Auction 105 will be conducted. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

218. *Need for, and Objectives of, the Rules.* The *Auction 105 Procedures Public Notice* implements auction procedures for those entities that seek to bid to acquire licenses in Auction 105. Auction 105 will be the Commissions first auction of mid-band spectrum in furtherance of the deployment of fifth-generation (5G) wireless, the Internet of Things (IoT), and other advanced spectrum-based services. The Public Notice adopts procedural rules and terms and conditions governing Auction 105, and the post-auction application and payment processes, as well as setting the minimum opening bid amounts for Priority Access Licenses (PALs) in the 3.5 GHz (3550–3650) band that will be offered in Auction 105.

219. To promote the efficient and fair administration of the competitive bidding process for all Auction 105 participants, the Commission adopted the following procedures proposed in the *Auction 105 Comment Public Notice:*

- Use of anonymous bidding/limited information procedures which will not make public: (1) The licenses or license areas that an applicant selects for bidding in its auction application (FCC Form 175); (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 105; (3) an applicant's bidding eligibility; and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid, until after bidding has closed;
- establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 105;
- adjustment of the bidding schedule as necessary in order to manage the pace of Auction 105;
- use of a simultaneous stopping rule where all blocks in all counties will remain open for bidding until bidding has stopped in every county;
- provision of discretionary authority to OEA, in conjunction with the Bureau, to delay, suspend, or cancel bidding in Auction 105 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- use of a clock auction format for Auction 105 under which each qualified bidder will indicate in successive clock bidding rounds its demands for generic blocks in specific counties, and associated bidding and bid processing procedures to implement the clock auction format;
- use of an activity rule, which requires a bidder to bid actively during the auction on a high percentage of its bidding eligibility, including a modification that would allow a bidder to submit bids, but not to be assigned bids, that exceed its bidding eligibility;
- use of an activity rule that does not include a waiver of the rule to preserve a bidder's eligibility;
- a requirement that bidders be active on between 90% and 100% of a bidder's bidding eligibility in all clock rounds;

• a specific minimum opening bid amount for generic blocks in each county available in Auction 105;

• a limit of four generic license blocks of spectrum per county that a bidder can demand at any point in Auction 105;

• a specific upfront payment amount for generic blocks in each county available in Auction 105;

• establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each generic block;

• establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a methodology for calculating such amounts;

• a methodology for processing bids and requests to reduce demand subject to the no excess supply rule for bids to reduce demand;

• use of bid processing procedures that the auction bidding system will use, after each bidding round, to process bids to determine the processed demand of each bidder and a posted price for each county that would serve as the start-of-round price for the next round; and

• establishment of additional default payments of 20% for bids pursuant to section 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

220. The procedures for the conduct of Auction 105 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 96 of the Commission's rules and the underlying rulemaking orders, including the *2015 3.5 GHz Report and Order* and *2018 3.5 GHz Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

221. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically address the procedures and policies proposed in the Supplemental IRFA.

222. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 105 Comment Public Notice.*

223. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.

224. As noted above, Regulatory Flexibility Analyses were incorporated into the *2017 NPRM* and *2018 3.5 GHz Report and Order.* These orders provide the underlying authority for the procedures proposed in the *Auction 105 Comment Public Notice* and are adopted herein for Auction 105. In those regulatory flexibility analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auction 105 Procedures Public Notice,* the Commission incorporated the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *2017 NPRM* and *2018 3.5 GHz Report and Order.*

225. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant which fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

226. The Commission does not expect that the processes and procedures adopted in the *Auction 105 Procedures Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 105 and comply with the procedures the Commission adopts because of the information, resources, and guidance it make available to potential and actual participants. The Commission cannot quantify the cost of compliance with the procedures; however, the Commission does not believe that the cost of compliance will unduly burden small entities that choose to participate in the auction. The processes and procedures are consistent with existing Commission policies and procedures used in prior auctions. Thus, some small entities may already be familiar with such procedures and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that will be made available, including, but not limited to, the mock auction, remote electronic bidding, and access to hotlines for both technical and auction assistance, should help facilitate participation without the need to hire professionals. For example, the Commission will release an online tutorial that will help applicants understand the procedures for filing the auction short-form applications (FCC Form 175). The Commission will offer other educational opportunities for applicants in Auction 105 to familiarize themselves with the FCC Auction Application System and the bidding system. By providing these resources as well as the resources discussed below, the Commission expects small business entities that use the available resources to experience lower participation and compliance costs.

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

228. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities

businesses through, among other things, the many free resources the Commission provides to potential auction participants. Consistent with the past practices in prior auctions, small entities that are potential participants will have access to detailed educational information and Commission personnel to help guide their participation in Auction 105, which should alleviate any need to hire professionals. More specifically, small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and using the bidding system. Additionally, an FCC Auctions Hotline will provide to small entities one-on-one access to Commission staff for information about the auction process and procedures. Further, the FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small business entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the bidding system. Small entities and other would-be participants will also be provided with various materials on the pre-bidding process in advance of the short-form application filing window, which includes step-by-step instructions on how to complete FCC Form 175. In addition, small entities will have access to the web-based, interactive online tutorials produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

229. Various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, are available to the public without charge, providing a low-cost mechanism for small businesses to conduct research prior to and throughout the auction. Prior to and at the close of Auction 105, the Commission will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. The Commission will make this information easily accessible and without charge to benefit all Auction 105 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

230. Eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Eligible bidders will have access to a user guide for the bidding system, bidding file formats, and an online bidding procedures tutorial in advance of the mock auction. Further, the Commission intends to conduct Auction 105 electronically over the internet using a web-based auction system that eliminates the need for small entities and other bidders to be physically present in a specific location. These mechanisms are made available to facilitate participation in Auction 105 by all eligible bidders and may result in significant cost savings for small entities that use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small businesses.

231. Another step taken to minimize the economic impact for small entities participating in Auction 105 is the Commission's adoption of bidding credits for small businesses. In accordance with the service rules applicable to the PALs to be offered in Auction 105, bidding credit discounts will be available to eligible small businesses and small business consortiums on the following basis: (1) A bidder with attributed average annual gross revenues that do not exceed $55 million for the preceding three years is eligible to receive a 15% discount on its winning bid or (2) a bidder with attributed average annual gross revenues that do not exceed $20 million for the preceding three years is eligible to receive a 25% discount on its winning bid. Eligible applicants can receive only one of the available bidding credits—not both.

232. The total amount of bidding credit discounts that may be awarded to an eligible small business is capped at $25 million. The Commission adopts a $10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to winning licenses in counties located within any PEA with a population of 500,000 or less. Based on the technical characteristics of the 3550–3650 MHz band and the Commissions analysis of past auction data, the Commission anticipates that the caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses.

233. These procedures for the conduct of Auction 105 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 96 of the Commission's rules and the underlying rulemaking orders, including the *2015 3.5 GHz Report and Order* and the 2018 *3.5 GHz Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

234. *Report to Congress.* The Commission will send a copy of the *Auction 105 Procedures Public Notice,* including the Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Auction 105 Procedures Public Notice,* including the Supplemental FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *Auction 105 Procedures Public Notice,* and Supplemental FRFA (or summaries thereof), will also be published in the **Federal Register**.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 17–317 and 17–105; FCC 20–14; FRS 16589]

In the Matter of Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this final rule document, we adopt proposals to modernize the Commission's carriage election notice rules with respect to certain television broadcast stations and open video systems (OVS) operators. First, we conclude that low power television stations (LPTVs) that qualify for mandatory carriage (qualified LPTVs) must send notices to affected multichannel video programming distributors (MVPDs) by email when changing their carriage election status in the same manner as full power television broadcast stations. However, unlike the requirement for full power television broadcast stations, qualified LPTVs and noncommercial educational (NCE) television translator stations that qualify for must carry (qualified NCE translators) will not be required to make their carriage election statements available for public inspection. Second, we find that MVPDs with carriage-related questions should be able to rely on the contact information provided by qualified LPTV and qualified NCE translator stations in the Commission's Licensing and Management System

(LMS) database. If an MVPD contacts the phone number or email address provided by the station regarding a concern about carriage, those concerns must be addressed as soon as is reasonably possible. Third, we conclude that, in the same manner as cable operators, OVS operators must post contact information for questions regarding carriage election to the Cable Operations and Licensing System (COALS) database, accept email election change notices, and timely respond to carriage-related questions. Through this Order, we continue our efforts to modernize our rules.

DATES: Effective May 26, 2020, except for amendatory instruction 2.b. (§ 76.64(h)(5)) which shall become effective after the Commission publishes a document in the **Federal Register** announcing the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, Policy Division, 202–418–2154, or email at *kim.matthews@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 20–14, adopted on February 25, 2020 and released on February 25, 2020. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Summary of Report and Order

1. Under the Communications Act of 1934, as amended (the Act), full power television broadcast stations, and certain low power stations and translator stations, are entitled to mandatory carriage of their signal (also known as ''must carry'') on any cable system located within their local market. Alternatively, commercial television broadcast stations with carriage rights may elect ''retransmission consent.'' If the broadcaster and MVPD cannot reach an agreement under which the broadcaster gives consent for retransmission of its signal, the MVPD is prohibited from carrying that signal. Thus, commercial stations are presented with a carriage choice—elect mandatory carriage and forego compensation while assuring carriage, or elect retransmission consent and forego assured carriage while retaining the possibility of compensation for carriage. NCE stations are entitled to must carry but cannot elect retransmission consent.

2. As discussed more fully in the *2019 Report and Order* in this proceeding, 84 FR 45659 (Aug. 30, 2019), when the Commission implemented the statutory provisions establishing the must carry/retransmission consent regime, it adopted a requirement that each commercial television broadcast station provide notice to every cable operator every three years electing either mandatory carriage or retransmission consent. Prior to the adoption of the *2019 Report and Order,* the rules directed each commercial television broadcast station to send a triennial carriage election notice, via certified mail, to each cable system or DBS provider serving its market, and directed each NCE station to send such notices to DBS providers. The notice must state whether the station has elected mandatory carriage or retransmission consent. In addition, the rules generally also require stations to place triennial carriage election statements in their online public inspection files, to the extent they maintain such files.

3. The *2019 Report and Order* generally adopted an approach for modernizing the carriage election notice process that was jointly recommended by the National Association of Broadcasters (NAB) and NCTA—the internet and Television Association (NCTA). The Commission's revised carriage election rules adopted therein apply to all television broadcast stations with mandatory carriage rights and to all MVPDs responsible for that carriage, except for the relatively few entities that participate in the must carry regime but do not use the online public file or COALS (the Excluded Entities). Under the new carriage election framework, broadcast stations are required to make their carriage elections by uploading those elections to their online public files and by providing a separate electronic notice of those elections to relevant MVPDs only when and if they change their election from the previous election period. Thus, only a limited number of notices will need to be sent to MVPDs and these will be sent via email instead of via paper mail. In addition, the *2019 Report and Order* requires broadcast stations and DBS providers to upload to their online public files both an email address and a phone number for purposes of carriage-related inquiries and requires cable operators to upload the same information in COALS.

4. The rules adopted in the *2019 Report and Order* require use of the Commission's online public inspection file and/or COALS. In the further notice of proposed rulemaking (FNPRM), 84 FR 45703 (Aug. 30, 2019) (*2019 FNPRM*), accompanying the *2019 Report and Order,* we sought comment on whether and how the modernized framework adopted in the *2019 Report and Order* should extend to the Excluded Entities, which are subject to the must carry regime and do not use these Commission databases. Among other things, the Commission asked whether we should require the Excluded Entities to establish and maintain a very narrow public file solely for carriage-related information or require them to post any required information on a company website. We also sought comment on whether we should, alternatively, simply maintain the status quo with respect to the small number of Excluded Entities.

5. The Commission received only three comments in response to the *2019 FNPRM.* All agree that the Excluded Entities should be transitioned to modernized carriage election rules and that any information these entities are required to provide should be posted on a Commission website or Commission-hosted database. All commenters support placing carriage election information in a centralized, Commission-established location rather than on company websites. NCTA contends that many non-Class A LPTV stations and qualified NCE translator

stations do not maintain company websites, and a centralized repository would make it easier for MVPDs to locate carriage information for these entities. All commenters also agree that the Excluded Entities should make public contact information for use for carriage-related communications, and ACA Connects and NCTA also argue that the Excluded Entities should provide any required election statements or notices to the Commission to be made available on a Commission website or database.

6. We adopt a carriage election notification approach for the Excluded Entities that is supported by the record in this proceeding and that is, to the greatest extent possible, consistent with that adopted in the *2019 Report and Order,* while recognizing the specific circumstances of these smaller entities. Specifically, we will require qualified LPTV stations to use the same process as full power television stations to notify MVPDs of any change in carriage election status. Rather than imposing a new public file obligation on qualified LPTV and qualified NCE translator stations, however, we require that they send a single ''baseline'' notice via email to MVPDs on which they will be seeking or expecting carriage in the 2021–2023 carriage cycle, even if they are making no change in their election status. We disagree with NCTA's and ACA Connects' contention that we should require the Excluded Entities to post election statements online each cycle in addition to sending election notices by email to MVPDs in the event of an election change. Qualified LPTV and qualified NCE translator stations are not currently required to make their election notices available to the public. We believe that the better approach is to maintain the status quo rather than impose a new public posting obligation that would increase burdens on these entities. Specifically, we believe that the creation of the proposed new database would impose unnecessary costs and inject unnecessary complexity into the election notice process.

7. In addition, we find that MVPDs with carriage-related questions must be able to rely on the contact information provided by these stations in LMS. We also require both qualified LPTV and qualified NCE translator stations to respond as soon as is reasonably possible to such questions. With respect to OVS, we require that they accept emailed election change notices, post contact information in COALS, and respond as soon as is reasonably possible to carriage election notifications and carriage-related questions, all in exactly the same manner as cable systems.

8. We agree with NCTA that the carriage election framework adopted in the *2019 Report and Order* ''greatly reduces administrative burdens'' for stations and MVPDs by, among other changes, only requiring email notice of changed elections and eliminating redundant election notifications and carriage requests. As we stated in the *2019 Report and Order,* our goal is to have a unified approach for carriage election notices, to the extent possible, to best serve the public interest and enhance administrative efficiency. Therefore, today we extend the benefits of the new carriage election framework to the Excluded Entities as well.

9. Consistent with our approach to commercial television broadcast stations, we require a qualified LPTV station that changes its carriage election to send an election change notice to each affected MVPD's carriage election-specific email address by the carriage election deadline. Such change notices must include, with respect to each station covered by the notice: The station's call sign, the station's community of license, the DMA where the station is located, the specific change being made in election status, and an email address and phone number for carriage-related questions. Consistent with our approach with respect to commercial full power broadcast stations, LPTV notices to cable operators need to identify specific cable systems for which a carriage election applies only if the broadcaster changes its election for some systems of the cable operator but not all. In addition, the broadcaster must carbon copy *ElectionNotices@FCC.gov,* the Commission's election notice verification email inbox, when sending its carriage elections to MVPDs. As noted in the *2019 Report and Order,* this election notice verification email inbox will provide a verification response to assure broadcasters that the email has been received.

10. As with commercial full power broadcast stations, if an LPTV station does not receive a response verifying receipt of its change notice by the MVPD, or gets an indication that the message was not delivered, it must contact the MVPD via the provided phone number to confirm that the notice was received or arrange for it to be redelivered. If the email is timely and properly sent to the MVPD's listed address, but the broadcast station receives no verification and is unable to reach anyone at the provided phone number, the notice still will be considered to have been properly delivered if it was properly copied to the Commission's election verification notice email inbox.

11. Unlike commercial full power broadcast stations, qualified LPTV stations need not maintain a publicly accessible copy of their carriage election notices or statements. As noted above, LPTV stations are not currently required to maintain a public file with copies of their carriage election notices, and we decline to impose a new obligation in that regard in this proceeding. Rather than imposing a new public file requirement, however, we require all qualified LPTV stations, whether being carried pursuant to must carry or retransmission consent, to send an email notice to all MVPDs that are or will be carrying the station no later than the next carriage election deadline of October 1, 2020. Qualified LPTVs must do so even if they are not changing their carriage status from the current election cycle. This one-time notification requirement for all qualified LPTV stations will give MVPDs baseline information regarding qualified LPTV stations without imposing a new obligation on qualified LPTVs to make their election status publicly available. In addition, requiring a one-time filing of ''baseline information'' does not impose any greater burden on LPTV or NCE translator stations given that, under the current rules, such entities would be required to file a paper copy of their election notification with each affected MVPD.

12. As noted above, qualified NCE stations may only request mandatory carriage and are not permitted to ''elect'' retransmission consent on any MVPD. Once an NCE station requests mandatory carriage from an MVPD, the carriage request continues, absent a change in circumstances. We therefore do not require qualified NCE translator stations to send election change notifications. In addition, similar to our approach herein with respect to qualified LPTV stations, rather than impose new public file obligations on qualified NCE translator stations, we require qualified NCE translator stations to provide email notice to all MVPDs that are or will be carrying the translator no later than the next carriage election deadline of October 1, 2020. As with qualified LPTV stations, this one-time notification requirement for all qualified NCE translators will give MVPDs baseline information regarding these entities without imposing a new obligation on them to make their election status publicly available.

13. Each licensed broadcast station, including LPTV and translator stations, has a publicly-accessible entry in LMS

with a field for contact information which can be updated easily. Therefore, in the absence of public file requirements for qualified LPTV and NCE translator stations, we find that MVPDs with carriage-related concerns must be able to rely upon the contact information that the LPTV or NCE translator station provides in LMS. As all licensed stations already have accounts in LMS, we conclude that it is more efficient and less burdensome to simply require that qualified LPTV and NCE translator stations maintain current contact information in LMS so that MVPDs can contact the station regarding carriage-related questions as necessary. We require qualified LPTV stations and encourage qualified NCE translator stations to review and, if necessary, provide contact information or update the existing contact information in LMS no later than July 31, 2020, approximately 60 days prior to the 2020 carriage election deadline, and to ensure that this information remains current thereafter. We will not establish a separate field in LMS for carriage-specific contact information for qualified LPTV and NCE translator stations, but require that these stations ensure that the general contact information in LMS can be used by MVPDs as a point of contact for carriage-related questions. If a station has designated a third party as contact representative or designates multiple types of contact representatives in LMS, questions should be directed to the licensee's email address rather than a contact representative's email address (if different from the licensee's email address). Qualified LPTV and NCE translator stations must ensure that, if an MVPD contacts the station via the licensee's phone or email address contained in LMS, that this carriage-related concern is addressed as soon as is reasonably possible.

14. In the *2019 FNPRM,* we sought comment on applying the revised carriage election framework to MVPDs that do not use COALS or OPIF, identifying OVS specifically. OVS providers, however, are in fact required to establish and maintain an up-to-date COALS account in the same manner as cable operators. We therefore impose requirements on OVS operators that are identical to those in the *2019 Report and Order* for cable operators. OVS operators must provide, via COALS, a specific carriage election email address where broadcasters will send election change notices and a phone number for broadcasters to use in the event of questions as to whether the OVS operator received the station's election notice. OVS operators must post carriage contact information to COALS by July 31, 2020, and maintain up-to-date contact information at all times thereafter. Each OVS operator must have a single email address and phone number for carriage issues, regardless of the number of markets served. Finally, like other entities subject to the must carry regime, OVS operators are required to respond as soon as is reasonably possible to carriage questions from broadcasters.

15. Again like cable operators, OVS operators must verify receipt of an emailed election change notice, via email sent back to the originating address, as soon as is reasonably possible. As we concluded in the *2019 Report and Order,* this email response will serve only as verification that the notice email was received; it will not constitute a statement that the broadcaster has fully satisfied its notice obligation. Although we anticipate that these verification emails will be generated automatically in most cases, we require only that they be sent as soon as is reasonably possible. A timely and correct notice of a change in election that is sent to the email address provided by the OVS operator, carbon copied to *ElectionNotices@FCC.gov,* and placed in the station's public file (if the station has a public file obligation) must be honored by the MVPD.

16. We find that requiring OVS operators to use their existing COALS accounts is the most efficient and least burdensome way for OVS operators to publicize their contact information for this purpose. Maintaining contact information for carriage-related questions for all OVS operators in the COALS database will also assist broadcasters and others who need information regarding all MVPDs operating in a given geographic area for carriage purposes. We also note that § 76.1506(l) of our rules provides that the requirements in § 76.64 regarding the delivery of must carry/retransmission consent election notifications apply to OVS operators. The *2019 Report and Order* revised § 76.64 of our rules to require cable operators to provide an up-to-date email address for carriage election notice submissions no later than July 31, 2020, to ensure that the information remains up-to-date, and to respond to questions from broadcasters as soon as is reasonably possible. We conclude that these existing requirements also apply to OVS operators.

17. Similar to our approach in the *2019 Report and Order,* we apply these revised notification requirements to LPTV and NCE translator stations and OVS operators beginning with the 2020 election for the 2021–2023 carriage election cycle. Therefore, qualified LPTV broadcasters must email required notifications to MVPDs by October 1, 2020. Qualified LPTV and NCE translator stations must also ensure that the contact information for the station in LMS is accurate no later than July 31, 2020, and OVS operators must ensure that their carriage-related contact information in COALS is up to date by the same deadline.

Procedural Matters

A. Final Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980 (RFA), an Initial Regulatory Flexibility Certification was incorporated into the *2019 FNPRM.* The Federal Communications Commission (Commission) sought written public comment on the proposals in the *2019 FNPRM* including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

19. In this *Report and Order,* we adopt proposals to modernize the Commission's carriage election notice rules with respect to certain television broadcast stations and open video system (OVS) operators to enhance administrative efficiency. In so doing, we adopt requirements largely consistent with those recently adopted for full power television broadcast stations. First, we conclude that low power television stations (LPTVs) that qualify for mandatory carriage (qualified LPTVs) must send notices to affected multichannel video programming distributors (MVPDs) by email when changing their carriage election status, in the same manner as full power television broadcast stations. However, unlike the requirement for full power television broadcast stations, qualified LPTVs and noncommercial educational (NCE) television translator stations that qualify for must carry (qualified NCE translators) will not be required to make their carriage election statements available for public inspection. Second, we find that MVPDs with carriage-related questions should be able to rely on the contact information provided by qualified LPTV and qualified NCE translator stations in the Commission's Licensing and Management System (LMS) database. If an MVPD contacts the phone number or email address provided by the station regarding a concern about carriage, those concerns

must be addressed as soon as is reasonably possible. Third, we conclude that, in the same manner as cable operators, OVS operators must post contact information for questions regarding carriage election to the Cable Operations and Licensing System (COALS) database, accept email election change notices, and timely respond to carriage-related questions. Through this Order, we continue our efforts to modernize our rules.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

20. No comments were filed in response to the IRFA.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

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

22. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

23. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999, and 70 had annual receipts of $50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

24. The Commission estimates that there are 1,900 LPTV stations and 3,631 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

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

25. The Commission anticipates that the rule changes adopted in this *Report and Order* will lead to an overall immediate, long-term reduction in reporting, recordkeeping, and other compliance requirements for qualified LPTV stations. Specifically, after the 2020 carriage election, qualified LPTV stations will be required to send carriage election notices only when they are changing their election, will be permitted to send these notices via email, and will no longer need to produce and mail several letters to MVPDs, many of which are duplicative, to ensure that they are received by the MVPD. LPTV and NCE translator stations are not currently required to maintain a public file with a copy of their carriage election notices, and the *Report and Order* does not impose a new obligation in that regard in this proceeding. In the absence of public file requirements for qualified LPTV and NCE translator stations, the *Report and Order* permits MVPDs with carriage-related concerns to rely upon the contact information provided by the LPTV or NCE translator station in LMS. We require qualified LPTV stations, and encourage qualified NCE translator stations, to review and, if necessary, update this contact information in LMS no later than July 31, 2020, approximately 60 days prior to the 2020 carriage election deadline, and ensure that this information remains current thereafter. Qualified LPTV and NCE translator stations must ensure that, if an MVPD contacts the station via the phone or email address they have provided in LMS because it has concerns regarding carriage, the station will respond to those concerns as soon as is reasonably possible.

26. With respect to OVS operators, the *Report and Order* imposes no burdens beyond those imposed in the *2019 Report and Order.* As with cable operators, broadcasters will send carriage election notifications to OVS operators via email rather than on paper, which will ease the administrative burden of reviewing these notifications, which were

previously in letter form and many of which were previously duplicative. In addition, OVS operators must use COALS for purposes of providing a designated carriage election email address, where broadcasters will send election change notices, and a phone number for broadcasters to use in the event of questions as to whether the OVS operator received the station's election notice. This burden is de minimis and is outweighed by the benefits to OVS operators of the new carriage election framework.

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

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

28. The Commission considered establishing a narrow online public file for the purposes of publicizing carriage-related contact information for qualified LPTV and NCE translator stations, but concluded that requiring qualified LPTV stations and encouraging qualified NCE translator stations to instead update their existing contact information in LMS as necessary would be more efficient and less burdensome both for stations and the Commission. In addition, the Commission concluded that requiring OVS operators use COALS to provide contact information for carriage election purposes, as required by the rules adopted in the *2019 Report and Order,* is the most efficient and least burdensome way for OVS operators to publicize their contact information. The Commission also considered retaining the paper-based carriage election notice requirements for qualified LPTV and qualified NCE translator stations, as well as OVS operators, but concluded it would be preferable to allow these entities to benefit from the new carriage election framework and that to retain the previous rules for these entities might undermine our goal of reducing regulatory burdens.

29. Overall, the *Report and Order* appropriately balances the interests of the public against the interests of the entities who are subject to the rules, including those that are small entities.

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

30. None.

B. Paperwork Reduction Act Analysis

31. This *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

32. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

33. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 325, 338, 614, 615, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 325, 338, 534, 535, 551, 552, and 573, this *Report and Order is adopted* and *will become effective* 30 days after publication in the **Federal Register**.

34. *It is further ordered* that part 76 of the Commission's Rules *are amended* as set forth in the Final Rules effective 30 days after publication in the **Federal Register**, except for § 76.64(h)(5), which contains new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and shall become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

35. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

36. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Cable television, Recording and recordkeeping requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

Final Rules

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

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

■ 2. Amend § 76.64 by:
■ a. Revising paragraph (h)(1); and
■ b. Adding paragraph (h)(5).

The revision and addition read as follows:

§ 76.64 Retransmission consent.

* * * * *

(h)(1) On or before each must carry/retransmission consent election deadline, each television broadcast station shall place a copy of its election statement, and copies of any election change notices applying to the upcoming carriage cycle, in the station's public file if the station is required to maintain a public file.

* * * * *

(5) Low power television stations and non-commercial educational translator stations that are qualified under § 76.55 and retransmitted by a multichannel video programming distributor shall, beginning no later than July 31, 2020, respond as soon as is reasonably possible to messages or calls from multichannel video programming distributors that are received via the email address or phone number the

station provides in the Commission's Licensing and Management System.

* * * * *

[FR Doc. 2020–07759 Filed 4–22–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 20–61; DA 20–375; FRS 16638]

Implementation of the Truth-in-Billing Provisions of the Television Viewer Protection Act of 2019

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Media Bureau, Federal Communications Commission (Commission), grants a blanket extension until December 20, 2020, of the effective date of new truth-in-billing requirements in the Television Viewer Protection Act of 2019.

DATES: This order is effective April 23, 2020.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Order, DA 20–375, adopted and released on April 3, 2020. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *https://docs.fcc.gov/public/attachments/DA-20-375A1.doc.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. As the nation tackles the COVID–19 pandemic, multichannel video programming distributors (MVPDs) and providers of fixed broadband internet access service are among the entities that are integral to the Commission's ongoing, nationwide effort to keep Americans informed and connected during this national emergency. So that these service providers may focus their resources on this critical effort, we provide appropriate flexibility for MVPDs and providers of fixed broadband internet access service to fulfill their obligations under the Television Viewer Protection Act of 2019 (TVPA). Specifically, by this *Order,* we exercise our discretion under the TVPA to grant a blanket extension until December 20, 2020, of the effective date of new truth-in-billing requirements set forth in section 642 of the Communications Act of 1934, as amended (the Act), as added by section 1004 of the TVPA.

2. Section 642 of the Act requires MVPDs to ''give consumers a breakdown of all charges related to the MVPD's video service'' before entering into a contract with a consumer for service [1] and also provides consumers 24 hours in which to cancel such service without penalty. In addition, section 642 requires greater transparency in electronic bills and prohibits MVPDs and providers of fixed broadband internet access service from charging consumers for equipment they do not provide. Section 642, as added by the TVPA, becomes effective June 20, 2020, six months after the date of enactment of the TVPA; however, the Commission for ''good cause'' may extend the effective date by six months. On February 27, 2020, the Media Bureau issued a *Public Notice* seeking comment on whether good cause exists for granting a blanket extension of section 642's effective date by six months, until December 20, 2020.[2]

3. Pursuant to section 1004(b) of the TVPA, we find that good cause exists for granting a blanket extension of section 642's effective date until December 20, 2020. We note that on March 13, 2020, approximately two weeks after issuance of the *Public Notice* in this proceeding, the President declared a national emergency concerning the COVID–19 pandemic. In view of the evolving and unpredictable nature of the pandemic, and the additional demands it is placing on MVPDs and providers of fixed broadband internet access service, we find that extending section 642's effective date as specified above is both reasonable and justified and will best serve the public interest. Compliance with the new truth-in-billing requirements in section 642 may require that subject entities make changes to existing billing systems, provide employee training, or take other compliance measures, thereby requiring providers to divert resources away from other consumer demands brought on by the pandemic. Indeed, we note that these service providers are the entities principally responsible for operating and maintaining the infrastructure that Americans increasingly depend on for continued business and interpersonal communications during the national emergency. As such, we believe their foremost obligation at this time is to ensure continuity of service adequate to meet the nation's needs.[3] We also conclude, given the indefinite length of time of the national emergency, that the public interest would be served best by affording subject entities until December 20, 2020—the maximum amount of time permitted by the statute—to come into compliance with the requirements of section 642. Indeed, we note that industry commenters claimed that an extension was necessary even if the pandemic had not occurred because six months likely would not have provided ample time for subject entities to take the steps needed to implement the relevant TVPA requirements.

4. Moreover, we find that the present national emergency provides ''good cause'' under the Administrative Procedure Act (APA) for extending section 642's effective date without prior notice and comment.[4] As explained above, we have already independently determined that the national emergency establishes good cause under section 1004(b) of the TVPA to issue a blanket extension of

[1] Section 642(a) of the Act, as added by section 1004(a) of the TVPA, indicates that information about fees and other charges may be provided by phone, in person, online, or by other reasonable means, and that a copy of this information must be sent to consumers by email, online link, or other reasonably comparable means not later than 24 hours after entering into a contract.

[2] 85 FR 14869.

[3] We note that many MVPDs and providers of fixed broadband internet access service recently pledged to ensure connectivity for Americans affected by pandemic-related disruptions. In addition, the Commission has taken steps to ensure that certain such providers have adequate capacity to keep Americans connected during the national emergency.

[4] Given the fact that the TVPA expressly anticipates the need for the Commission to grant an additional six-month extension of the compliance date, we believe our doing so for all affected entities is the most efficient use of both agency and industry resources given that all such entities face demands brought on by the COVID–19 pandemic. Indeed, issuing a blanket extension here achieves the same result as granting multiple extensions to individual providers in a more efficient manner, and thereby avoids delay that could otherwise result in an unnecessary diversion of industry and Commission resources during this national crisis.

section 642's effective date, rendering notice and comment prior to extending the effective date ''unnecessary.'' In addition, in light of the disruptive effect of the national emergency on the daily activities of entities subject to section 642 and other interested parties, and the need for MVPDs and providers of fixed broadband internet access service to focus their resources on the national emergency, we find that delaying relief under the circumstances would not serve the purpose of the extension and would fail to yield the public interest benefits that notice and comment procedures are designed to produce.[5]

5. Because this blanket extension does not require notice and comment pursuant to the ''good cause'' exception of the Administrative Procedure Act, the Regulatory Flexibility Act does not apply.

6. This *Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

7. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

8. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), section 1004 of the Television Viewer Protection Act of 2019, section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553, and sections 0.5(c) and 0.283 of the Commission's rules, 47 CFR 0.5(c), 0.283, this *Order* is adopted. *It is further ordered* that, pursuant to section 1.113(a) of the Commission's rules, 47 CFR 1.113(a), the March 16, 2020 *Public Notice* in MB Docket No. 20–61 is hereby rescinded. *It is further ordered* that this *Order* shall be effective upon publication in the **Federal Register**.[6] *It is further ordered that,* should no petitions for reconsideration be timely filed, MB Docket No. 20–61 shall be terminated, and its docket closed.

Federal Communications Commission.

Thomas Horan,

Media Bureau.

[FR Doc. 2020–07968 Filed 4–22–20; 8:45 am]

BILLING CODE 6712–01–P

[5] Although the pleading cycle for the *Public Notice* was scheduled to conclude on April 13, 2020, given our finding of good cause to dispense with public comment, we hereby rescind the *Public Notice.*

[6] The blanket extension adopted herein serves to ''reliev[e] a restriction.'' For similar reasons, there is also good cause to make this *Order* effective upon **Federal Register** publication, in order to provide certainty to affected providers during the current emergency as to the effective date of the new requirements.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2015–0019; 4500090024]

RIN 1018–BC78

Endangered and Threatened Wildlife and Plants; Reclassifying the Golden Conure From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), reclassify the golden conure (*Gauruba guarouba*) under the Endangered Species Act of 1973, as amended (Act), from endangered to threatened on the Federal List of Endangered and Threatened Wildlife (List). Our determination is based on a thorough review of the best available scientific and commercial information, which indicates that the golden conure no longer meets the definition of an endangered species, but is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We are also establishing a rule pursuant to section 4(d) of the Act for the golden conure to provide for its further conservation. Additionally, this final rule updates the List to reflect the latest scientifically accepted taxonomy and nomenclature for the species as *Guaruba guarouba,* golden conure.

DATES: This rule is effective May 26, 2020.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2015–0019.

FOR FURTHER INFORMATION CONTACT: Don Morgan, Chief, Branch of Delisting and Foreign Species, Ecological Services, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone, 703–358–2444. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On September 5, 2018, we published in the **Federal Register** (83 FR 45073) our 12-month finding on a petition to remove the golden conure from the List of Endangered and Threatened Wildlife (*i.e.,* ''delist'' the species) or to reclassify the golden conure from an endangered to a threatened species (*i.e.,* ''downlist'' the species) determining that reclassification was warranted. Accordingly, we published a proposed rule to downlist the golden conure under the Act (16 U.S.C. 1531 *et seq.*) and proposed a rule pursuant to section 4(d) to further the conservation of the golden conure. Please refer to that document for information on Federal actions occurring before September 5, 2018, for the golden conure.

Summary of Changes From the Proposed Rule

During the comment period on our September 5, 2018, proposed rule (83 FR 45073), we received updated information regarding the golden conure reintroduction program occurring in the Belém region of Pará at Utinga State Park. We have incorporated this information under Conservation Measures and Regulatory Mechanisms in this rule and have updated the species status assessment (SSA) report.

Background

A thorough review of the taxonomy, life history, ecology, and overall viability of the golden conure is presented in the species status assessment (SSA) report for the golden conure (Service 2018; available at Docket No. FWS–HQ–ES–2015–0019 on *http://www.regulations.gov*). The SSA report documents the results of the comprehensive biological study for the golden conure and provides an account of the species' overall viability through forecasting of the species' condition in the future (Service 2018, entire). In the SSA report, we summarize the relevant biological data and a description of past, present, and likely future stressors, and we conduct an analysis of the viability of the species. The SSA report provides the scientific basis that informs our statutory decision regarding whether this species should be listed as an

endangered or a threatened species under the Act. This decision involves the application of standards within the Act, its implementing regulations, and Service policies (see Determination, below). The SSA report contains the risk analysis on which this determination is based, and the following discussion is a summary of the results and conclusions from the SSA report. We solicited peer review of the draft SSA report from five qualified experts. We received responses from four of the reviewers, and we modified the SSA report as appropriate. In addition to our SSA report, the summary of the biological background of the species can also be found in our September 5, 2018, proposed rule (83 FR 45073).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act directs us to determine whether any species is an endangered species or a threatened species because of one or more of the following factors affecting its continued existence: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We completed a comprehensive assessment of the biological status of the golden conure, and prepared a report of the assessment, which provides a thorough account of the species' overall viability. In the discussion below, we summarize the conclusions of that SSA, which can be accessed at Docket No. FWS–HQ–ES–2015–0019 on *http://www.regulations.gov.* Please refer to the SSA report and the Summary of Factors Affecting the Species section in the proposed rule (83 FR 45073, September 5, 2018, pp. 45077–45080) for a more detailed discussion of the factors affecting the golden conure.

Habitat Loss—Deforestation

Large-scale deforestation in the Amazon has occurred since the 1970s and 1980s concurrent with the growth of Brazil's economy (GFA 2017, unpaginated). The Brazilian Amazon is approximately the size of Western Europe, and as of 2016, an area the size of France has been lost to deforestation (Fearnside 2017a, pp. 1, 3). Approximately 30 to 35 percent of the golden conure's range has already been lost to deforestation, primarily in the eastern states of Pará and Maranhão (Laranjeiras 2011a, unpaginated; Laranjeiras and Cohn-Haft 2009, p. 8), and another 23 to 30 percent of the golden conure's habitat is predicted to be lost within 22 years or three generations (Bird *et al.* 2011, appendix S1). The golden conure's range partially overlaps what is known as the ''arc of deforestation,'' an area in the southeastern Amazon where rates of deforestation and forest fragmentation have been the highest (Prioste *et al.* 2012, p. 701; Laranjeiras 2011a, unpaginated; Laranjeiras and Cohn-Haft 2009, p. 8).

After a long period of deforestation in the Amazon, rates of deforestation dropped dramatically to levels not recorded in recent decades (Alves *et al.* 2017, p. 76). However, despite declines in the deforestation rate, the total area deforested in Brazil's Amazon has risen steadily since deforestation rates were first measured in 1988 (IPAM 2017, p. 7 using PRODES 2017 data). More recently, deforestation rates are increasing again (Fearnside 2017b, p. 1; IPAM 2017, p. 15; Biderman and Nogueron 2016, unpaginated), as global demand for agricultural commodities continues to rise (Brando *et al.* 2016, abstract), and the ''arc of deforestation'' is likely to continue to be a hotspot (Alves *et al.* 2017, p. 76).

Forest habitat degradation and fragmentation typically begin with road construction and subsequent human settlement. Nearly 95 percent of all deforestation occurred within 5.5 kilometers (km) (3.4 miles (mi)) of roads or 1 km (0.6 mi) of rivers (Barber *et al.* 2014, pp. 203, 205, 208). Roads are rapidly expanding in the region and contribute to further habitat degradation and fragmentation (Barber *et al.* 2014, p. 203).

Logging in the Amazon was once restricted to areas bordering major rivers, but the construction of highways and strategic access roads and the depletion of hardwood stocks in the south of Brazil made logging an important, growing industry (Veríssimo *et al.* 1992, p. 170). Logging operations typically occur on private lands (GFA 2018a and b, unpaginated). After logging, the land may be clear-cut and burned, in preparation for crops (Reynolds 2003, p. 10). Although the Brazilian forest code requires private landowners in the Amazon to maintain 80 percent of their land as forest, the code has been poorly enforced (GFA 2018b, unpaginated), and full compliance has not been achieved (Azevedo *et al.* 2017, entire; see Conservation Measures and Regulatory Mechanisms, below). Logging on public lands is allowed via concessions where logging companies are granted logging rights for a fee (GFA 2018a, unpaginated). However, the concession system is not currently working as intended, and illegal logging in public protected areas remains a serious threat, particularly logging of mahogany (*Swietenia macrophylla*) (BLI 2016, p. 5), a CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Appendix II species (CITES 2018b). Although selective logging and requirements for minimum tree sizes are intended to minimize effects to the forest, logging of larger trees is likely to have a greater effect on the golden conure because the species uses larger, older trees for its nesting and roosting (Yamashita 2003, p. 38).

Expanding crop production and ranching are also major drivers of deforestation in the Amazon basin. Soy beans are primarily used for cattle feed, and in the 1990s and early 2000s, high demand for beef created a ''soy-cattle pasture deforestation dynamic,'' where soy production replaced existing cattle pasture, and forced new deforestation into the Amazon for cattle ranching (GFA 2018c, unpaginated). In the 2 years preceding the moratorium (instituted in 2006), approximately 30 percent of soy expansion occurred through deforestation rather than by replacement of pasture or other previously cleared lands; by 2014, just 1 percent of soy expansion was responsible for deforestation in Brazil's Amazon (Gibbs *et al.* 2015, p. 377). The soy moratorium was renewed indefinitely in 2016, or until it is no longer needed (Patiño 2016, unpaginated).

Cattle ranching is the largest cause of deforestation in every Amazon country and is responsible for about 80 percent of current deforestation rates (GFA 2018d, unpaginated). Brazil is the largest beef exporter in the world, supplying about one quarter of the world market (GFA 2018d, unpaginated). In 2015 and 2016, new markets for Brazilian beef were opened

up via agreements with Russia, the United States, and China (Fearnside 2017b, p. 14). The Chinese market, in particular, has significant potential demand for both beef and leather, with China being the world's largest manufacturer of shoes (Fearnside 2017b, p. 16).

Conversion of native forest for the cultivation of palm plantations for the production of palm oil is likely to further reduce the amount of habitat available to the golden conure. The Brazilian government plans to increase biofuel production in the next decade, driven primarily by demands for fuel (ethanol and biodiesel) (Villela *et al.* 2014, p. 273). A recent study of regional avian biodiversity in palm oil plantations concluded that they are as detrimental to avian biodiversity as other forms of agriculture such as cattle pasture (Lees *et al.* 2015, entire). Therefore, any native forest converted to palm plantations will result in habitat loss for the golden conure, and any degraded land that is planted for palm oil will not regenerate or be restored to suitable habitat for the species.

Increased fire risk from human settlement and the activities noted above further contribute to deforestation (Barber *et al.* 2014, p. 203) (see *Projected Effects from Climate Change,* below). Fire for land management is now common in rural Amazonia (Malhi *et al.* 2008, p. 171), but wildfires in tropical forests of the Amazon were rare over the past millennia, and trees are not adapted for fire (Fearnside 2009, p. 1005). Amazonian trees have thin bark and fire heats the cambium under the bark at the base of the trunk, causing the tree to die and further contributing to deforestation (Fearnside 2009, p. 1005).

Hydroelectric dams are also a major contributor to deforestation in the Amazon. Brazil is the second-largest producer of hydroelectricity in the world (after China), and hydropower supplies about 75 percent of Brazil's electricity (GFA 2018e, unpaginated; Fearnside 2017c, unpaginated). The Brazilian government recently announced an end to the construction of large dams in the Amazon (Branford 2018, unpaginated), but smaller dams within the golden conure's range are still under construction or planned (GFA 2018e, unpaginated; Fearnside 2017c, unpaginated; Nobre *et al.* 2016, p. 10763).

Mining for minerals also contributes to deforestation of the Amazon; it grew from 1.6 percent of gross domestic product (GDP) in 2000, to 4.1 percent in 2011, and is projected to increase by a factor of 3 to 5 by 2030 (Brasil Ministério de Minas e Energia 2010, as cited by Ferreira *et al.* 2014, p. 706). Mining leases, exploration permits, and concessions collectively encompass 1.65 million square kilometers (km^2) (0.64 million square miles (mi^2)) of land, with about 60 percent located in the Amazon forest (Departamento Nacional de Produção Mineral 2012, as cited in Sonter *et al.* 2017, p. 1).

Deforestation Rates and Gross Domestic Product

Annual deforestation rates in the Brazilian Amazon have always varied, but have generally been correlated with national economic growth as measured by GDP (Petherick 2013, p. 7; Hochstetler and Viola 2012, p. 759). However, beginning in 2005, measures of deforestation and GDP have separated or ''decoupled'' (Lapola *et al.* 2014, p. 27; Petherick 2013, p. 7). The Amazon experienced dramatic reductions in annual average rates of deforestation from almost 21,000 km^2 (8,108 mi^2) between 2000 and 2004—to about 7,000 km^2 (2,703 mi^2) in 2009 and 2010 (Prodes 2017, unpaginated; Petherick 2013, p. 8; Hochstetler and Viola 2012, p. 759) and 6,418 km^2 (2,478 mi^2) in 2011 (Prodes 2017, unpaginated). During this same period, Brazil's GDP rose steadily, indicating strong, sustained growth from an export commodity boom (Petherick 2013 p.7; Hochstetler and Viola 2012, pp. 759–760).

Decoupling has been attributed to a number of factors with no clear consensus on which factor has been the most effective (Moutinho 2015, p. 2). Contributing factors include government strategies and policies for forest conservation (Assunção *et al.* 2012, p. 697) such as: (1) The expansion of protected areas, which reduced the supply of unclaimed forest land (Nepstad *et al.* 2014, p. 1118); (2) an effort that began in 2007 to blacklist the worst deforesters; and (3) efforts to monitor and control municipalities with high levels of illegal deforestation through sanctions and restricted access to credit (Moutinho 2015, p. 3; Assunção *et al.* 2012, p. 698). Reductions in deforestation have also been attributed to market and social forces, such as decreases in the price of agricultural commodities (including soy and beef) in 2005 (Fearnside 2017b, p. 1; Assunção *et al.* 2012, entire) and the 2006 soy moratorium (Gibbs *et al.* 2015, pp. 377–378).

Brazil is one of the countries that currently has comparatively low productivity levels and is projected to grow faster as it catches up with more developed countries (Guardian 2012, unpaginated). Forecasts vary for Brazil's GDP purchasing power parity (GDP PPP), with one forecast predicting that GDP PPP will rise steadily through 2050 (PWC Global 2016, unpaginated), while a more recent forecast predicts that GDP PPP will stagnate and then drop after about 2050 (Knoema 2018, unpaginated).

Illegal Collection and Trade

The golden conure is highly prized as an aviary bird and has been extensively trapped for both the domestic and international pet trade in the past (BLI 2016, p. 5; Alves *et al.* 2013, p. 60; Laranjeiras 2011a, unpaginated; Yamashita 2003, p. 38; Snyder *et al.* 2000, p. 132; Collar 1992, p. 304; Oren and Novaes 1986, pp. 329, 334–335). However, there is little evidence that this practice is continuing in international trade (Laranjeiras 2011a, unpaginated; Silveira and Belmonte *in press,* unpaginated).

In contrast, the illegal domestic market for the species is still occurring at some level (Silveira and Belmonte *in press,* unpaginated). Historically, keeping birds was an important part of local indigenous tradition and culture (Carvalho 1951 and Cascudo 1973, as cited by Alves *et al.* 2013, p. 54). Young birds were taken from the wild to raise as pets and for feathers, but now are also sold to bird traders (Oren and Novaes 1986, p. 335). Much of the area occupied by the golden conure is poor, and selling the birds for the domestic pet trade provides an extra source of income (Yamashita 2003, p. 39).

There are mixed reports regarding the degree to which illegal capture of golden conures from the wild (''poaching'') occurs. The Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) has licensed and regulated bird breeding in an effort to reduce poaching (Alves *et al.* 2013, p. 61). As a result, several sources believe poaching is no longer a major concern for the species because trade is thought to mostly be from the substantial captive population (Silveira *in litt.* 2012, Lees *in litt.* 2013, in BLI 2016, p. 5). However, some level of illegal capture and trade of the species is still believed to occur (Lima *in litt.* 2018). Captive rearing may not be a practical alternative to illegal trade, particularly in low-income areas, because the price of commercially bred birds is approximately 10 times higher than wild-caught individuals (Renctas 2001, as cited in Alves *et al.* 2013, p. 61; Machado 2002, as cited in Alves *et al.* 2010, p. 155).

Additionally, oversight of domestic wildlife-breeding facilities in Brazil is limited (Alves *et al.* 2010, entire), and

many wild bird species declared to be captive-bred are actually born in the wild and traded under fraudulent documentation (Alves *et al.* 2013, p. 61). Most wildlife centers responsible for managing, licensing, and inspecting all categories of breeders, traders, and zoos (Kuhnen and Kanaan 2014, p. 125) lack resources and funding (Padrone 2004, as cited in Kuhnen and Kanaan 2014, p. 125). Also, there are not enough inspections at market places and commercial breeding facilities to fight illegal domestic trade (Alves *et al.* 2010, pp. 154–155).

The United States is a major importer of pet birds, yet relatively little trade in the golden conure has been observed. We reviewed all records of legal and intercepted illegal trade in the CITES annual trade records submitted by the U.S. Fish and Wildlife Service from 1981 to 2016. Overall, the U.S. trade in the golden conure has been relatively low compared with other pet birds, likely because the golden conure was included in CITES Appendix I in 1975 and we listed the species under the Act in 1976.

Projected Effects From Climate Change

Changes in Brazil's climate and associated changes to the landscape are likely to result in additional habitat loss for the golden conure. Across Brazil, temperatures are projected to increase and precipitation to decrease (Barros and Albernaz 2014, p. 811; Carabine and Lemma 2014, p. 11). The 2013 Intergovernmental Panel on Climate Change (IPCC) predicted that by 2100, South America will experience temperature increases ranging from 1.7 to 6.7 degrees Celsius (°C) (3.06 to 12.06 degrees Fahrenheit (°F)) under Representative Concentration Pathway (RCP) 4.5 and RCP 8.5, respectively (Carabine and Lemma 2014, p. 10; Magrin *et al.* 2014, p. 1502). Projected changes in precipitation in South America vary by region, with rainfall reductions in the Amazon estimated with medium confidence (about a 5 out of 10 chance) (IPCC 2018, unpaginated; Carabine and Lemma 2014, p. 11; Magrin *et al.* 2014, p. 1502).

Downscaled models, based in part on the 2007 IPCC data, predict more severe changes than the average expected global variation, with the greatest warming and drying occurring over the Amazon rainforest, particularly after 2040 (Marengo *et al.* 2011, pp. 8, 15, 27, 39, 48; Féres *et al.* 2009, p. 2). Estimates of temperature changes in the Amazon by the end of the 21st century are 2.2 °C (4 °F) under a low greenhouse gas emission scenario and 4.5 °C (8 °F) under a high-emission scenario (Marengo *et al.* 2011, p. 27). The downscaled model for the Amazon used a previously provided set of scenarios known as the Special Report on Emissions Scenarios (SRES) to project the low-emissions using scenario (SRES B1) and high-emissions scenario (SRES A2) (Marengo *et al.* 2011, p. 27). More recently, a newer set of scenarios (*i.e.,* RCPs) were prepared that include a wider range of future conditions and emissions. However, to compare the SRES and RCP scenarios, SRES B1 is roughly comparable to RCP 4.5 and SRES A2 is similar to RCP 8.5 (U.S. National Climate Change Assessment 2014, p. 821). These similarities between specific RCP and SRES scenarios make it possible to compare the results from different modeling efforts over time (U.S. National Climate Change Assessment 2014, p. 821).

The risks to the golden conure from deforestation will likely be intensified by synergistic effects associated with climate change (Staal *et al.* 2015, p. 2) because a number of large-scale drivers of environmental change (*i.e.,* land-use change from deforestation and climate changes due to global warming) are operating simultaneously and interacting nonlinearly in the Amazon (Nobre *et al.* 2016, p. 10759). Increased temperatures and frequency or severity of droughts put the Amazon region at a higher risk of forest loss and more frequent wildfires (Magrin *et al.* 2007, p. 596; Marengo *et al.* 2011, p. 48). The Amazon's rainforest may have two ''tipping points'': (1) A temperature increase of 4.0 °C (7.2 °F); or (2) deforestation exceeding 40 percent (Nobre *et al.* 2016, p. 10759), that once exceeded could cause large-scale shifts in the vegetation to a savanna (*i.e.,* ''savannization'') mostly in the southern and eastern Amazon (Nobre *et al.* 2016, p. 10759) within the golden conure's range.

Similarly, a study that considered only the effects from global warming (*i.e.,* absent deforestation) predicted that by the end of this century, some areas of rainforest will be replaced by deciduous forest and grassland using scenario RCP 4.5 and by all grassland using scenario RCP 8.5 (Lyra *et al.* 2016, entire). Although the projected outcomes of models are not definitive, any terra firme (unflooded) forest habitat that shifts from rainforest to other habitat types (*e.g.,* savanna) would result in loss of habitat for the golden conure.

Other Potential Stressors

Other potential stressors to the golden conure include hunting and persecution (Factor B), and predation or disease (Factor C). The species is likely still hunted at low levels as a food source and for feathers, and birds that raid crops may be shot by farmers (Oren and Novaes 1986, p. 335). However, we have no information about the rate that these activities may be occurring or the extent to which they may be affecting populations. Similarly, we have no information regarding diseases that may affect golden conures in the wild.

Golden conures, including eggs and nestlings, are prey to a variety of native predators, including toucans (Oren and Novaes 1986, p. 334; Forshaw 2017, p. 228); raptors (Laranjeiras 2008a, as cited in Laranjeiras 2011a, unpaginated; Silveira and Belmonte *in press,* unpaginated); monkeys; snakes; and the tayra (*Eira barbara*), an omnivorous weasel (Oren and Novaes 1986, p. 334). However, we have no information regarding the rates of predation on the golden conure from these predators and how that may be affecting the golden conure.

Conservation Measures and Regulatory Mechanisms

The conservation measures and regulatory mechanisms for the golden conure are described in the proposed rule (83 FR 45073; September 5, 2018) and are summarized below. The golden conure is considered ''vulnerable'' at the national level in Brazil (MMA 2014, p. 122). Golden conures and their nests, shelters, and breeding grounds are protected by Brazilian environmental laws (Clayton 2011, p. 4; Environmental Crimes law of Brazil (1999) as cited in MSU 2018, unpaginated; Official List of Brazilian Endangered Animal Species Order No. 1.522/1989 as cited in ECOLEX 2018; CFRB 2010, p. 150; Law No. 5.197/1967 as cited in LatinLawyer 2018, unpaginated). Various regulatory mechanisms (Law No. 11.516, Act No. 7.735, and Decree No. 78, as cited in ECOLEX 2018, unpaginated) and Law 6.938/1981(LatinLawyer 2018, unpaginated) direct Brazil's federal and state agencies to promote the protection of lands and govern the formal establishment and management of protected areas to promote conservation of the country's natural resources. Additionally, several Brazilian laws are designed to protect forest reserves and to prohibit fire and other actions, such as logging, without authorization (Clayton 2011, p. 5; Law No. 9.605/1998 as cited in LatinLawyer 2018, unpaginated).

Protected Areas

Protected areas have traditionally formed the backbone of forest conservation in the Amazon Basin, and

they still remain a vital conservation strategy (GFA 2018f, unpaginated). Brazil has the largest protected area network in the world. The National Protected Areas System (Federal Act 9.985/2000, as cited in LatinLawyer 2018, unpaginated) was established in 2000, and covers nearly 2.2 million km² (0.8 million mi²) or 12.4 percent of the global total (WDPA 2012, as cited by Ferreira *et al.* 2014, p. 706). This extensive network of protected areas is intended to (1) preserve priority biodiversity conservation areas, (2) establish biodiversity corridors, and (3) protect portions of the 23 Amazonian ecoregions identified by the World Wildlife Fund (Rylands and Brandon 2005, pp. 612, 615; Silva 2005, entire). Brazil's Protected Areas may be categorized as ''strictly protected'' or ''sustainable use'' based on their overall management objectives. Strictly protected areas include national parks, biological reserves, ecological stations, natural monuments, and wildlife refuges protected for educational and recreational purposes and scientific research. Protected areas of sustainable use (national forests, environmental protection areas, areas of relevant ecological interest, extractive reserves, fauna reserves, sustainable development reserves, and private natural heritage reserves) allow for different types and levels of human use with conservation of biodiversity as a secondary objective.

By 2006, 1.8 million km² (0.7 million mi²), or approximately 45 percent of Brazil's Amazonian tropical forest, was under some level of protection as federal- or state-managed land, or designated as indigenous reserve (managed by indigenous communities) (Barber *et al.* 2014, p. 204). Of this, 19.2 percent was strictly protected areas, and 30.6 percent was comprised of federal and state sustainable use areas, with indigenous reserves making up the remainder (Barber *et al.* 2014, p. 204).

Indigenous lands are legally recognized areas where indigenous peoples have perpetual rights of access, use, withdrawal, management, and exclusion over the land and associated resources (GFW 2018, unpaginated). Indigenous communities sustainably use their forest land, practice shifting cultivation, trade non-timber forest products, and may allow selective logging (GFA 2018g, unpaginated; Schwartzman and Zimmerman 2005, p. 721). Large-scale deforestation is prohibited (Barber *et al.* 2014, p. 204).

Protected areas have been emphasized as a key component for the golden conure's survival (*e.g.,* in the Tapajos River region and the Gurupi Biological Preserve) (Laranjeiras and Cohn-Haft 2009, pp. 1, 8; Silveira and Belmonte *in press,* unpaginated). The species' predicted range overlaps with numerous protected areas such as national parks and national forests, which have various levels of protection (Service 2018, pp. 68–70; Laranjeiras and Cohn-Haft 2009, p. 8). Additionally, the species occurs in nine areas recently designated as ''Important Bird Areas'' (IBAs) in Brazil (BLI 2018a–h, unpaginated; Lima *et al.* 2014, p. 318; Laranjeiras 2011a, unpaginated; Devenish *et al.* 2009, pp. 104–106). IBAs are places of international significance for the conservation of birds and other biodiversity (BLI 2018i, unpaginated). Levels of protection at IBAs vary from fully protected within Protected Areas to no protections and are outside the National Protected Area System (BLI 2018i, unpaginated).

Habitat modeling studies have estimated approximately 10,875 golden conures within 174,000 km² (67,182 mi²) of suitable habitat across a range of approximately 340,000 km² (131,275 mi²) (Laranjeiras 2011b, p. 311; Laranjeiras and Cohn-Haft 2009, pp. 1, 3). To date, the golden conure has been found in numerous protected areas or IBAs that have a total area of approximately 154,673 km² (51,719 mi²) (Service 2018, pp. 68–70). However, not all of the area represented contains suitable habitat for the species, and several of the IBAs (39 percent) presently have no protection (61,864 km² (23,866 mi²)). An additional 26 percent of IBAs presently have just partial protection (40,582 km² (15,669 mi²)) (Service 2018, pp. 68–70). Despite significant efforts to designate and establish protected areas, funding and resources are limited, and adequate enforcement of these areas is challenging.

Forest Code

Brazil's forest code was created in 1965, and was subsequently changed in the 1990s via a series of presidential decrees (Soares-Filho *et al.* 2014, p. 363). As of 2001, the forest code required landowners in the Amazon to conserve native vegetation on their rural properties by setting aside what is called a ''legal reserve'' of 80 percent of their property (*i.e.,* with 20 percent available to be harvested) (Soares-Filho *et al.* 2014, p. 363). The forest code severely restricted deforestation on private properties but proved challenging to enforce, and full compliance has not been achieved (GFA 2018b, unpaginated; Azevedo *et al.* 2017, entire; Soares-Filho *et al.* 2014, p. 363).

In late 2012, a new forest code was approved that reduces restoration requirements by providing amnesty for previous illegal deforestation by smaller property holders (Soares-Filho *et al.* 2014, p. 363). Under the older forest code, legal reserves that were illegally deforested were required to be restored at the landowner's expense. The new forest code forgives the legal reserve debt of small properties (up to 440 hectares (1,087 acres)) (Soares-Filho *et al.* 2014, p. 363). Although the 2012 forest code reduced the restoration requirements, it also introduced measures that strengthen conservation including addressing (1) fire management, (2) forest carbon emissions and storage, and (3) payments for ecosystem services that increase the economic activities compatible with conservation of natural resources (Soares-Filho *et al.* 2014, p. 364; GFA 2018h, unpaginated). Additionally, the new forest code created an ''environmental reserve quota,'' where quota surplus on one property may be used to offset a legal reserve debt on another property within the same biome; this could create a market for forested lands, adding monetary value to native vegetation and potentially abating up to 56 percent of legal reserve debt (Soares-Filho *et al.* 2014, p. 363).

Legal Captive Rearing and Trade

IBAMA has licensed and regulated breeding of native bird species, including golden conure, in an effort to reduce poaching (Alves *et al.* 2013, p. 61). The captive population of golden conures in Brazil is believed to be about 600 birds (Prioste *et al.* 2013, p. 146). Additional captive populations of golden conures exist as CITES-registered captive-breeding operations in the United Kingdom and the Philippines. Although we have no further information on these programs, captive rearing in Brazil is believed to have reduced the incidence of poaching of young golden conures from the wild (Silveira *in litt.* 2012, Lees *in litt.* 2013, as cited in BLI 2016, p. 5).

Reintroduction

We know of only one attempt to reintroduce the golden conure to an area where it had been extirpated. The species was extirpated from the Belém region of Pará in 1848 (Moura *et al.* 2014, p. 5). In 2017, reintroductions of golden conure were attempted in this area (at Utinga State Park in Belém) (globo.com 2018, unpaginated; Silveira *in litt.* 2018; Organization of Professional Aviculturists *in litt.* 2018). Of the 24 birds involved in the release program, three died prior to release, and

one died after release due to predation by a boa (*Boa constrictor*). There have been no reports of released conures being taken as pets, although it is a possibility in the future. Currently, seven of the released birds are living in close proximity to the release station, while another 13 birds have flown away from the release point. These 13 birds are not currently under observation, but reports have indicated that they are living within the green areas of the city of Belém. One pair of golden conures has also successfully produced one offspring in an artificial nest box provided near the release station. This chick was successfully reared without human intervention and is living as a wild parrot along with its parents that have been seen feeding on native fruits. This is the first documented wild born golden conure in the Belém area in over 50 years. Even though this project is in the initial stages, its prospects are promising (Silveira *in litt.* 2018; Organization of Professional Aviculturists *in litt.* 2018).

Additional Conservation and Regulatory Mechanisms

''Reducing Emissions from Deforestation and Forest Degradation'' (REDD) is a ''payment for ecological services'' initiative developed by the United Nations that creates a financial value for the carbon stored in forests (GFA 2018h, unpaginated). The program offers incentives to developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development (GFA 2018h, unpaginated). REDD plus (REDD+) goes one step further by including objectives for (1) biodiversity conservation, (2) sustainable management of forests, and (3) improvements to forest governance and local livelihoods (GFA 2018h, unpaginated). Brazil is one of the most advanced countries in the world in REDD+ planning and maintains an ''Amazon Fund,'' which receives compensation for reductions in deforestation. To date, the Norwegian government is the major donor; lesser donors include the government of Germany and the Brazilian oil company Petrobras (GFA 2018h, unpaginated). The successful funding and implementation of REDD+ is expected to reduce rates of deforestation in Brazil's Amazon rainforest and would likely benefit the golden conure and its habitat. However, the initiative is in its early stages and is being hampered by numerous issues, particularly unresolved land-tenure problems (May *et al.* 2018, p. 44).

The golden conure is protected under CITES, an international agreement between member governments to ensure that the international trade of CITES-listed plant and animal species is sustainable and does not threaten species' survival. Under this treaty, CITES Parties (member countries or signatories) regulate the import, export, and re-export of specimens, parts, and products of CITES-listed plant and animal species. Brazil is a Party to CITES. Trade in CITES-listed plants and animals must be authorized through a licensing system of permits and certificates that are provided by the designated CITES Management Authority of each CITES Party. CITES includes three Appendices that list species meeting specific criteria. Depending on the Appendix in which they are listed, species are subject to various permitting requirements.

The golden conure is included in CITES Appendix I and receives the highest degree of protection. Species listed in this Appendix are those that are threatened with extinction and which are, or may be, affected by trade. Commercial trade in Appendix I wildlife species is strictly prohibited, except in limited circumstances provided by the treaty. However, commercial international trade may be allowed in certain circumstances where animals have been produced by CITES-registered captive-breeding operations. Trade in specimens from registered operations may be treated as if they were listed in CITES Appendix II, although they remain Appendix I listed specimens. Each shipment requires the issuance of both CITES export and import documents. There are two CITES-registered captive-breeding operations for the golden conure: one in the United Kingdom and the other in the Philippines. The United States may also allow noncommercial trade in this species on a case-by-case basis for approved purposes such as scientific, zoological, and educational activities.

Two other laws in the United States apart from the Act provide protection from the illegal import of wild-caught birds into the United States: the Wild Bird Conservation Act (WBCA; 16 U.S.C. 4901 *et seq.*) and the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371 *et seq.*). The WBCA was enacted in 1992, to ensure that exotic bird species are not harmed by international trade and to encourage wild bird conservation programs in countries of origin. Under the WBCA and our implementing regulations (50 CFR 15.11), it is unlawful to import into the United States any exotic bird species listed under CITES that is not included in the approved list of species, except under certain circumstances. We may issue permits to allow import of listed birds for scientific research, zoological breeding or display, cooperative breeding, or personal pet purposes when the applicant meets certain criteria (50 CFR 15.22–15.25).

The Lacey Act was originally passed in 1900, and was the first Federal law protecting wildlife. Today, it provides civil and criminal penalties for the illegal trade of animals and plants. Under the Lacey Act, in part, it is unlawful to (1) import, export, transport, sell, receive, acquire, or purchase any fish, or wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law; or (2) import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law. Therefore, because the take of wild-caught golden conures would be in violation of Brazil's wildlife law, the subsequent import of the species would be in violation of the Lacey Act. Similarly, under the Lacey Act, it is unlawful to import, export, transport, sell, receive, acquire, or purchase specimens of these species traded contrary to CITES.

Summary of Comments and Responses

SSA Report

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five appropriate specialists regarding the SSA report that informed our proposed rule, and we received responses from four of the five peer reviewers. We also invited any additional comments from the peer reviewers on the proposed rule during its public comment period. The purpose of peer review is to ensure that our reclassification determination is based on scientifically sound data, assumptions, and analyses. All substantive information from the peer review was fully considered and incorporated into this final rule, where appropriate. The peer reviewers' comments and suggestions are available at *https://www.fws.gov/endangered/improving_ESA/peer_review_process.html.*

Proposed Rule

The public comment period for our September 5, 2018, proposed rule (83

FR 45073) lasted for 60 days, ending November 5, 2018. During that comment period, we received 31 comments on our proposed rule to downlist the golden conure. The majority of the comments support downlisting the golden conure from endangered to threatened with a 4(d) rule to allow import/export and interstate commerce of certain golden conures. Additionally, commenters provided updated information regarding the golden conure reintroduction program occurring in the Belém region of Pará at Utinga State Park. We have incorporated this information under Conservation Measures and Regulatory Mechanisms, above, and have updated the SSA report. Other comments are discussed below by topic.

Comment (1): Many commenters state that the 4(d) rule will help improve the breeding pool because allowing interstate commerce of golden conures will develop more diverse genes and blood lines. Thus, the continued breeding of the species in the United States can provide a safety reservoir of individuals for reintroduction if needed.

Our Response: While we agree with the commenters that interstate commerce of golden conures could allow the development of more diverse genes and blood lines, we do not believe that captive-bred golden conures in the United States as pets are good candidates for reintroduction into the wild. Golden conures bred as pets would likely be socialized with humans and in turn fail to act appropriately with wild individuals when released. In addition, golden conures held as pets may pose a disease risk to wild populations.

Comment (2): A few commenters disagreed with the proposed downlisting because they claim that we underestimate the effect of deforestation and increased human population growth within the range of the golden conure. Therefore, they state that the golden conure should not be downlisted to threatened because the species remains in danger of extinction due to deforestation.

Our Response: Our analysis of the stressors to the golden conure as discussed in the SSA report (Service 2018, pp. 25–35) and summarized here and in the proposed rule includes the contribution of an increasing human population and how it impacts the species through habitat degradation and fragmentation. While we agree the golden conure faces significant risk from loss and degradation of its habitat from deforestation in the foreseeable future, because the golden conure is more widespread than previously thought and near-term threats to the species have been reduced, we do not find the species is presently in danger of extinction throughout all or a significant portion of its range. Thus, it does not meet the definition of an ''endangered species'' under the Act.

Drivers of habitat degradation and deforestation include roads; human settlement; logging; and agricultural expansion for soy cultivation, cattle ranching, and palm oil production (an emerging threat). Additionally, infrastructure projects such as hydroelectric dams and mining operations are growing sources of deforestation that also contribute to loss of forest habitat in the range of the conure. Based on the best available scientific studies and information assessing land-use trends (including deforestation, lack of enforcement of laws, predicted landscape changes under climate-change scenarios, and predictions about the impact of those threats), we conclude that the golden conure is likely to be in danger of extinction in the foreseeable future throughout its range and meets the definition of a ''threatened species'' under the Act.

Comment (3): One commenter stated that downlisting the golden conure to threatened will provide the species with less protection than if it was listed as endangered.

Our Response: We must make our determination on whether the species is endangered or threatened based solely on the best available scientific and commercial data available. If a species is determined to be an endangered species, the Act extends certain prohibitions to the species pursuant to section 9. If the species is listed as threatened, we may develop a rule pursuant to 4(d) to provide for its conservation.

The golden conure is more widespread than previously thought, and threats to the species have been reduced to the point that it is no longer in danger of extinction throughout all or a significant portion of its range. Our analysis also assessed the biological status of the golden conure in light of the broad protections provided to the species under CITES and the WBCA. We determined that the golden conure meets the definition of a ''threatened species'' under the Act. A threatened species is likely to become endangered throughout all or a significant portion of its range within the foreseeable future. Section 4(d) of the Act states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. Therefore, we include the golden conure in the 4(d) rule for birds at 50 CFR 17.41(c) to address the golden conure's specific threats and conservation needs, which will promote conservation of the golden conure. We find that this 4(d) rule contains all the prohibitions and authorizations necessary and advisable for the conservation of the species.

We acknowledge that we do not have authority to directly regulate activities in a foreign country that may cause the golden conure to be an endangered species or a threatened species. However, conservation measures or benefits provided to foreign species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and may encourage and result in conservation actions by foreign governments, Federal and State governments, private agencies and interest groups, and individuals.

Comment (4): Some commenters stated that Bird Life International (BLI) has downlisted the species from ''endangered'' to ''vulnerable'' because the estimated population is 10,000 to 19,999 individuals. The commenters state that BLI is a recognized authority, and their recommendations should be taken as ''best scientific evidence.''

Our Response: We determined that the best available information indicates the current wild population of the golden conure is about 10,875 individuals (Laranjeiras 2011b, p. 311). Birdlife International's population estimate is 6,600–13,400 individuals (BLI 2019, unpaginated). We note that this estimate is within the range of the range of individuals cited by BLI.

The decision to list a species under the Act is based on whether the species meets the definition of an endangered species or a threatened species as defined under section 3 of the Act, considering the factors set forth in section 4(a)(1) of the Act, and is made solely on the basis of the best scientific and commercial data available. BLI uses different standards and criteria to assign its status designations; therefore, a determination of status under the Act is not interchangeable with a BLI designation. Using the best scientific and commercial data available, as summarized in this rule, we find that the golden conure meets the definition of a ''threatened species'' under the Act.

Determination of Golden Conure Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets

the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the golden conure and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we reviewed the status of the golden conure and assessed the five factors to evaluate whether the species is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the golden conure. We reviewed information presented in the August 21, 2014, petition we received from the American Federation of Aviculture, Inc.; information available in our files; information gathered through our 90-day finding in response to the petition; information gathered in the SSA report; information from public comments on our September 5, 2018, proposed rule (83 FR 45073); and other available published and unpublished information.

When we listed the golden conure as endangered (41 FR 24062; June 14, 1976), the species was perceived to be declining in numbers due to either Factor A, Factor B, or Factor D, or a combination of all three factors. At present, while we consider deforestation and habitat degradation to be a significant risk to the golden conure in the future, the best scientific and commercial information available on the range and abundance of the species indicates that the species is more widespread and abundant than previously believed and that the threat from overutilization for the pet trade (Factor B) has diminished (Silveira *in litt.* 2012, Lees *in litt.* 2013, in BLI 2016, p. 5; Snyder *et al.* 2000, p. 99).

Approximately 10,875 golden conures occur within 174,000 km² (67,182 mi²) of suitable habitat across a range of approximately 340,000 km² (131,275 mi²) (Laranjeiras 2011b, p. 311; Laranjeiras and Cohn-Haft 2009, pp. 1, 3). Tighter enforcement of CITES, stricter European Union legislation, adoption of the WBCA in the United States, and adoption of national legislation in other countries have all helped to significantly curtail illegal international trade (Snyder *et al.* 2000, p. 99). Government-authorized captive breeding programs in Brazil are thought to have curtailed the illegal domestic trade (Silveira *in litt.* 2012, Lees *in litt.* 2013, in BLI 2016, p. 5). Thus, after assessing the best available information, we conclude the golden conure is not currently in danger of extinction throughout its range.

We next considered whether the golden conure is likely to become in danger of extinction throughout its range within the foreseeable future. Our proposed rule described ''foreseeable future'' as the extent to which we can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. The Service since codified its understanding of foreseeable future in 50 CFR 424.11(d) (84 FR 45020; August 27, 2019).

In those regulations, we explain the term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. The Service will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The Service need not identify the foreseeable future in terms of a specific period of time. These regulations did not significantly modify the Service's interpretation; rather they codified a framework that sets forth how the Service will determine what constitutes the foreseeable future based on our long-standing practice. Accordingly, though these regulations do not apply to the final rule for the golden conure since it was proposed prior to their effective date, they do not change the Service's assessment of foreseeable future for the golden conure as contained in our proposed rule.

The golden conure has already lost 30 to 35 percent of its historical range (Laranjeiras 2011a, unpaginated; Laranjeiras and Cohn-Haft 2009, p. 8). We expect both the species' global population and its habitat to decline an additional 23 to 30 percent in 22 years (Service 2018, pp. 42–46; Bird *et al.* 2011, appendix S1).

Additionally, habitat loss and degradation is likely to be intensified by synergistic effects associated with the consequences of climate change (Service 2018, pp. 42–46; Staal *et al.* 2015, p. 2). There is a strong likelihood of warming by at least 1.5 to 2.0 °C (2.7 to 3.6 °F) in Latin America by the end of the century (Carabine and Lemma 2014, p. 8), and downscaled estimates for the Amazon over the same time period (*i.e.,* by the end of the century) indicate temperature increases of 2.2 °C (4 °F) under a low greenhouse gas emission scenario, SRES B1 that equates to RCP 4.5, and 4.5 °C (8 °F) under a high-emission scenario, SRES A2 that equates to RCP 8.5 (Marengo *et al.* 2011, p. 27). Increased temperatures of these amounts put the Amazon region at a high risk of forest loss and more frequent wildfires (Magrin *et al.* 2007, p. 596). Downscaled models, based in part, on the earlier (2007) IPCC data, predict severe changes (increased warming and drying) over the Amazon rainforest, particularly after 2040 (Marengo *et al.* 2011, pp. 8, 15, 27, 39, 48; Féres *et al.* 2009, p. 2). Additionally, extreme weather events, such as droughts, will increase in frequency, with drought becoming a 9-in-10-year event, by 2060 (Marengo *et al.* 2011, p. 28), further contributing to deforestation due to more risk from fires (Marengo *et al.* 2011, p. 16).

Based on the best available data, we assessed foreseeable future to be 22 to 42 years (or approximately three to six generations of the golden conure). We based the lower end of this range (22 years) on the peer-reviewed work by Bird *et al.* 2011, relating to deforestation and declines in the population. We based the upper end of this range (42 years) on peer-reviewed studies predicting effects from climate change (such as drought) on deforestation after about 2040 to 2060 (Marengo *et al.* 2011, pp. 8, 15, 27, 28, 39, 48; Féres *et al.* 2009, p. 2). We conclude that it is reasonable to rely on the predictions made in these peer-reviewed studies to determine both the future threats and the species' response to these threats in making determinations about the foreseeable future of the golden conure.

Although the golden conure is now known to be more widespread and abundant than previously thought, the species occurs only within the southern basin of Brazil's Amazon. Much of this area is in the ''arc of deforestation'' and is threatened by loss and degradation of its rainforest habitat from deforestation. Effects from deforestation are

exacerbated by the projected effects from climate change. Additionally, even though government-authorized captive breeding programs in Brazil are thought to have curtailed the illegal domestic trade, some unknown level of illegal collection and trade is ongoing, particularly within Brazil (Silveira and Belmonte *in press,* unpaginated).

Existing regulatory mechanisms and conservation efforts do not currently adequately ameliorate threats to the golden conure (Factor D). Although the species is no longer in danger of extinction now, the factors identified above continue to affect the golden conure such that it is likely to become in danger of extinction within the foreseeable future throughout all of its range. Based on the best available scientific studies and information assessing land-use trends, adequacy of enforcement of laws, predicted landscape changes under climate-change scenarios, and predictions about how those threats may impact the golden conure, we conclude that the species is likely to be in danger of extinction within the foreseeable future throughout all of its range.

Thus, after assessing the best available information, we conclude the golden conure is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Having determined that the golden conure is likely to become an endangered species within the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction in a significant portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and (2) the species may be, in that portion, in danger of extinction. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing as endangered because of its status in that portion of its range. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the ''significant portion of its range'' prongs: (1) The portion is significant and (2) the species is, in that portion, in danger of extinction. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both prongs would the species warrant listing as endangered because of its status in a significant portion of its range

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For golden conure, we chose to evaluate the status question (*i.e.,* identifying portions where the golden conure may be in danger of extinction) first. To conduct this screening, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Habitat loss; illegal collection and trade; climate change; and other stressors of hunting, persecution, and predation; and including cumulative effects. We found no concentration of threats in any portion of the golden conures' range at a biologically meaningful scale. For the golden conure, we found both: The species is not in danger of extinction throughout all of its range, and there is no geographical concentration of threats so the threats to the species are essentially uniform throughout its range. The ''arc of deforestation'' is a hotspot of deforestation in the Amazon and the golden conure's range partially overlaps this area. However, deforestation caused by fires, ranching, and agriculture occurs in many parts of the Amazon and in the conure's range outside of the ''arc of deforestation.''

If both (1) a species is not in danger of extinction throughout all of its range and (2) the threats to the species are essentially uniform throughout its range, then the species could not be in danger of extinction in any biologically meaningful portion of its range. Therefore, we conclude, based on this screening analysis, that no portions warrant further consideration through a more detailed analysis, and the species is not in danger of extinction in any significant portion of its range. Our approach to analyzing significant portions of the species' range in this determination is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018); *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017); and *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020).

Determination of Status

Our review of the best available scientific and commercial information indicates that the golden conure meets the definition of a threatened species. Therefore, we are listing the golden conure as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

4(d) Rule

When a species is listed as endangered, certain actions are prohibited under section 9 of the Act and our regulations at 50 CFR 17.21. These include, among others, prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity. Exceptions to the prohibitions for endangered species may be granted in accordance with section 10 of the Act and our regulations at 50 CFR 17.22.

The Act does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior, as well as the Secretary of Commerce depending on the species, was given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act

prohibited under section 9(a)(1) of the Act. For the golden conure, the Service is exercising our discretion to issue a rule under section 4(d) of the Act by extending the regulations at 50 CFR 17.41(c) that provide for the conservation of certain species in the parrot family to the golden conure. These provisions generally extend the prohibitions included in 50 CFR 17.21, except 50 CFR 17.21(c)(5) and as provided in subpart A of part 17, or in a permit. Further, the import and export of certain golden conures into and from the United States and certain acts in interstate commerce will be allowed without a permit under the Act, as explained below.

Import and Export

The 4(d) rule imposes a prohibition on imports and exports, but creates exceptions for certain golden conures. Shipments of captive specimens (*i.e.,* not taken from the wild) may include live and dead golden conures and parts and products, including the import and export of personal pets and research samples. The 4(d) rule adopts the existing conservation regulatory requirements of CITES and the WBCA as the appropriate regulatory provisions for the import and export of these golden conure specimens.

This 4(d) rule allows a person to import or export, into and from the United States, captive specimens, without a permit issued under the Act, provided that the export is authorized under CITES and the import is authorized under CITES and the WBCA. The import would require a CITES document issued by the foreign Management Authority indicating a source code of ''C'', ''D'', or ''F.'' Exporters of captive birds would need to provide a signed and dated statement from the breeder of the bird, along with documentation that identifies the source of their breeding stock in order to obtain a CITES export permit from the U.S. Fish and Wildlife Service's Division of Management Authority. Exporters of captive-bred birds must provide a signed and dated statement from the breeder of the bird confirming its captive-bred status, and documentation on the source of the breeder's breeding stock. The source codes of C, D, and F for CITES permits and certificates are as follows:

- *Source Code C:* Animals bred in captivity in accordance with Resolution Conf. 10.16 (Rev.), as well as parts and derivatives thereof, exported under the provisions of Article VII, paragraph 5 of the Convention.
- *Source Code D:* Appendix I animals bred in captivity for commercial purposes in operations included in the Secretariat's Register, in accordance with Resolution Conf. 12.10 (Rev. CoP15), and Appendix I plants artificially propagated for commercial purposes, as well as parts and derivatives thereof, exported under the provisions of Article VII, paragraph 4, of the Convention.
- *Source Code F:* Animals born in captivity (F1 or subsequent generations) that do not fulfill the definition of ''bred in captivity'' in Resolution Conf. 10.16 (Rev.), as well as parts and derivatives thereof.

The 4(d) rule does not allow any U.S. import or export of golden conures that are taken from the wild; such birds would continue to need a permit under the Act, with the following exception: A person may import or export a wild golden conure specimen if the specimen was held in captivity prior to the date the species was listed in CITES Appendix I (*i.e.,* prior to the date that CITES entered into force on July 1, 1975, with ''golden parakeet'' (*i.e.,* the golden conure) listed in Appendix I) and provided that the specimen meets all the requirements of CITES and WBCA. If a specimen was taken from the wild and held in captivity prior to that date (July 1, 1975), the exporter will need to provide documentation as part of the application for a U.S. CITES preconvention certificate. Examples of documentation may include: (1) A copy of the original CITES permit indicating when the bird was removed from the wild, (2) veterinary records, or (3) museum specimen reports. Additionally, consistent with the 4(d) rule for other species in the parrot family at 50 CFR 17.41(c), the prohibitions on take will apply and the 4(d) rule will require a permit under the Act for any activity that could take a golden conure. Our regulations at 50 CFR 17.3 establish that take, when applied to captive wildlife, does not include generally accepted animal husbandry practices, breeding procedures, or provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices are not likely to result in injury to the wildlife.

We assessed the conservation needs of the golden conure in light of the broad protections provided to the species under CITES and the WBCA. As noted above in Summary of Factors Affecting the Species, some level of poaching for illegal trade of golden conures is occurring within Brazil (Silveira and Belmonte *in press,* unpaginated), but there is little evidence that this practice occurs at the international level (Laranjeiras 2011a, unpaginated; Silveira and Belmonte *in press,* unpaginated). The best available commercial data indicate that tighter enforcement of CITES, stricter European Union legislation, adoption of the WBCA in the United States, and adoption of national legislation in other countries have all helped to significantly curtail illegal international trade (Snyder *et al.* 2000, p. 99). Therefore, illegal international trade is not likely to be occurring at levels that negatively affect the golden conure population. Additionally, legal international trade of the species is not currently occurring at levels that affect the golden conure population. Therefore, we find that the import and export requirements of the 4(d) rule provide the necessary and advisable conservation measures that are needed for this species. This 4(d) rule will streamline the permitting process for these types of activities by deferring to existing laws that are protective of golden conures in the course of import and export.

Interstate Commerce

Under the 4(d) rule, except where use after import is restricted under 50 CFR 23.55, a person may deliver, receive, carry, transport, or ship a golden conure in interstate commerce in the course of a commercial activity, or sell or offer to sell in interstate commerce a golden conure without a permit under the Act. At the same time, the prohibitions on take under 50 CFR 17.21 apply under this 4(d) rule, and any interstate commerce activities that could incidentally take golden conure or otherwise constitute prohibited acts in foreign commerce require a permit under 50 CFR 17.32.

Between 1981 and 2016, persons within the United States imported 54 golden conures and exported 26; all were reported as live captive-bred birds except two exported birds that originated from an unknown source and one imported bird seized upon import (UNEP–WCMC 2018, unpaginated; Service 2018, p. 33). These imports and exports were made for commercial, captive-breeding, zoological, and personal purposes (UNEP–WCMC 2018, unpaginated; Service 2018, p. 33). We have no information to indicate that interstate commerce activities in the United States are associated with threats to the golden conure or would negatively affect any efforts aimed at the recovery of wild populations of the species. Therefore, because (1) acts in interstate commerce within the United States have not been found to threaten the golden conure, (2) the species is otherwise protected in the course of

interstate and foreign commercial activities under the take provisions as extended through 50 CFR 17.41(c), and (3) international trade of this species appears to be effectively regulated under CITES, we find the 4(d) rule contains all the prohibitions and authorizations necessary and advisable for the conservation of the golden conure.

Technical Correction

50 CFR 17.11(c) and 17.12(b) direct us to use the most recently accepted scientific name of any wildlife or plant species, respectively, that we have determined to be an endangered or threatened species. The golden conure currently appears on the List as the ''golden parakeet'' (*Aratinga guarouba*). Both ''golden conure'' and ''golden parakeet'' are common names associated with *Guaruba guarouba.* However, we find that the best available scientific information available supports the designation of the golden conure to its own genus (*Guaruba*). Therefore, we are updating the List to reflect this change in the scientific name for golden conure.

The basis for this taxonomic change is supported by published studies in peer-reviewed journals (*e.g.,* Urantówka and Mackiewicz 2017, entire; Tavares *et al.* 2004, pp. 230, 236–237, 239; Sick 1990, p. 112). Accordingly, we are correcting the scientific name of the species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) by changing the name as currently listed (*i.e.,* golden parakeet (*Aratinga guarouba*)) to the corrected species name (*i.e.,* golden conure or golden parakeet (*Guaruba guarouba*)).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2015–0019 or upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), in the List of Endangered and Threatened Wildlife under BIRDS, by:

■ a. Adding an entry for ''Conure, golden (=golden parakeet)'' in alphabetical order; and

■ b. Removing the entry for ''Parakeet, golden''.

The addition reads as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
BIRDS				
*	*	*	*	*
Conure, golden, (=golden parakeet).	*Guaruba guarouba*	Wherever found	T	41 FR 24062, 6/14/1976; 85 FR [Insert **Federal Register** page where the document begins], 4/23/2020; 50 CFR 17.41(c).[4d]
*	*	*	*	*

■ 3. Amend § 17.41 by revising paragraphs (c) introductory text and (c)(2)(ii) introductory text and adding paragraph (c)(2)(ii)(F) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) The following species in the parrot family: Salmon-crested cockatoo (*Cacatua moluccensis*), yellow-billed parrot (*Amazona collaria*), white cockatoo (*Cacatua alba*), hyacinth macaw (*Anodorhynchus hyacinthinus*), scarlet macaw (*Ara macao macao* and scarlet macaw subspecies crosses (*Ara macao macao* and *Ara macao cyanoptera*)), and golden conure (*Guaruba guarouba*).

* * * * *

(2) * * *

(ii) *Specimens held in captivity prior to certain dates:* You must provide documentation to demonstrate that the specimen was held in captivity prior to the applicable date specified in paragraph (c)(2)(ii)(A), (B), (C), (D), (E), or (F) of this section. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to the specified dates.

* * * * *

(F) For *golden conures:* July 1, 1975 (the date CITES entered into force with the ''golden parakeet'' (*i.e.,* the golden conure) listed in Appendix I of the Convention).

* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–07571 Filed 4–22–20; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 85, No. 79
Thursday, April 23, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–20–0037; NOP–20–03]

RIN 0581–AD75

National Organic Program (NOP); Request for Comment on Organic Livestock and Poultry Practices Economic Analysis Report

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comment.

SUMMARY: The USDA Agricultural Marketing Service (AMS) requests public comment on an Economic Analysis Report related to the Organic Livestock and Poultry Practices final rule (OLPP Rule), published on January 19, 2017, and the final rule withdrawing the OLPP Rule (Withdrawal Rule), published on March 13, 2018. The public comment process for the Economic Analysis Report is being conducted consistent with an Order of the United States District Court for the District of Columbia, which granted USDA's Motion to Remand a legal challenge to the Withdrawal Rule for purposes of clarifying and supplementing the record regarding the economic analysis underlying both the OLPP Rule and the Withdrawal Rule. (*See Organic Trade Association* v. *USDA;* Civil Action No. 17–1875 (RMC) (March 12, 2020), ECF No. 112).

DATES: Comments must be received by May 26, 2020.

ADDRESSES: You may submit comments on this document via the Federal eRulemaking Portal at *https://www.regulations.gov/.* Search for docket number AMS–NOP–20–0037; NOP–20–03. Comments may also be sent by mail to: Dr. Jennifer Tucker, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave SW, Room 2642-So., Ag Stop 0268, Washington, DC 20250–0268. Instructions: All submissions received must include docket number AMS–NOP–20–0037; NOP–20–03 or Regulatory Information Number (RIN): 0581–AD75. You should clearly indicate the topic to which your comment refers, state your position(s), and include relevant information and data to support your position(s). All comments and relevant background documents posted to *https://www.regulations.gov* will include any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jennifer Tucker, Ph.D., Deputy Administrator, National Organic Program, Telephone: (202) 720–3252. Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6524), authorizes the United States Department of Agriculture (USDA or Department) to establish national standards governing the marketing of certain agricultural products as organically produced to assure consumers that organically produced products meet a consistent standard and to facilitate interstate commerce in fresh and processed food that is organically produced. USDA's Agricultural Marketing Service (AMS) administers the National Organic Program (NOP) under 7 CFR part 205.

The Economic Analysis Report summarizes the agency's further review of the Regulatory Impact Analysis (RIA) for both the OLPP Rule (Final RIA) and Withdrawal Rule (Withdrawal RIA). The Economic Analysis Report includes findings that the Final RIA contained several material errors. The Withdrawal RIA corrected some of those errors, did not identify some of those errors and thus incorporated them in its analysis, and did not fully correct one of the errors. USDA seeks comment on the findings in the Economic Analysis Report and their impact on the Withdrawal Rule. The public comments will inform a final analysis, to be published in the **Federal Register** in the form of a second document later in 2020, explaining USDA's final conclusions pertaining to the Economic Analysis Report. The full Economic Analysis Report is included below.

On January 19, 2017 (82 FR 7042), AMS published the OLPP Rule. After delaying the effective date of the OLPP Rule (82 FR 9967, 82 FR 21677, and 82 FR 52643), AMS published the Withdrawal Rule on March 13, 2018 (83 FR 10775), which withdrew the OLPP Rule. AMS explained the withdrawal on the basis that, among other things, the Final RIA had incorrectly calculated the costs and benefits of the OLPP Rule and had wrongly concluded that the benefits of the rule exceeded the costs. AMS also published the Withdrawal RIA in support of the Withdrawal Rule that sought to correct for three identified errors in the Final RIA. In the Withdrawal RIA, AMS found that the projected costs of the OLPP Rule likely exceeded its benefits. As separate and independent bases for the Withdrawal Rule, AMS also concluded that it lacked the legal authority under the Organic Foods Production Act to promulgate the OLPP Rule and that there was no market failure in the organic industry sufficient to warrant the particular regulations established by the OLPP Rule.

In the fall of 2017, the Organic Trade Association (OTA) filed a lawsuit in the U.S. District Court for the District of Columbia, challenging AMS's delay of the OLPP Rule's effective date; OTA subsequently amended its complaint to challenge the Withdrawal Rule. On October 31, 2019, OTA filed a motion for summary judgment accompanied by several extra-record attachments, including a privately commissioned analysis of the Withdrawal RIA performed by Dr. Thomas Vukina, a consultant and professor of economics at North Carolina State University. In the course of reviewing Dr. Vukina's analysis, AMS independently discovered additional flaws in the Final RIA, which had inadvertently been carried through to the Withdrawal RIA.

In light of those flaws, on January 3, 2020, USDA filed a motion to suspend the summary judgment proceedings and requested voluntary remand. On March 12, 2020, the District Court granted that request. Subsequently, AMS completed its initial review of the flaws in the Final RIA and Withdrawal RIA and is now publishing the results of the review, *i.e.,* the Economic Analysis Report, in this document for public comment. AMS intends to publish its final analysis, as informed by public comment, in time to report back to the District Court by the court-ordered deadline of September 8, 2020.

AMS commissioned one of its economists, Dr. Peyton Ferrier, to conduct a thorough review of both RIAs

and to prepare the Economic Analysis Report cataloguing his findings. Dr. Ferrier was not involved in the administrative processes leading to the OLPP Rule or the Withdrawal Rule and therefore was able to provide an independent perspective on the integrity of the methodology and calculations underlying the prior rulemakings. The Economic Analysis Report describes his principle findings and appears below. AMS is seeking comment on this Report by May 26, 2020.

Economic Analysis Report: Peer Review of Regulatory Impact Analysis for the Organic Livestock and Poultry Practices Rule and the Withdrawal Rule

Table of Contents

Summary

On January 19, 2017, the Agricultural Marketing Service (AMS) promulgated the Organic Livestock and Poultry Practices Final Rule (OLPP Rule), (82 FR 7042), and published the associated regulatory impact analysis (Final RIA). AMS subsequently completed a rulemaking that withdrew the OLPP Rule, (83 FR 10775) (Mar. 13, 2018), and published the regulatory impact analysis in support of the withdrawal (Withdrawal RIA). This Economic Analysis Report (Report) describes a number of areas in which the Final RIA contained flaws in methodology and calculations that materially affected AMS's economic analysis of the costs and benefits of the OLPP Rule.

The Withdrawal RIA documented and sought to correct three of these errors: The incorrect application of the discounting formula; the use of an incorrect willingness to pay value for eggs produced under the new open access requirements; and the incorrect application of a depreciation treatment to the benefit calculations. This Report identifies four additional categories of errors in the Final RIA that were not detected or corrected during the rulemaking to withdraw the OLPP Rule and were carried forward into the Withdrawal RIA. Those errors are: Inconsistent or incorrect documentation of key calculation variables; an error in the volume specification affecting benefits calculations in two of three scenarios considered; the incorrect use of production values that do not account for increased mortality loss in the benefits calculations; and aspects of the cost calculations that resulted in certain costs being ignored, underreported, or inconsistently applied.

This Report also identifies additional issues related to the erroneous depreciation methodology applied in the Final RIA. First, the Final RIA contained errors in its treatment of depreciation of benefits. The Withdrawal RIA attempted to correct the error; however, it did not fully do so and therefore its final calculations were inaccurate. The Final RIA included another error related to depreciation of costs that was not previously identified and was carried forward into the Withdrawal RIA.

In addition to the material errors, there were minor errors in the Final RIA and the Withdrawal RIA. This Report describes three such minor errors that do not have a material effect on cost and benefit calculations.

Background

In April 2016 (81 FR 21956), AMS published the OLPP proposed rule pertaining to certain aspects of organic livestock production certified under the NOP. Among other provisions, the rule would have imposed stricter requirements for producers of organic eggs to provide layers with access to outdoor space and established stricter stocking density requirements for broiler producers. In the preliminary regulatory impact analysis (Preliminary RIA), AMS estimated that, despite the added costs of complying with these requirements, all existing broiler producers would become fully compliant with the new rule. On the other hand, AMS expected the rule to cause a large portion of organic egg producers to exit the industry. At the same time, because the organic egg industry had experienced high rates of production growth in the preceding years, AMS assumed that the organic egg industry would grow substantially throughout the five year period between the rule's date of publication and the date on which it required operations to become fully compliant. For these reasons, both the Preliminary and Final RIAs considered three alternative scenarios with different assumptions regarding both firm exit and entry (*i.e.,* industry growth). These scenarios and underlying assumptions about firm exit and entry were subsequently retained without change in the Withdrawal RIA.

As stated in the Final RIA (Passage 1, pages 6–7), these scenarios are:

- Scenario (A)—Full Compliance—''All producers remain in the organic market; Organic layer and broiler populations continue historical growth rates after the rule.''
- Scenario (B)—Entry and Exit—''50 percent of organic layer production in year 6 (2022) moves to the cage free market. Organic layer and broiler populations continue historical growth rates after the rule.''
- Scenario (C)—Entry and Exit, No Non-Compliant Entry—''50 percent of organic layer production in year 6 (2022) moves to the cage free market. There are no new entrants after publication of this rule who cannot comply.''

Following public comment on the Preliminary RIA, AMS published the OLPP Rule and Final RIA in the **Federal Register** in January 2017. Between the Preliminary RIA and the Final RIA, AMS changed two key assumptions. First, based on updated data, AMS

revised its expected growth rate of organic egg production upward from 2 percent to 12.7 percent, a change that would directly impact Scenarios A and B, which assume continued industry growth.

Second, in the Preliminary RIA, AMS had previously applied a depreciation treatment to both costs and benefits calculations whereby the expected annual costs and benefits for egg producers were reduced by one-thirteenth (1/13) each year until they reach zero in the thirteenth year. This depreciation treatment differs from the commonly understood accounting concept of depreciation that converts the loss in value of a durable asset that is only infrequently purchased (*i.e.,* tractor, barn, truck) to an annual cost. Instead, the depreciation treatment used by AMS in the Preliminary RIA was intended to adjust the costs of incumbent producers who were pre-committed to producing in the organic industry (due to already owning a layer house) for the period necessary to recover the value of their industry-specific assets. After that point, the costs and benefits realized by these producers under the OLPP Rule were no longer deemed to be attributable to the OLPP Rule and were not included in the costs or benefits calculations of the analysis. The justification for the application of this depreciation treatment was that, as the value of a producer's industry-specific assets become fully depreciated, that producer would no longer be treated as pre-committed to the industry so that that producer's costs and benefits were no longer, strictly speaking, due to the OLPP Rule rather than the producer's independent decision to stay in the organic market notwithstanding the OLPP Rule. In the Preliminary RIA, AMS based its expected share of production that becomes fully depreciated each year on Internal Revenue Service (IRS) schedules allowing for 13 years of depreciation for specialized farm production structures (see Non-Material Errors (3)). In the Final RIA, AMS removed the depreciation treatment from its cost calculations, but not from its benefit calculations. In the Withdrawal RIA, AMS acknowledged that it should also have removed the depreciation treatment from its benefit calculations as well.

In March 2018, AMS published the Withdrawal Rule, after notice-and-comment, and the Withdrawal RIA. The Withdrawal RIA described three errors in the Final RIA, which were: (1) The incorrect application of the discounting formula, (2) the use of an incorrect willingness to pay value for organic eggs produced under the OLPP Rule, and (3) the application of depreciation to the values of calculated benefits. These three errors pertained only to the calculation of benefits and did not affect the analysis of costs described in the Final RIA. With the Withdrawal RIA, AMS also published a spreadsheet that contained 10 pages that related Final RIA calculations to intermediary components of the benefits calculation as modified in the Withdrawal RIA. This document (Withdrawal Workbook) did not include detailed documentation to allow simple cross-referencing of some key figures with the cost and benefit values presented in the Final RIA or the Withdrawal RIA. Appendix A provides that cross-referencing. Moreover, the Withdrawal Workbook did not include new calculations for benefits that corrected all three errors identified within the Withdrawal RIA, despite the Withdrawal RIA presenting values intending to correct all identified errors. For this reason, the benefit values in Table C of the Withdrawal RIA do not correspond to the benefit values calculated in sheets 6, 7, and 8 in the Withdrawal Workbook.

The OLPP Rule's egg producer requirements did not become fully effective until the sixth year following the rule's publication to give producers time to come into compliance.[1] Both RIAs assumed that costs of the OLPP Rule (other than administrative costs, which are ignored in the analysis) would first be accrued in the third year following the Rule's publication by producers who would need to acquire land to meet the OLPP Rule's space requirements. The Final RIA assumed that benefits would not accrue until the sixth year after publication, when full compliance was required. These assumptions were retained in the Withdrawal RIA. Since annual growth was assumed to be 12.7 percent in both RIAs as well, firm entry and exit over the period between the rule's year 1 publication and year 6 full compliance date would potentially have a large effect on measured costs and benefits. In general, differences in the assumptions regarding firm entry and exit can dramatically affect the calculations of benefits and costs because these values are tied to the number of eggs being produced each year. Certain errors described by this Report pertain only to flaws in the analysis of one or two of the three scenarios.

Errors Detailed in This Report

Below are the descriptions and analyses of the errors found in the Final RIA and the Withdrawal RIA.

1. Discounting Error in the Final RIA

As explained in the Withdrawal RIA, the Final RIA incorrectly applied the discounting formula to the future benefits reported in the Summary Table (pages 6–7) and Table 1 (pages 8–11). The OLPP Rule considered costs and benefits over a period of 15 years. With discounting practices used by economists, benefits or costs occurring sooner are more valuable than those occurring later. To compare costs or benefits across time, economists apply a discounting formula that adjusts the value of future benefits and costs to their present value equivalent. Guidance to Federal agencies[2] describes the rationale for discounting and methods of its application in detail. Specifically, to convert future costs and benefits to their present value, they are to be multiplied by $1/(1 + r)^t$ where t is the number of years in the future that the benefits or costs occur and r is the discount rate, which the guidance recommends to be applied at the 3 and 7 percent rates. Benefits or costs that have been adjusted in this way are called (discounted) present values.

A total present value of benefits (TB) can then be calculated by simply summing the present values of benefits across years. Denoting the value of benefits in year t as B_t, the correct formula for TB over the 15 years considered in the rule is:

$$TB = B_1 \times \frac{1}{(1+r)^1} + B_2 \times \frac{1}{(1+r)^2} + B_3 \times \frac{1}{(1+r)^3} + \cdots + B_{15} \times \frac{1}{(1+r)^{15}}$$

[1] To avoid confusion, this Report uses year 1 to refer to the publication date and year 6 to the full compliance date. The Final RIA and Withdrawal RIA use 2017 as year 1 and 2022 as year 6 since the OLPP Rule was published in 2017, became effective one year later, and had a five-year regulatory phase-in period.

[2] Office of Management and Budget Circular A–4, dated September 17, 2003, provides guidance on best practices associated with cost-benefit analysis to Federal agencies undertaking rulemaking.

However, in the Final RIA, an incorrect formula was used to calculate total benefits. In the case where r is 3 percent, that formula, denoted $TB_{Incorrect,r=0.03}$, was:

$$TB_{Incorrect,r=3\%} = B_1 \times \frac{1}{(1+r)^1} + B_2 \times \frac{1}{(1+r)^2} + B_3 \times \frac{1}{(1+r)^2} + \cdots + B_{15} \times \frac{1}{(1+r)^2}$$

In this case, the exponent in the denominator for all periods after the second year was incorrectly set to 2.

A different error was present for the total benefits formula in the case where r is 7 percent, denoted $TB_{Incorrect,r=7\%}$ below as:

$$TB_{Incorrect,r=7\%} = B_1 \times \frac{1}{(1+r)^1} + B_2 \times \frac{1}{(1+r)^1} + B_3 \times \frac{1}{(1+r)^1} + \cdots + B_{15} \times \frac{1}{(1+r)^1}$$

In this case, the exponent in the denominator was incorrectly set to 1 for all periods.

This Report agrees with both the Withdrawal RIA's assessment and correction of the discount rate error in the benefits calculations of the Final RIA.

2. Willingness To Pay Value Was Too High in the Final RIA

The Final RIA contained an error that made the willingness to pay (WTP) value used in the benefits calculations too high. Specifically, the Final RIA drew upon an inappropriate estimate for the value of eggs produced with the new outdoor access requirements. This error was identified and corrected in the Withdrawal RIA.

The Final RIA drew primarily upon a 2013 article by Yan Heng, Hikaru Hanawa Peterson, and Xianghong Li involving a choice experiment conducted on 924 surveyed consumers.[3] In the experiment, consumers were asked to choose between eggs that differ in terms of the growing conditions of the laying hens. Price and growing conditions were adjusted across choices to optimize the ability to identify consumers' value for eggs produced under different growing conditions. The study applied a stated preference method of estimating the WTP for eggs that now meet the new outdoor access requirement in the OLPP Rule. In brief, the Final RIA focused on the article's text (Passage 2, page 419) stating:

> Our estimates suggest that the majority of consumers are willing to pay an average premium of $0.21 to $0.49 per dozen for eggs produced in a cage-free environment with outdoor access or without induced molting.

Based on this text, the Final RIA assigned a premium value per egg to the outdoor access characteristic of $0.49 on the high side and of $0.21 on the low side. However, the Withdrawal RIA notes that under existing rules, organic eggs are already required to be produced cage-free. The Withdrawal RIA notes that the actual benefit attributable to the OLPP Rule should be comprised of only the portion of the WTP described by Heng, Peterson, and Li (2013) that may be ascribed to the addition of new outdoor access requirements to existing organic egg production requirements.

Table 8 (''Statistics of Simulated WTP Distributions'') of the Heng, Petersen, and Li (2013) study provides estimates of the WTP for eggs produced by hens under the new outdoor access requirements (Passage 3, page 429), explaining that in a subsample of consumers that received additional information regarding the environmental benefits of cage-free systems and outdoor access:

> 89% (59%) of respondents were willing to pay a premium for eggs from hens given outdoor access (more space), with a mean premium of $0.25. In [a second] subsample that did not receive the additional information, the mean premium for outdoor access (more space) was lower, at $0.16, with 81% (43%) of those willing to pay a premium.

To correct for this error, the Withdrawal RIA therefore replaced the Final RIA's high WTP estimate of $0.49 and its low WTP estimate of $0.21 with new high and low WTP estimates of $0.25 and $0.16 (with all dollar values referring to price per dozen eggs).

This Report finds that the Withdrawal RIA corrected the WTP value error in an appropriate manner. We note in (2) of our Non-Material Errors section, however, that the correction contained a minor error that did not have a material effect on the calculations.

3. Depreciation Errors

A. Depreciation of Future Benefits Error in the Final RIA

The Preliminary RIA applied the depreciation treatment to both the benefit and costs calculations. The Final RIA applied the depreciation treatment only to the benefits calculations, not to costs. The Final RIA (Passage 4, pages 111–112) states that:

> For each cohort, AMS applied the full compliance costs for each year after the rule must be fully implemented. These recurrent costs are incurred through year 15, relative to the without-regulation baseline. Given the uncertainty in these cost estimates and forecasting impacts in the organic egg market, *AMS is presenting estimates without depreciation* to capture the full range of potential impacts. . . . . While AMS is presenting the costs associated with this methodology as the primary costs estimates, we discuss the rationale for *an alternative methodology* based on linearly reducing costs over the depreciation time period for poultry houses.
>
> The following description of applying the depreciation to the cost estimates would yield a lower cost estimate. This also *assumes that costs only accrue to legacy organic producers*. . . . . [italics added]

The ''alternative methodology'' text refers to the method of applying the depreciation treatment while computing cost calculations. The ''AMS is presenting estimates without depreciation'' text indicates that costs calculations in the Final RIA did not incorporate the depreciation treatment as they had in the Preliminary RIA. Finally, the ''assumes that costs only accrue to legacy organic producers'' text explains that the inclusion of the discussion regarding depreciation treatment as an alternative rationale was motivated by the specific assumption that costs and benefits only arise from the actions of legacy producers and only to those producers until their capital investments under the prior regulatory regime were fully depreciated.

[3] The article is titled ''Consumer Attitudes toward Farm-Animal Welfare: The Case of Laying Hens'' and published in the *Journal of Agricultural and Resource Economics*,38(3):418–434 (2013).

Notwithstanding this discussion, the Final RIA states in footnotes 92 and 94 that the depreciation treatment *was* being applied to benefits calculations because it had also been applied to costs. Specifically, Footnote 92 (Passage 5, page 97) states:

> The 13 year period accounts for the time needed to fully depreciate layer houses. We use a 13 year timeframe to align with the methodology used to calculate the costs, below [in footnote 94].

In short, despite concluding at pages 111–112 of the Final RIA that it would not apply the depreciation treatment to costs, footnote 92 explained AMS's application of the depreciation treatment to its benefits calculations in the Final RIA as a way to be consistent with an application of the depreciation treatment to costs.

The Preliminary RIA included cost and benefits calculations in which the 13-year depreciation treatment was both applied and not applied. For instance, Table 9 (pages 126–127) shows layer costs as falling in a range each year. The upper limit to the range is constant and reflected the estimated costs without the depreciation treatment. For layers, this is $28,160,000. The lower limit to the range is the depreciated value and it falls by one-thirteenth of the $28,160,000, or $2,166,000, each year.

The Final RIA's removal of the depreciation treatment from costs appears to have been intended to be associated with its same removal from the benefits calculations as well. The Withdrawal RIA (Passage 6, page 11) states that:

> In initial drafts of the OLPP final rule RIA, AMS applied a straight-line reduction in both costs and benefits over time to reflect the economic life of egg and broiler structures. Both benefits and costs declined every year as a fraction of the industry structures became fully depreciated and reached the end of their economic lifetimes.

Footnotes 92 and 94 of the Final RIA show that the depreciation treatment was not removed from the benefits calculations in that analysis. The Withdrawal RIA (Passage 7, page 11) states as much in the text:

> Costs were instead estimated to be constant over time, but benefits were still straight line reduced over time. The same reasoning should have been applied to the benefits to make the calculation of costs and benefits consistent.

The Withdrawal RIA calculated new values for benefits without the straight-line depreciation treatment applied. This Report concurs with the Withdrawal RIA's assessment that the Final RIA contained an error in its inconsistent application of the depreciation treatment to benefits but not costs. However, as we describe in Section 3.B to follow, the Withdrawal RIA does not fully address that error.

B. Depreciation Treatment Not Fully Removed From Benefits Calculations in the Withdrawal RIA

The Withdrawal RIA attempts to correct the depreciation error in the Final RIA by removing the treatment of depreciation from the calculation of benefits, but it failed to do so entirely.[4] This new benefit calculation has the following five steps:[5]

i. Estimate the number of eggs produced that would newly have outdoor access, as defined by the OLPP Rule, after the Rule takes effect in year 6 (E_{y6});

ii. Multiply E_{y6} by the WTP for the new outdoor access to obtain the benefit value by year;

iii. Apply time discounting to each year's benefits (at either the 3 or 7 percent rate);

iv. Sum the benefits over years 6 to 13; and

v. Convert the summed discounted benefits to an annual benefit over 15 yearly periods.[6]

The number of eggs projected to be produced after the Rule took effect depends on which of the three scenarios, described in the Introduction to this Report, is being considered. Several omissions in the Preliminary and Final RIAs stymie the independent review and replication of key figures provided in the Withdrawal RIA and the Withdrawal Workbook to this Report. Those concerns are described in Section 5 of this Report. To assess the Withdrawal RIA corrections, one can recover the values for E_{y6} in the Withdrawal Workbook by dividing the year one benefit values by $0.21 (in the low case) and $0.49 (in the high case). Table 1 provides the E_{y6} values and the location where they are stated for each scenario.

TABLE 1—PRODUCTION ESTIMATES IN THE WITHDRAWAL WORKBOOK

Scenario	E_{y6}	Withdrawal workbook location
Scenario A	355,289,326	Sheet 6—Production with newly acquired outdoor access.
Scenario B	97,708,552	Sheet 7—Production with newly acquired outdoor access.
Scenario C	89,361,091	Sheet 8—Inferred from Values of Undiscounted Benefits.[7]

The Withdrawal RIA generates benefit values (*i.e.,* those realized in year 6 of the analysis period when the requirement for full compliance takes effect) based on the WTP values of $0.16 and $0.25 per dozen eggs. The benefits used in the Withdrawal RIA should be constant across all years and continue into year 14 and 15 since they are no longer subject to the depreciation treatment. However, in the implementation of its corrections, the Withdrawal RIA used the year 6 benefit value from the Final RIA to determine the constant annual benefit value with the depreciation treatment removed. Since that year 6 value incorporated 5 periods of depreciation treatment pursuant to the erroneous depreciation treatment, the value is five-thirteenths (or 38.4 percent) less than the value the Withdrawal RIA should have used.

For this reason, while this Report agrees with the Withdrawal RIA's assessment of the Final RIA's error in depreciating benefits as described in Section 3(A), it finds that the Withdrawal RIA retained a benefits calculation affected by the flawed application of the depreciation treatment methodology and thus failed to fully correct for that error.

C. Depreciation Treatment Not Fully Removed From Scenario A Cost Calculations in the Withdrawal RIA

Although the Final RIA stated that it did not apply the depreciation treatment to the cost calculations, an artifact of the

[4] Other sections to this Report evaluate the treatment of depreciation, production growth, and firm exit from the industry in their totality.

[5] Note that these steps are similar to those described in Footnote 94 of the Final RIA with three key differences. First, straight-line depreciation treatment is not applied. Second, discounting is applied. Third, total discounted payments are converted to their annual benefit values.

[6] This conversion was done using the Microsoft Payment function. The formula for the annual benefit, AB, is a function based on *r;* the discount rate, *N;* the number of years (*i.e.,* 15); and *TB,* the summed discounted benefits. The value is given as: $AB = (TB \times r)/(1-(1+r)_{-N})$.

[7] Sheet 8 erroneously contains the same values as Sheet 7 for the benefits in its top half. From its bottom half, the production level of 89,361,091 can be inferred by dividing the first year undiscounted benefits value of $18,765,829.11 by 0.21.

depreciation treatment actually was retained in some of its cost calculations. Table 15 on page 116 of the Final RIA reported annual costs for Scenario A. Layer houses were assumed to be comprised of the same ratio composition as described (*i.e.,* 70 percent aviaries, 30 percent non-aviaries). Table 15 of the Final RIA shows that for layer houses greater than 4-years old, costs are $3.81 million in year 3 (representing one-time land-acquisition costs) and $24.29 million from years 6 to 15; for 2-years old layer houses, costs are $6.62 million from years 6 to 15; for 1-year old layer houses, costs are $13.23 million. Page 111 of the Final RIA assumed that 4-year old houses represent 64 percent of production facilities, 2-year old houses represent 24 percent of production facilities, and 1-year old houses represent 12 percent of production facilities. Underlying AMS calculations (described in Section 6 of this Report) show that the sum of total (physical) costs and lost revenue is $55.13 million under Scenario A. Table 2 shows the decomposition of producers' costs to the OLPP Rule by age of operation.

TABLE 2—DECOMPOSITION OF PRODUCERS' COSTS TO THE OLPP RULE BY AGE OF HOUSE

Age of house	Share of houses (%)	Year 3 costs (million)	Years 6 to 15 costs (million)
Older than 4-year-old houses	64	$3.81	$24.29
2-year-old houses	24	$0	$6.62
1-year-old houses	12	$0	$13.32
Total	100	$3.81	$44.13

AMS's removal of the depreciation treatment from its costs calculations in the Final RIA implied that the age of facilities should have no bearing on annualized calculations of costs. However, in Table 15 of the Final RIA, the depreciation treatment was applied for four years for the 64 percent of houses that were more than 4 years old. Rather than using $35.29 million (= 64% × $55.13 million) for this class of houses, the number is $24.43 million (= 64% × (9/13) × $55.13 million).[8] Table 15 applied no similar depreciation to 2- and 1-year old houses whose values correspond to their respective share of the market multiplied by $55.13 million. The calculation for the 4-year old houses in Table 15 reflects that the depreciation treatment was not fully removed from the cost analysis.

This Report finds that the Withdrawal RIA's downward adjustment of costs by 4/13th for houses that are four years old or greater was inappropriate because, first, it applies to all costs (*i.e.,* feed, labor, etc.), not just the industry-specific assets that depreciate over time and, second, it is inconsistent with the ordinary depreciation of assets applied elsewhere in the analysis (see Final RIA, page 103). In this case, the downward adjustment reduced layer costs by 18.2 percent for Scenario A.

4. Inconsistent or Incorrect Documentation of Underlying Assumptions in the Final RIA

This section notes instances where the Final RIA contained conflicting or omitted data on key figures used in calculations and inconsistent descriptions of certain scenarios regarding entry and exit. Many of these omissions or inconsistencies interact with errors previously discussed in this Report. This Report finds that, due to these inconsistencies and omissions, a knowledgeable external reviewer would have had substantial difficulty replicating the key findings of the Final RIA.[9]

A. Baseline Egg Production Values Used in Calculations Differ From Those Described in Text

In the Final RIA, AMS assumed the organic egg industry would continue at its historical growth of an average of 12.7 percent per year during the 6 years following the publication of the OLPP Rule until full implementation of the Rule in 2022. Table 3 of the Final RIA (page 46) states the baseline quantities of 325.83M doz. eggs in 2016, 367.21M doz. in 2017, and 667.63M doz. in 2022. The Withdrawal Workbook projected that 390.83M doz. eggs would be produced in 2017. Footnote 89 (page 96) and Footnote 94 (page 97) of the Final RIA alternatively list 710.58M doz. in 2022. Both Table 3 of the Final RIA and Footnotes 89 and 94 of the Final RIA reflect the assumption of 12.7 percent annual industry growth, but because the two sets of numbers have different starting values, the Final RIA baseline production figures in Table 3 on page 46 are 6.4 percent lower than the baseline production figures used in the calculations in footnotes 89 and 96 in every year, without any explanation for that difference. The 390.83M doz. eggs figure in the Withdrawal Workbook appears to be based on 14,087,500 organic laying hens reported in the AMS Weekly USDA Certified Organic Poultry and Eggs Report first reported for November 15th 2016.[10] In each period, organic laying hens produced 24.77 dozen eggs per year, a figure that is not documented explicitly in the Final RIA (See Section 4.B).[11]

This Report notes that reproduction of the Final RIA calculations would be very difficult without the actual baseline production estimate and this number would be very difficult to ascertain from the Final RIA in light of the inconsistent figures and omissions described above.

B. Baseline Egg Production Figures Used in Final RIA Differ From Those in Cited Market News Reports

Page 17 of the Final RIA (Passage 8) states:

In April 2016, AMS Market News reported 14 million organic layers currently in production.

[8] The $24.43 Million figure is stated in cell F29 of the ''Stay in Organic'' Worksheet of B-Layer, along with intermediary steps in the equations. The $24.29 Million figure in Table 2 is stated in the page 1 of the Withdrawal Workbook. This Report cannot explain the discrepancy in values.

[9] OMB Circular A–4 providing guidance on Federal rule-making states (page 17): A good analysis should be transparent and your results must be reproducible. You should clearly set out the basic assumptions, methods, and data underlying the analysis and discuss the uncertainties associated with the estimates. A qualified third party reading the analysis should be able to understand the basic elements of your analysis and the way in which you developed your estimates.

[10] The 14,087,500 figure is, itself, rounded to 14,000,000 in the analysis.

[11] One can only infer the 24.77 dozen eggs per year value from the Withdrawal Workbook.

This statement is incorrect. AMS Market News reported a count of 11,350,500 organic layers in each of the four reporting weeks in April of 2016 in its ''Weekly USDA Certified Organic Poultry and Eggs'' reports. It was not until November 14, 2016, that the AMS Market News report began reporting 14,087,500 organic layers.[12] The highest level of organic eggs recorded as being produced between April 2016 and January 2017 was 207,497 30-dozen cases, or 6,224,910 dozen per week. Based on 52.143 weeks per year, this corresponds to 324,584,3593 dozen egg produced per year for an average of 276.49 eggs, or 23.0406 dozen, per laying hen per year. Separately, the National Agricultural Statistics Service (NASS) Chickens and Eggs Summary for 2015, which includes organic and conventional eggs, lists the average number of eggs per layer as 276, or 23 dozen, in 2015 and 276.6, or 23.05 dozen, in 2016. In contrast, based on AMS's calculation in Tables 6, 7, and 8 of Withdrawal Workbook,[13] AMS assumed, without explanation, that the average annual dozen eggs laid per bird was 24.7708. This higher production value increased the estimated number of eggs produced by 7.51 percent over the estimate in the contemporaneous Market News Report.

This Report finds that the use of the 24.7708 dozen eggs-per-layer assumption was inappropriate for two reasons. First, the data source of egg-per-layer value used is poorly documented and significantly exceeds other readily available data collected by USDA at the national level. Second, it deviates from the AMS Weekly Report data relied upon in the Final RIA for the layer numbers. It is generally considered a best practice to use a single, consistent data set because doing so limits the possible ways that biases arising from methodological differences and data-collection error may influence the analysis.

C. Separate Descriptions of Scenario C in the Final RIA Do Not Match

The Final RIA calculates costs and benefits under three sets of assumptions regarding the entry of operations to the industry (*i.e.,* industry growth at a 12.7 percent rate in the five years preceding the full compliance date) and the exit of operations when firms must become compliant in year 6. This Report previously described Scenario C based on descriptions from pages 6 and 7 of the Final RIA. However, pages 98 and 118 of the Final RIA include an alternative description of Scenario C (labeled hereafter as Scenario C.2, to distinguish it from the description of Scenario C described in the Summary Table on pages 6–7 in the Final RIA) that has an important difference affecting the cost and benefit calculations applicable to that scenario. Specifically, Scenario C.2 is described on page 98 (Passage 9) as assuming that:

> . . . 50 percent of current production would exit the organic market in 2022 and *that there would be no new entrants until that time.* [italics added]

Page 118 seems to reflect the same description stating:

> We base costs on . . . the layer population in 2017, *and no new entrants to the organic egg market during the implementation period for this rule.* [italics added]

However, page 118 later states that:

> In addition, we expect that *any producers who cannot comply with this rule will not enter the organic egg market during the implementation period.*

The page 98 quote assuming ''no new entrants until [2022]'' and the page 118 quote assuming ''no new entrants . . . during the implementation period [through 2022]'' support the description in Scenario C.2. The second quote on page 118, suggests, however, that entry continues but only by compliant producers. Page 7 of the Final RIA describes Scenario C similarly to the description in the second quote on page 118, which suggests that entry (*i.e.,* growth) continues but that ''there are no new entrants after publication of this rule who cannot comply'' with the OLPP Rule. The he ''who cannot comply'' language is superfluous unless there are also entrants who can comply. If entry (*i.e.,* growth) continues as assumed by Scenario C, 711 million eggs are projected to be produced in year 6 and the share of production that is already compliant exceeds 50 percent. If no entry occurs as assumed by Scenario C.2 (*i.e.,* no growth), 390M eggs are produced in year 6 and the share of production that is already compliant is less than 50 percent. As we discuss in Section 5, cost and benefit calculations for Scenario C depend only on the number of non-compliant producers that become compliant as a result of the OLPP Rule in year 6. If a large number of compliant producers enter the industry after the rule is announced, then the share of industry that is non-compliant in year 6 becomes smaller. In Section 5, this Report describes how Scenario C implies that less than 50 percent of operations are non-compliant in year 6 so that the 50 percent share of producers that AMS assumes will remain in the industry after the OLPP Rule takes effect would all already be compliant. For this reason, the discrepancy between the Scenario C and Scenario C.2 descriptions has a direct impact on cost and benefit calculations.

This Report notes that confusion over the exact assumptions involving Scenario C is likely to have prevented external reviewers from replicating key cost and benefit calculations, especially when this problem occurs in conjunction with other documentation errors surrounding baseline production values.

D. Number of Eggs With New Outdoor Access Not Stated for Two of Three Scenarios

Neither pages 97 and 98 of the Final RIA nor any other section of the Final RIA states the number of eggs that are subject to the OLPP Rule (E_{y6}) in Scenario B and C. While the E_{y6} value of 97,708,552 for Scenario B was subsequently provided later in the Withdrawal Workbook, the Scenario C value of 89,361,091 is not explicitly stated and can only be inferred from calculations in the tables. See Sections 5.G and the footnote to Table 1 of this Report for discussion. While these omissions do not represent errors in the calculations unto themselves, they would have, especially in conjunction with other errors mentioned in this section, severely hampered the ability of external reviewers to replicate and examine key calculations regarding both the benefit and cost calculations of the Final RIA.

E. Benefits Values Reported in Summary Tables Do Not Match the Text

The Summary Table (pages 6–7) and Table 1 (pages 8–11) of the Final RIA present benefit calculations that do not match the descriptions of those calculation on pages 97 and 98 (Passage 10). Specifically, Scenario A benefits:

> ''. . . range between $13.77 million to $ 32.1 million annually with a mean value of $23 million over a 15-year period.''

Scenario B benefits:

> ''. . . range from $3.79 million to $8.84 million per year''

Scenario C benefits:

> ''. . . range from $6.93 million to $16.17 million per year.''

In contrast, the Summary Table and Table 1 list Scenario A benefits at $16.3 to $49.5 million, Scenario B benefits at

[12] The AMS Market News report adjusts organic egg production figures only every month or so.

[13] Specifically, 24.7708 Eggs Per Layer is the ratio of ''Eggs'' to ''Layers #'s'' for each year except for year 4. As explained in the section on Non-material Errors (1.B), the year 4 Eggs value likely reflects a transposition error.

$4.5 to $13.8 million, and Scenario C benefits at $4.1 to $12.4 million.

The Summary Table and Table 1 show the sum of benefits to which discounting (which had been done improperly) and the depreciation treatment have been applied and which was then converted to an annualized benefit using the Microsoft Excel Payment (PMT) function (see footnote 6). The page 97 text, however, presents the average annual benefits to which the depreciation treatment but not discounting had been applied. Also, the page 97 values do not annualize the total benefit using the Payment function, but instead sum the yearly benefits and then divide that sum by the total number of years considered, 15. The Final RIA does not present the benefit values stated in the Summary Table and Table 1 elsewhere in the document, nor does it describe the function used to convert total benefits to an annualized figure. These discrepancies would likely have prevented a knowledgeable reader from independently replicating the AMS calculations.

F. Costs Estimates for Scenario A in Final RIA Text Are Inconsistent

Page 110 of the Final RIA (Passage 11) states:

> For the organic egg sector, AMS estimates that the costs of this rule will average $15 million to $21.9 million annually, over 15 years, if all producers comply (the discounted annualized estimated costs are $24.7 million to $27.5).

These costs align with the cost figures in the Summary Table and Table 1 for Scenario A only. Note that across all the scenarios considered, the discounted annualized estimated costs of the broiler rule are unchanged at $3.541 million at the 3 percent discount rate and $4.092 million at the 7 percent discount rate, figures reflected in the last two columns of Sheet 1 in the Withdrawal Workbook. That same sheet shows that the sum of the layer and broiler cost components of the rule is $31.036 million at the 3 percent level and $28.699 million at the 7 percent level. These figures correspond to the Summary Table (pages 6–7), Table 1 (pages 8–11), and Table 15 (page 116) of the Final RIA.[14]

In contrast, pages 111–112 (Passage 12) of the Final RIA states:

> If all currently certified organic egg producers comply with this rule and the organic production continues to grow at 12.7 percent each year, we estimated that the annual cost of the rule is $32.3 million ($17 million at 7 percent discount; 24.2 million at 3 percent discount.)

The preface indicates that this passage also describes Scenario A but the figures do not match those previously stated, any of the figures found in Summary Table, Table 1, or Table 15 of the Final RIA, or the figures presented in the first three sheets of the Withdrawal Workbook.[15] [16]

G. Transposition Error Likely Affected Scenario C Benefit Calculation in Final RIA

The number of eggs used in Scenario C in the Final RIA should likely have been 88,822,332 rather than 89,361,091. The value 88,822,332 is one-eighth of the total number of eggs produced after 5 years of growth at the 12.7 percent rate, or ¼ × (24.77083335 × 14,343,051) where 24.77083335 is the number of dozen eggs produced per layer annually and 14,343,051 is half of 28,686,102, the number of layers after 5 years of growth. The incorrect value of 89,361,091 (= ¼ × 357,444,364) eggs used in Scenario C corresponds with the incorrect substitution of 14,*430,050* for 14,*343,051.* The italicized material suggests where a transposition error likely occurred, an error that carried through from the Final RIA to the Withdrawal RIA.[17]

H. Poor Justification for the General Specification of Scenario B in Final RIA

Scenario B in the Final RIA made the assumption that between the time the rule was published in 2017, and five years later, when full compliance was required, industry production would grow at a 12.7 percent annual growth rate. This rate predicted industry growth of 81.8 percent from year 1 to year 6.[18] Then, scenario B assumes that after 5 years of such growth, 50 percent of firms would exit the organic egg industry. Because the ratio of producer types stays constant, the scenario implies that half of the producers who entered the industry after the rule was published in year 1 would then leave the industry at the compliance date. Under a modest assumed level of industry growth, this specification might be inconsequential. However, given the high assumed rate of production growth (81.8 percent), this specification implies that a production volume equal to 40.6 percent of the baseline production level both enters and departs the organic egg industry over the span of five years with full knowledge of the regulatory requirements expected to cause the departure of half of the market upon the compliance date. Page 47 of the Final RIA seems to preclude this possibility (Passage 13), stating:

> After publication of the rule, AMS projects continued entry into the organic egg market (see Table 3). The implementation dates of the rule as drafted would give those operations—certified after the publication of the rule but prior to 3 years after publication—5 years to comply. This is intended to provide additional time to producers who had intended to enter organic production near the time this rule is published to prepare land to meet the organic requirements (the required preparation time lasts three years). Given that the proposal was published early in 2016, the majority of new entrants from publication (2017) until three years later (2020) would be aware of the new requirements and construct facilities that comply with the outdoor space requirements. *Because there is no economic rationale for a producer to incur the licensing and construction expenses associated with organic production, only to be out of compliance within a few years, late entrants into the market are assumed to comply.* However, in the cost estimates below, AMS considered that there may be new entrants up until full implementation for layers and that there may be costs to these entrants. *We believe this could significantly overestimate the costs,* but are providing this to capture a range of potential outcomes given uncertainties in the underlying assumption.

In Passage 13, AMS states that it assumes that all late entrants (*i.e.,* those entering the industry after the rule is published) would be compliant with the new rule because there is ''no economic rationale'' to believe that they would not be. However, by allowing for growth in non-compliant operations, particularly aviaries, within the underlying costs calculations, AMS assumed that such firms continue to enter. The implication of AMS's later statement that the inclusion of ''new [non-compliant] entrants . . . could significantly overestimate the costs'' would only have the effect of increasing costs in the final calculations is misleading because a higher number of non-compliant operations moving into compliance

[14] Similarly, page 114 also states that ''[i]n summary, the average annual costs for the organic poultry sector are estimated to range from $17.4 to $24.7 million annually over 15 years.''

[15] The Withdrawal RIA made no corrections to the cost calculations in the Final RIA. For this reason, an error in the Final RIA cost calculations extends into the Withdrawal RIA as well.

[16] Pages 121–23 of the Final RIA consider Scenarios B and C together, with Table 16 (page 122) corresponding to Scenario C and Table 17 (page 123) corresponding to Scenario B.

[17] The Excel File titled ''C–OLPP All Costs Benefits FINAL'' contained the sheet ''Benefits—cage-free no entry'' forming some of the calculations in Sheet 8 of the Withdrawal Workbook. In this Excel file, the value of 357,444,364 eggs did not have an underlying formula or source associated with it, but the 89,361,091 value for the number of eggs that entered the benefits equation was defined as ¼ of that value.

[18] This rate of growth is substantially larger than the 2 percent growth rate assumed in the preliminary RIA and is explained in footnote 131 on page 126 of the Final RIA as reflecting new data.

increases the size of the estimated benefits. Within the structure of AMS cost and benefit calculations, operations that are already compliant with the rule in year 6 do not create have new costs to become compliant, nor do they create any new benefits. As described in Section 5, if all entrants to the industry after year 1 are compliant with the new outdoor access requirement, then greater than 50 percent of operations are already compliant in year 6 when AMS assumes that the 50 percent of presumably non-compliant operations leave the industry. This suggests that there would be no new benefits and no new costs if only compliant firms enter the industry before year 6 but after the OLPP Rule's publication.

Given the costs and time for firms to enter the organic industry, this Report finds that AMS's assumption that non-compliant operations continue to enter the industry in the period after the OLPP Rule's publication date but before its compliance date is not well-justified.

5. Error in the Volume Specification Affecting Benefits Calculations in Two of Three Scenarios

In the Final RIA, AMS stated that the outdoor access requirement established by the OLPP Rule for organic egg production is a ''credence good'' because it is a characteristic that cannot be independently verified by the consumer at the time of consumption and therefore requires trust in a label to ascertain that the quality characteristic is present. AMS did not specify how consumers of compliant eggs know that the layers of these eggs have open access to the outdoors, whether operations advertise their eggs as having that characteristic, or whether consumers of such eggs pay a premium (above the ordinary organic premium) for eggs with this characteristic. The presence of such premiums would likely affect the content of the RIA. Regardless of these mechanisms, AMS assumed that only organic eggs that did not previously have the outdoor access production characteristic and now acquired it as a result of the OLPP Rule would generate new benefits for consumers.

On page 27 of the Final RIA (Passage 14), AMS wrote:

> In response to the descriptions in public comment, AMS is modifying the estimated proportion of organic operations that have adequate land to comply with this rule. In the proposed rule, we estimated this could be 50 percent of organic egg production. As discussed above, AMS is assuming that all aviary operations, which account for an estimated 70 percent of organic egg production, would need to acquire additional land. Based on public comments, we are also projecting that a portion, 17 percent, of single-story (non-aviary) operations, which account for an estimated 5 percent of all organic egg production, would also need to acquire additional land because they may not have two barn footprints of outdoor space due to various conditions specific to the operation.

Scenarios A, B, and C specify that growth occurs in the industry at a 12.7 percent rate from year 1 to year 6.[19] Scenario C (but not Scenario C.2) indicates that the proportion of facilities of each type in the industry changes as the industry grows. The construction of Scenarios A and B, however, strongly suggests that there is no change in the proportions of production facilities of each type through year 6. Page 27 (Passage 15) then states:

> In summary, AMS assumes that operations representing 75 percent of organic egg production could incur costs for purchasing and maintaining additional land to comply with the outdoor stocking density requirement.

This statement, in which the outdoor stocking density requirement refers to the new requirements for outdoor access under the OLPP Rule, implies that if the proportions of all operations of each type remain in production and no firms exit the industry (as Scenario A indicates), then 75 percent of current organic egg production will gain new outdoor access as a result of the rule.

Scenario A assumes that all producers become compliant. The Final RIA calculates benefits for Scenario A by multiplying the WTP values by one-half of year 6 production. In this case, multiplying production by 50 percent is likely a correction for the proportion of existing production that is already compliant. If so, this proportion likely reflects the Preliminary RIA's lower assumed proportion of production occurring under aviary systems. The Preliminary RIA states (Passage 16, page 115):

> For this analysis, we assumed that pasture housing, floor litter housing and slatted/mesh floor housing systems collectively account for 50 percent of organic egg production and either currently comply with the outdoor space requirements or have the land available to comply with the proposed outdoor stocking rate without significant changes to the number of birds or facilities.

In the Preliminary RIA, AMS assumed that 50 percent of production was from non-aviary type facilities (*i.e.,* pasture housing, floor litter housing, and pit litter housing systems) and already compliant with the OLPP Rule and that the other 50 percent was of the aviary type and not compliant. Under these assumptions for Scenario A (Full Compliance), the share of production that would acquire new outdoor access and provide new benefits to consumers was 50 percent of production.

In the Final RIA, AMS altered this assumption and instead assumed that 30 percent of production was from non-aviaries (with only 25 percent of total production being already compliant) and that the other 70 percent of production was from non-compliant aviary operations. Under these new assumptions, 75 percent of production would provide new benefits to consumers because that is the share of production not already in compliance with the OLPP Rule before it takes effect. For this reason, this Report finds that calculations in the Final RIA that assume that new benefits only arise from 50 percent of the organic egg produced in year 6 in Scenario A are inconsistent with assumptions stated elsewhere.

Scenario B assumes that the industry and production grow at the 12.7 percent rate annually between year 1 and year 6 and that 50 percent of current production exits the industry in year 6 when the rule becomes effective.[20] Page 27 of the Final RIA (Passage 15) indicates that 75 percent of production must incur costs to become compliant with the open access requirement. If the 50 percent of production that exit the organic market are noncompliant producers, then 25 percent of production will have been noncompliant, become compliant as a result of the rule, and now gained new outdoor access. Scenario B calculates benefits based on 25 percent of year 6 production gaining new outdoor access (which are subsequently multiplied by the WTP value). This Report assesses those calculations as being accurate given the description of assumptions made on the composition of production with regard to compliance.

As described previously, Scenario C assumes that 50 percent of current production exits the industry in year 6. Between year 1 and year 6, growth was assumed to occur at the 12.7 percent rate but no non-compliant producers were expected to enter the industry. To find the amount of production by incumbent firms that now provide new benefits to consumers, let Q_{ALL} be all producers in year one and $0.75 \times Q_{ALL}$

[19] Non-aviary systems account for 30 percent of production. One-sixth of these producers (16.67 percent) is 5 percent of all production.

[20] In the Withdrawal Workbook, AMS presented tables that projected future volumes based on a 12.7 growth rate for the entire 15-year period considered in the analysis. The higher egg volume projections after year six, however, had no bearing on the actual calculations of costs and benefits.

be all non-compliant producers in year one. If production grows by 12.7 percent for 5 years, production in year 6 is 1.818 $\times Q_{ALL}$ (=1.127^5 $\times$ Q). Of these producers, there are still 0.75 $\times Q_{ALL}$ non-compliant producers in the industry (*i.e.,* the same number of non-compliant producers from year one). Subsequentially, the remaining 1.068 $\times Q_{ALL}$ are all compliant.

If half of production exits the industry under Scenario C, then 0.91 $\times Q_{ALL}$ leave the industry. Presumably, only non-compliant producers leave the industry in year 6. This implies that all of the non-compliant production from year 1 leaves the industry (0.75 $\times Q_{ALL}$) along with an additional 0.16 $\times Q_{ALL}$ of production that is already compliant. Since already compliant operations that remain in the industry do not generate any new benefits, no new benefits are created under the assumed conditions of Scenario C. In the Final RIA, however, AMS based its benefit calculations on a production volume getting newly acquired outdoor access of one-eighth (12.5 percent) of year 6 production or 0.225 $\times Q_{ALL}$ (=.0125 $\times$ 1.818 $\times Q_{ALL}$) to calculate its benefit value.[21] This Report finds that the benefit calculation AMS used in Scenario C is incorrect and overestimates the total value of benefits.

Alternatively, AMS might have intended to have described Scenario C.2 rather than Scenario C in its benefits calculation. Scenario C.2 assumes that 50 percent of current production exits the industry in year 6 and no growth occurs until that time (See Section 4.C). In this case, the benefits calculated for C.2 would be the same as the benefits calculated for Scenario B. In that Scenario, 25 percent of year 1 production (0.25 $\times Q_{ALL}$) gains new outdoor access and this volume would be multiplied by the WTP to find benefits. Since this also differs from the 0.225 $\times Q_{ALL}$ value used in the Final and Withdrawal RIAs, this Report also finds that the calculated benefit for that Scenario in the Final RIA is inconsistent with the description of Scenario C.2.

6. Incorrect Use of the Production Levels That Do Not Account for Increased Mortality When Calculating Benefits

In the Final RIA, AMS stated that it expected layer mortality to increase from 5 to 8 percent as a result of the OLPP Rule's new outdoor access requirement, which exposed layers to increased risks of disease and predation. As a result, AMS developed estimates of after-the-rule production levels that were 1.4 percent lower than the before-the-rule levels that specifically reflected this mortality adjustment. While the cost estimates correctly utilized the relevant after-the-rule production level, the benefits calculations were calculated based on the quantity levels that did not take into account the expected increase in mortality. Details for specific values of the production before the rule (with the lower mortality rate) and after the rule are provided in the following section. Because the production level enters into the benefit calculation multiplicatively, the benefit calculation is over-estimated by 1.4 percent. This Report finds that AMS erred by using the before-the-rule production level when the after-the-rule production level was appropriate.

7. Errors in Cost Calculations in the Final RIA

The cost calculations were not fully documented in the Final RIA with regard to how the OLPP Rule affected average costs across operation types. This section describes the cost calculations and notes several concerns, including how production levels used to calculate costs and benefits differ, how AMS did not appropriately consider the costs to aviaries that could not obtain land, and how production shares were not updated for firm exit. By not appropriately considering the costs to aviaries that could not obtain land and not updating production shares for firm exit, AMS likely underestimated the costs to implementing the rule in specific instances.

The main documentation for the cost and transfer calculations of the Final RIA was included in workbooks titled ''A–OLPP layer costs—cage free'' (A–OLPP) and ''Barn and Layer projections FR 01 2017 OMB'' (B–Layer). For the four types of operations (pasture raised, floor litter, pit litter, and aviary), the A–OLPP file enumerates the costs of producing organic or cage-free eggs (*i.e.,* feed costs, machinery, labor, etc.). A–OLPP documents layer numbers, production levels, and adjustment factors including the death loss rate, which AMS expected to increase under the OLPP Rule. A–OLPP also reports calculations for production levels, fixed costs, variable costs, average total costs, revenue (based on price assumptions), and cost differentials before and after the OLPP Rule. The cost burden of the rule has two components for egg producers—increased physical costs and reduced revenue. In the Final RIA's Tables 16 and 17 on pages 122–123 (which correspond to Withdrawal Workbook sheets 2 and 3), the ''Cost: Layers'' column refers to the sum of increased physical costs and reduced revenue.

The A–OLPP file has six sheets. The A–OLPP sheets titled Industry Cost No Entry (No Entry Sheet) and Industry Cost Entry (Entry Sheet) calculate total aggregate costs of the rule, including increased physical costs and reduced revenue for all operation types, under the alternative assumptions that the industry production did not grow and that it grew at the 12.7 percent rate. In the Entry and No Entry Sheets, cell E67 reports total costs, cell E65 reports lost revenue, and cell E59 reports increased physical costs. These values are the sums of the values for each operation type, with only the pasture raised operations incurring no additional increased physical costs or lost revenue. Cells G36:G38 and D35:D38 show production levels for each operation type before and after the rule takes effect, the difference arising from the increase in death loss following the OLPP Rule's promulgation.[22] The difference between rates of death loss (reported in cells B18 and B19) drives the difference in the production levels before and after the rule takes effect. The A–OLPP file reports total costs in year 6 of $55,135,426 in the Entry Sheet and $30,325,723 in the No Entry Sheet. These computations do not consider whether operations exit in year 6, but are instead based on cells G36:G38, the production levels after the OLPP Rule takes effect if all operations are producing.

Note that production for each operation in the Entry Sheet is 1.818107555 times greater than its value in the No Entry Sheet. This indicates that growth does not change the proportions of operation types in the industry. Also, note that production levels after the rule takes effect (G39) are 1.4 percent lower than their levels before the rule takes effect (D39). The higher before-rule production levels form the baseline production levels in the benefits calculations.

The A–OLPP total cost values in the Entry and No Entry Sheets do not consider the effect of operation exit. Instead, the B-Layer file adjusts the total cost values for the shares of year 6 production that remains in the industry to compute costs under the different Scenarios. As described in Section 5, AMS expected different proportions of the producer types to exit the industry in Scenario B and C where exit occurs.

[21] The likely transposition error discussed in Section 5.G affected this calculation. Year 6 production is 710,578,652, or 1.127^5 (or 1.818) multiplied by Year 1 production of 390,834,208. One-eighth of year 6 production is 88,822,332. Section 5.G describes how that number was likely incorrectly transcribed to be 89,361,091.

[22] Death loss rates before and after are presented in B18 and B19.

Specifically, the 70 percent share of egg production from aviaries would fall to 25 percent and the 30 percent share of non-aviary production would fall to 25 percent. Since AMS had different cost calculations for each type of producer, it should have used these expected changes in shares to scale costs specifically by operation type. Instead, it applied a single scaling multiplier to total costs (across all operation types) based on the aggregate share of year 6 production that remains in the organic egg industry.

In B-Layer, the cell H8 value of $7,541,431 in the ''Transfer—No Entry'' sheet describes annual layer costs in Scenario C, which corresponds to Table 16 of the Final RIA.[23] This value reflects the $30,325,723 total cost from the Entry Sheet being scaled by ¼.[24] The cell H8 value of $13,784,001 in the ''Transfer to Cage Free'' Sheet describes annual layer costs in Scenario B, which corresponds to Table 17 of the Final RIA.[25] This value is ¼ of the total cost value of $55,135,426 recorded in the ''Industry Cost—Entry'' sheet.[26] The interpretation of the ¼ multiplier is discussed later in this section.

In B-Layer, the cell H9 value of $3,812,000 in the ''Stay in Organic'' sheet reflects the one-time fixed costs of aviaries acquiring land and is equal to Scenario A's year 3 costs in Table 15 of the Final RIA. Cell H10 of that same sheet calculates recurring annual costs of $55,135,426 after year 6. As previously discussed in Section 3.C, Table 15 of the Final RIA presents annual cost figures for layers for three groups of producers divided by the age of the producer.[27] The values for the one-and two-year old producer groups correspond to their share (12 and 24 percent) multiplied by $55,135,426. Section 3.C describes an error in the Withdrawal RIA whereby the depreciation error was not entirely removed from the cost calculations for houses older than four years.

The Final RIA's costs calculations for layers of a certain type (pasture, floor litter, pit litter, and aviaries) reflect two components—increased physical costs for the portion of production remaining in the industry and lost revenue for the portion of production exiting the industry. For each producer type, increased physical costs equals the number of eggs multiplied by the difference in the estimated average costs of production before and after the rule. Lost revenue for layers is the difference in the number of eggs produced before and after the rule multiplied by the break-even organic price before the rule. Table 3 provides values of average costs and break-even price[28] for each type of operation.

TABLE 3—AVERAGE COSTS AND BREAK-EVEN PRICES BY OPERATION TYPE

Operation type	Average costs before the rule	Average costs after the rule	Break-even egg price before the rule
Pasture	$3.0427	$3.043	$3.403
Floor Litter	1.8972	1.947	2.121
Pit Litter	1.8972	1.947	2.121
Aviary (Can Get Land)	1.8344	1.891	2.043
Aviary (Can't Get Land)	1.8344	2.399	2.043

Note: All values are in dollars per dozen.

Since pasture operations are already fully compliant with the OLPP Rule, their average costs are equal before and after the rule. A–OLPP sheet ''Layers-Aviary'' provides average cost and break-even price calculations for both aviaries that could not obtain land and aviaries that could. As Table 3 shows, aviaries that could not obtain land faced a much higher average cost (after the rule) than aviaries that could obtain land. The ''Aviary (Can't Get Land)'' average cost values reflect costs if the baseline aviary's post-rule production was one-third of its pre-rule production, a production level reduction that mirrors the level of firm exit AMS assumed for the aviaries after the rule in Scenarios B and C.[29] Based on comments, AMS increased the production share of aviaries from 50 percent in the Preliminary RIA to 70 percent in the Final RIA, but assumed that two-thirds of aviaries would not be able to acquire land. The Final RIA (Passage 17, pages 27–28) states:

AMS is estimating that about two-thirds of the aviaries, equivalent to 45 percent of organic egg production, and that a portion of non-aviary production, which accounts for 5 percent of organic egg production, will not be able to acquire additional land and will move to the cage-free market. In summary, AMS believes that 50 percent of organic production may transition to cage-free egg production, while the remainder would be incentivized to remain in the organic market and obtain needed land.

Despite calculating this figure within internal spreadsheets, AMS did not apply or publish the ''aviary (can't get land)'' average cost values in the Final RIA. In the Final RIA, AMS (Passage 18, page 24) writes:

AMS acknowledges that some producers may opt to remain in organic production by obtaining non-adjacent land and constructing new facilities. While AMS is not estimating aggregate costs based on assumptions about what proportion of organic producers may decide to remain in organic production by constructing new facilities, we are providing some parameters of such costs. Based on information from the

[23] The cell I8 value of $170,042,253 is the annual transfers value reported in sheet 4 of the Withdrawal Workbook.

[24] In the sheet, the $7,542,431 is the sum of four component values, but each has the same multiplier and sum to ¼ of total costs in the ''Industry Cost—No Entry'' sheet by construction.

[25] The cell I8 value of $93,527,000 is the value of annual transfers value reported in sheet 5 of the Withdrawal Workbook.

[26] In the sheet, the $13,784,001 is the sum of four component values, but each has the same multiplier and sum to ¼ of total costs in ''Industry Cost—No Entry'' sheet by construction.

[27] The distribution of the productive type for this group is assumed to be the same as it was previously—70 percent aviaries, 10 percent pasture, 10 percent pit litter, and 10 percent floor litter.

[28] The break-even price reflects the (before rule) average costs with an adjustment for the 20 percent of output that goes to the less-lucrative breaker egg market.

[29] In AMS cost calculations in A–OLPP, total cost is the sum of total fixed costs and total variable costs for a baseline enterprise budget AMS estimated for a large organic layer operation. Between firms able to purchase land and firms unable to purchase land, fixed costs are roughly equal at $420,626 and $418,234, respectively. On the other hand, total variable costs differ by approximately an order of three at $4,236,938 and $1,552,299. This reflects a production level differing by approximately an order of three at 2,464,000 dozen eggs for farms that can acquire land and 821,333 dozen eggs for farms that cannot acquire land. The average total cost for farms that can acquire land of $1.8902 per dozen reflects the sum of fixed and variable costs equaling $4,657,564 divided by 2,464,000 dozen eggs. The average total cost for farms that cannot acquire land of $2.3992 reflects the sum of fixed and variable costs $1,970,533 divided by 821,333.

organic egg producers, AMS estimates that the costs of aviary housing is [sic] $70/hen. Further, we believe that larger organic operations have a minimum of 100,000 hens; medium scale have between 30,000–100,000 birds and smaller scale less than 30,000 birds. Therefore, the corresponding estimates for housing costs for producers of each size category: $7 million minimum (large scale); $2.1–$7 million (medium); $2.1 million maximum (smaller scale). In addition, producers that construct new aviary facilities to house 100,000 birds would need approximately 6.12 acres of land for housing and outdoor space. This amounts to nearly $28,000 in land costs.

Since AMS deviated from those provisions, we are not utilizing the associated cost projections. [italics added]

In the first italicized passage, AMS states that some aviary operations that could not acquire additional (adjacent) land might be forced to buy land elsewhere and build new facilities to remain in operation. AMS then outlines ''parameters of such [building] costs'' before stating in the second italicized passage that it would not utilize these costs.

Table 4 lists the production levels before and after the OLPP Rule for each type of operation for Scenario A. The total level of eggs before accounting for the rule's impact on mortality—710,578,627 dozen—corresponds to the level of eggs in year 6 as listed on Table 6 of the Withdrawal Workbook. The numbers of eggs before and after the rule differ because AMS expected layer mortality to increase with outdoor access. As we note in Section 6, AMS used the higher before-the-rule production level rather than the lower after-the-rule production levels in the benefits calculations and this led to their over-estimation.

TABLE 4—PRODUCTION VALUES, COST INCREASES, AND LOST REVENUES FROM ENTRY SHEET

Type	Eggs after rule	Eggs before rule	Increased costs	Lost revenue
Pasture	64,495,917	64,495,917	$0	$0
Fl. Litter	70,682,553	71,786,968	3,506,265	2,343,009
Pit Litter	70,682,553	71,786,968	3,507,153	2,343,009
Aviary	494,777,870	502,508,774	27,641,969	15,794,020
Total	700,638,893	710,578,627	34,655,387	20,480,038

Increased costs and lost revenues equal $55,134,539. As we note in Section 3.C, this value would have been the total cost to egg producers in Scenario A if the depreciation treatment had not been applied for 4-year-old houses. This value is the sum of total increased costs—$34,655,387—and total lost revenue—$20,480,038. Importantly, the computation for increased costs for aviaries uses only the average costs for aviaries that can obtain land. Because AMS estimated that about 45 percent of production was comprised of aviaries that could not obtain land and because these aviaries have far higher costs than aviaries that can obtain land, using only the average cost for aviaries that can obtain land for all aviaries will lead AMS estimate of costs for Scenario A to be underestimated.

Under Scenario B, the organic egg industry grows at a 12.7 percent rate between year 1 and year 6, after which time half of the market participants leave the industry. To obtain the increased costs estimate, AMS used ¼ of the year 6 production levels for each type of operation and then multiplied these values by the difference in average costs before and after the OLPP Rule, as with Scenario A. Similarly, for decreased revenues, AMS used production values before and after the rule that were ¼ of the values used in Scenario A. This Report notes that production levels enter linearly into the formulas for increased costs and lost revenue. As a result, the total costs reported in Table 17 for layers are $13,784,000.

In Scenario C, the industry grows at the 12.7 percent rate with no entry from non-compliant producers and then, in year 6, 50 percent of producers exit and transition to cage-free production. Table 5 below shows the level of eggs produced before and after the OLPP Rule with no growth. Based on these levels, Table 5 shows that total increased costs are $19,061,241 and lost revenue is $11,264,482 so that total costs are $30,325,723. As with Scenario B, the numbers of eggs used in the calculations (both before and after the rule) are multiplied by ¼ and the estimated value calculated for Scenario B is ¼ of $30,325,723 (the sum of increased costs and lost revenue) in Table 5 below, or $7,541,431.

TABLE 5—PRODUCTION, INCREASED COSTS, AND LOST REVENUES FROM A–OLPP NO ENTRY SHEET

Type	Eggs after rule	Eggs before rule	Increased costs	Lost revenue
Pasture	35,474,203	35,474,203	$0	$0
Fl. Litter	38,876,992	39,484,445	1,928,524	1,288,707
Pit Litter	38,876,992	39,484,445	1,929,013	1,288,707
Aviary	272,138,944	276,391,115	15,203,704	8,687,067
Total	385,367,131	390,834,208	19,061,241	11,264,482

Based on these figures, this Report finds three errors with the cost calculations in the Final RIA, as described in the following sections.

A. Production Levels Used To Calculate Costs and Benefits Differ

The Final RIA (Passage 19, page 27) indicates that:

AMS assumes that operations representing 75 percent of organic egg production could incur costs for purchasing and maintaining additional land to comply with the outdoor stocking density requirement.

Seventy five percent of the year 6 production (711 million dozen eggs) is 532 million dozen eggs. In its calculation of benefits, AMS sought to include only benefits from production

of organic eggs that gained new outdoor access as defined under the OLPP Rule and used 50 percent of year 6 production, or 355,289,326 dozen eggs, to reflect that production. The share of houses that were projected to gain new outdoor access under this scenario is higher than 50 percent because, at a minimum, all aviary production remaining in the industry would gain outdoor access and aviaries comprise 70 percent of production. For this reason, this Report finds that the assumed 50 percent share of production that gains new outdoor access is inconsistent with the page 27 text.[30]

In Scenario B, AMS computes costs based on ¼ of total costs in the Entry Sheet (relating to year 1 production levels). In the benefits section, AMS computes benefits based on ⅛ (of year 6) production (after correcting for the error described in Section 3.C). In this case, AMS assumed that only 50 percent of production would gain new outdoor access as a result of the OLPP Rule and thereby create new consumer benefits. However, this Report finds the 50 percent share to be inconsistent with the page 27 text indicated that 75 percent of production would need to acquire land to gain new outdoor access and its costs calculations that approximately 90 percent of production volume pays a higher cost.

For Scenario C, AMS computes costs based on ¼ of total costs reported in the No Entry Sheet (relating to year 1 production levels) but computes benefits based on ⅛ of year 1 production. Following the same logic as with Scenarios A and B, this Report finds the 50 percent share to be inconsistent with the page 27 text.

B. AMS Did Not Appropriately Consider the Costs to Aviaries That Could Not Obtain Land

Aviaries comprised 70 percent of organic egg production and AMS estimated that approximately two-thirds of aviary producers would be unable to acquire the land required under the OLPP Rule. Scenario A calculates costs under the assumption that all current firms continue to operate under the new rule conditions, regardless of their ability to acquire additional land. Whether aviaries would become compliant by acquiring non-adjacent land and building new facilities (as suggested in Passage 17) or reducing production volumes is unclear. Despite acknowledging that the aviaries that comprised 45 percent of production that could not acquire land would face far higher average costs than the aviaries comprising 25 percent of production that could acquire land, AMS applied the lower average cost to all aviaries. This Report further notes that because AMS did not present any of these key underlying cost calculations in the Final RIA, outside reviewers may not have been aware of the modeling specification. Despite stating in Passage 18 that a cost estimate for aviaries that could not acquire land would not be used, this Report finds that AMS still did not fully explain why the lower cost estimate was used and concludes that costs for Scenario A were underestimated as a result.

C. Production Shares Not Updated for Firm Exit

In Scenarios B and C, AMS assumed that, following industry growth for five years, 50 percent of firms exit the industry as a result of the rule. In Passage 17, AMS indicated that ⅔ of aviaries would exit the industry after the OLPP Rule took effect. This implies that the ratio of aviaries to non-aviaries (pasture, floor litter, and pit litter) falls considerably after the rule. In Scenario B, however, AMS used cost calculations that assume the shares of operation types are unchanged. This is significant for two reasons. First, a larger share of remaining firms may be comprised of pastured raised operations. Within the context of the AMS analysis, an increased share of pasture raised operations causes both costs and benefits to fall. This occurs because operations that are already compliant with the rule do not produce any new benefit after the rule takes effect and do not incur any costs to become compliant.

Second, a change in the composition of operations after the rule takes effect is likely to cause the average price of eggs to increase to reflect its new higher break-even level across all producers. Following the rule, firms will exit the industry if the average price of eggs is less than the break-even price. Price, however, will rise as firms leave the industry. Eventually, the average price reaches the break-even price level and firms no longer exit the market. If the proportion of firm types is unchanged, the increase in the break-even will be close to the average cost of implementing the rule. Table 3 indicates that the maximum change in average costs across all operations is relatively small at 6 cents. Pasture raised operations, however, have far higher average costs (and related break-even costs) before the rule than other operation types. By assuming that the share of producer types is unchanged after the rule, AMS constrained the rule's effect on the break-even price to be the cost of compliance (*i.e.,* the change in average costs) within an operation type and precluded a separate industry composition effect due to the industry shift from aviaries to non-aviaries. This industry composition effect will increase production costs on average for the industry independent of the increased cost of compliance.

Non-Material Errors in the Final and Withdrawal RIAs

1. Other Transposition Errors

a. *Costs in Withdrawal RIA*—In the Withdrawal RIA's Table C, the cost savings are erroneously stated as ''$28.7 to $29.9'' under the assumed conditions of: ''All producers remain in organic market; Organic layer and broiler populations continue growth rates after rule.'' The correct values are reported in Table A as: ''$28.7 to $31.0.''

b. *Year 4 Egg Production*—The Withdrawal Workbook Sheets 6, 7, 8, and 9 list 5*9*9,453,90*3* eggs being produced in year 4. Based on the stated 12.7% growth rate this value should have been 5*5*9,453,90*4.* The italicized material suggests that a transposition error likely occurred.

2. Weighting of WTP Values

This Report notes that Passage 1 refers to the WTP of ''the majority of the consumers'' while Passage 2 refers to the ''mean premium'' for each of the two subsets of additional consumers' WTP. This Report assesses the mean premium as the more appropriate value to apply for rulemaking purposes. This rationale is not cited in the Withdrawal RIA but supports AMS's decision to correct the Final RIA numbers.

This Report also notes that Table 8 provides WTP estimates (identical to the ''mean premium'' cited in Passage 2) for two other subsets of all consumers—consumers differing by their perception of quality of an animal-friendly product and consumers differing by their perception of management practices on hen welfare. In the Final RIA and Withdrawal RIA, the high-end and low-end values for the WTP are then used to create separate high-end and low-end

[30] Despite the page 27 statement that 75 percent of production would need to purchase additional land, the Entry and No Entry Sheets describe three producer types (pit-litter, floor-litter, and aviary) that comprise 90 percent of production and would incur increased costs as a result of the OLPP Rule. A close reading of the cost figures in A–OLPP indicates that little or no cost for added land for pit-litter and floor-litter producers was included in the cost calculations. It is unclear whether AMS considered production that gained outdoor access under the rule as production by operations paying additional costs under the rule or firms needing to acquire land under the rule. If it is firms needing to acquire land, the 75 percent figure may be accurate.

estimates of the benefits under the rule. Also, despite the availability of the other subsets, only the ''receiving of additional information'' subset is used for the high and low values. Later those two estimates are averaged in the computation of the net benefits of the rule without regard for any weighing of what proportions of consumers actually belong to those subsets.

From a methodological standpoint, this Report notes that the use of the estimate of the ''receiving of additional information'' subset, rather than the other subsets, is inappropriate. The ''receiving of additional information'' is a treatment variable where subjects receive additional information (relative to the control treatment of no additional information) on the environmental consequences of their choices. The other two subsets—consumers organized by perception of quality and consumers organized by perception of management—represent true control variables because they reflect consumer perceptions formed outside of the choice experiment, as opposed to information provided by the experimental designers. A more appropriate method of developing and compiling the WTP from the two subsets would have been to use values of the WTP from one of the two control groups and weight their effect on the final benefit values by the share of consumers in each group. In the case of the information provided, there is no reason to assume that the proportion of the consumers to which the authors provided this information is equal to the share of actual consumers purchasing eggs who might have that information.

Despite the methodological concerns in the choice of subsets and the weighting of the subset groups, benefit calculations are unlikely to change materially when either change is applied. Because the ''received additional information'' and ''did not receive additional information'' treatment groups had nearly equal numbers of consumers—499 and 475—the weighted and unweighted averages—20.5 cents and 20.2 cents—are very similar. Moreover, the weighted averages of the other two subsets—20.9 cents for ''perceptions of quality'' and 20.3 cents for ''perception of management practices''—are very similar to the ''received additional information'' subset.

This Report concurs with the assessment of the Withdrawal RIA that the Final RIA used inappropriate values for the WTP in its calculation of the benefits. The Report cites two methodological concerns in the Withdrawal RIA's correction of this error. However, this Report also notes that using benefits values with a more appropriate specification in the benefits calculation would not change the findings substantially.

3. Different Depreciation Periods Are Used in Different Sections of the Analysis

In the proposed OLPP Rule published April 13, 2016 (81 FR 21956), AMS states that it applied a depreciation period for hen layer houses of either 12.5 or 13 years, the difference presumably reflecting the need for a round number. AMS applied the depreciation rate in three ways. First, a 12.5-year depreciation period is used to set the compliance phase period. Specifically, in the proposed OLPP Rule, AMS states that the difference between the depreciation rate (12.5 years) and average age of organic aviary layer houses (7.6 years) is roughly 5 years. Therefore, a 5-year implementation period would allow organic egg producers, on average, to recover the costs of a poultry house. 71 FR 21986.

Second, a 13-year period is used in the depreciation treatment of costs and benefits in the proposed OLPP Rule. Despite the errors already mentioned in this section, the depreciation treatment was intended to be removed from calculations in the Final RIA. Third, AMS followed the standard accounting practice of converting the single period cost of a durable asset to a recurring annual cost using the depreciation concept. In this method, AMS divided an asset's costs by its depreciable life to create an equivalent annual cost in using the asset. In using a longer depreciation period of 20 rather than 13 years, AMS decreased the annual costs of using the asset by approximately 35 percent (7/20).[31] However, since this asset depreciation cost (the term being used in the ordinary accounting sense) is a relatively small portion of annual costs, this Report assesses this discrepancy as being non-material.

Appendix A—Cross Referencing of Withdrawal Workbook Page Numbers and Final RIA Tables

- Withdrawal Workbook Sheet 1 corresponds to Final RIA, Table 15 titled ''Estimated costs for organic egg and poultry sector—full compliance.''
- Withdrawal Workbook Sheet 2 corresponds to Final RIA, Table 16 titled ''Estimated cost for organic egg and poultry production—some operations move to cage free in year 6 (2022).''
- Withdrawal Workbook Sheet 3 corresponds to Final RIA, Table 17 titled ''Estimated cost for organic egg and poultry production—some operations move to cage free in year 6 (2022); new entry continues after rule.''
- Withdrawal Workbook Sheet 4 corresponds to Final RIA, Table 18 titled ''Estimated transfers (foregone profit) for organic egg and poultry production—some operations move to cage free in year 6 (2022).''
- Withdrawal Workbook Sheet 5 corresponds to Final RIA, Table 19 titled ''Estimated cost for organic egg and poultry production—some operations move to cage free in year 6 (2022); new entry continues after rule.''
- Withdrawal Workbook Sheet 6 includes intermediate calculations to support the benefit figures associated with Scenario A.
- Withdrawal Workbook Sheet 7 includes intermediate calculations to support the benefit figures associated with Scenario B.
- Withdrawal Workbook Sheet 8 includes intermediate calculations to support the benefit figures associated with Scenario C.
- Withdrawal Workbook Sheet 9 corresponds to Figure 6 of the Final RIA.
- Withdrawal Workbook Sheet 10 includes calculations based on data from the National Animal Health Monitoring Survey that describes the age distribution of layer houses.

Bruce Summers,

Administrator, Agricultural Marketing Service.

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[31] If a 20-year depreciation period is used, then annual costs are 5 percent of the asset's cost. If a 13-year depreciation period is used, then annual costs are 7.69 percent of the asset's cost.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–PET–0003]

Energy Efficiency Program for Industrial Equipment: Test Procedures for Fans, Notice of Petition for Rulemaking

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for rulemaking; request for comments.

SUMMARY: This document announces receipt of a petition received by DOE on January 10, 2020, from the Air Movement and Control Association (AMCA), International, Air Conditioning Contractors of America, and Sheet Metal & Air Conditioning Contractors of America requesting that DOE establish a Federal test procedure for commercial and industrial fans. The petition, which appears at the end of this document, requests that DOE resume a previous DOE rulemaking effort to establish a Federal test

procedure for commercial and industrial fans, and that such test procedure be based on an upcoming industry test method. This document summarizes the substantive aspects of this position and requests public comments on the merits of the petition.

DATES: DOE will accept comments, data, and information with respect to the AMCA Petition until May 26, 2020.

ADDRESSES: You may submit comments, identified by docket number ''EERE–2020–BT–PET–0003,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: FansPetition2020PET0003@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting written comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *http://www.regulations.gov/docket?D=EERE-2020-BT-PET-0003.*

The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket. See the *Submitting Public Comment* section of this document for further information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or to request a public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) DOE received a petition from the Air Movement and Control Association International, Air Conditioning Contractors of America, and Sheet Metal & Air Conditioning Contractors of America (hereinafter referred to as ''the petitioners''), as described in this document and set forth verbatim below, requesting that DOE resume a previous DOE rulemaking effort to establish a Federal test procedure for commercial and industrial fans, and that such test procedure be based on an upcoming industry test method, AMCA 214.

For reference, in 2011, DOE proposed a determination that commercial and industrial fans, blowers, and fume hoods, are covered equipment under Part A–1 of Title III of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6311 *et seq.*), as amended, which would subject such equipment to the energy conservation standards (42 U.S.C. 6313) and test procedure requirements (42 U.S.C. 6314) of Part A–1 of Title III of EPCA. (See 76 FR 37678) DOE held a public meeting and solicited public comment on the proposed determination. DOE then established a negotiated rulemaking working group under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC Working Group) to negotiate the scope of coverage, key conditions of a proposed test procedure, and proposed energy conservation standards for fans and blowers. (80 FR 17359) After negotiation meetings and solicitation of public comment,[1] the ASRAC Working Group made several recommendations regarding the issues discussed in the negotiated rulemaking.[2] However, DOE did not finalize its determination and has not taken further action on the matter.

In their petition, the petitioners propose that DOE base a test procedure for commercial and industrial fans on new fan efficiency metrics: Fan electrical power (FEP) measured in kilowatts and the fan energy index (FEI).[3] Petitioners state that both metrics are derived using a set of AMCA test methods, which will be incorporated under the upcoming AMCA 214.[4] Petitioners also request that the scope of any Federal test procedure for fans be consistent with that in ANSI/ASHRAE/IES Standard 90.1–2019, Energy Standard for Buildings Except Low-Rise Residential Buildings (ASHRAE 90.1–2019), and that some fans should be exempt from testing in accordance with specific industry standards highlighted by the petitioners, and in accordance with the recommendations of the ASRAC Working Group. Petitioners also request that a Federal test procedure for commercial and industrial fans allow regulators to rely on previously established test data to certify compliance, and that regulators be allowed to rely on test data from a single fan to certify compliance with any state or Federal efficiency standard, and to use test results based on certain AMCA or International Organization for Standardization (ISO) standardized methods of testing. (The petitioners, No. 01 at p. 8)

Petitioners assert that a Federal test procedure based upon AMCA 2014 would have several benefits, including: (1) More accurate representation of

[1] Comments and documents related to the proposed determination and the ASRAC meetings may be found *http://www.regulations.gov* under docket number EERE–2013–BT–STD–0006.

[2] The final ASRAC Commercial and Industrial Fans and Blowers Working Group term sheet (Docket No. EERE–2013–BT–STD–0006, No. 179) is available at *https://www.regulations.gov/document?D=EERE-2013-BT-STD-0006-0179.*

[3] The FEI of a fan at a given operating point is a dimensionless index defined as the FEP (kW) of a theoretical reference fan divided by the FEP (kW) of the fan at the same operating point.

[4] According to petitioners, AMCA 214 establishes uniform definitions of FEI and FEP and integrates and revises ANSI/AMCA Standard 207 (Fan System Efficiency and Fan System Input Power), ANSI/AMCA Standard 208 (Calculation of the Fan Energy Index for calculating FEI) and portions of AMCA Publication 211 (Certified Ratings Program Product Rating Manual for Fan Air Performance), and incorporates by reference standardized methods of test for fans (*e.g.* ANSI/AMCA Standard 210/ASHRAE Standard 51, Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating). (The petitioners, No. 01 at p. 6–7)

wire-to-air performance of fans and fan energy use, (2) assisting customers in comparing and selecting fans, (3) easier enforceability for regulators, and (4) acceleration of the use of the new efficiency metrics recommended by the ASRAC Working Group. (The petitioners, No. 01 at p. 4–5) Petitioners also state that a Federal test procedure would reduce regulatory burden, particularly to small- to medium-sized manufacturers. (The petitioners, No. 01 at p. 4) Petitioners state that without a Federal test procedure, the industry would have to continue to comply with unique or outdated state energy codes resulting in considerable regulatory burden for the fan industry through expenditure of resources, greater uncertainty, and inefficiency. (The petitioners, No. 01 at p. 5–6)

The petition is available in the docket at *http://www.regulations.gov/docket?D=EERE-2020-BT-PET-0003.* In promulgating this petition for public comment, DOE is seeking views on whether it should consider the petition and undertake a rulemaking to develop a test procedure for fans. By seeking comment on whether to grant this petition, DOE takes no position at this time regarding the merits of the suggested rulemaking or the assertions made by the petitioners.

DOE welcomes comments and views of interested parties on any aspect of the petition for rulemaking and on whether DOE should proceed with the rulemaking. Specifically, DOE request submission of comments, including data and information on whether an amended test procedure rule would: (1) Accurately measure energy efficiency, energy use, or estimated annual operating cost of fans during a representative average use cycle or period of use; and (2) Not be unduly burdensome to conduct.

Submission of Comments

DOE invites all interested parties to submit in writing by May 26, 2020, comments and information regarding this petition.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information prior to submitting comments. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or postal mail. Comments and documents via email, hand delivery, or postal mail will also be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information in your cover letter each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not include any special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked ''Confidential'' including all the information believed to be confidential, and one copy of the document marked ''Non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of its process for considering rulemaking petitions. DOE actively encourages the participation and interaction of the public during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in determining how to proceed with a petition. Anyone who wishes to be added to DOE mailing list to receive future notices and information about this petition should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of petition for rulemaking.

Signed in Washington, DC, on April 2, 2020.

Alexander N. Fitzsimmons,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

BILLING CODE 2020–08316–P

AMCA International
Air Movement and Control Association International, Inc.
The International Authority on Air System Components Since 1917

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847-394-0150
communications@amca.org
www.amca.org

January 10, 2020

The Honorable Daniel R. Simmons Assistant Secretary, Office of Energy Efficiency and Renewable Energy
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
1000 Independence Avenue SW
Washington, DC 20585-0121

Via email.

Dear Mr. Simmons:

On behalf of Air Movement and Control Association (AMCA) International[5], Air Conditioning Contractors of America (ACCA)[6] and Sheet Metal & Air Conditioning Contractors of America (SMACNA)[7], please accept the petition that is attached below to this letter respectfully requesting the U.S. Department of Energy (DOE) to resume its rulemaking to develop a federal test procedure for commercial and industrial fans.

A related rulemaking began in June 2011, with AMCA International and its member companies working intensively and proactively with the Department, efficiency advocates, and industry stakeholders to make progress on what became a highly complex effort. In aid of the earlier rulemaking a term sheet approved by the Appliance Standards and Rulemaking Federal

[5] AMCA International is a not-for-profit association of manufacturers of fans, dampers, louvers, air curtains, and other air-system components for commercial HVAC, industrial-process, and power-generation applications. With programs such as certified ratings, laboratory accreditation, verification of compliance, and international-standards development, its mission is to advance the knowledge of air systems and uphold industry integrity on behalf of its 400 member companies worldwide.
[6] ACCA is a non-profit association whose membership includes more than 60,000 professionals from businesses in the indoor environment and energy services community. We work together to promote professional contracting, energy efficiency, and healthy, comfortable indoor environments.
[7] SMACNA is an international trade association representing 1,834 member firms in 97 chapters throughout the United States, Canada, Australia, and Brazil. A leader in promoting quality and excellence in the sheet metal and air conditioning industry, SMACNA has offices in Chantilly, Va., and on Capitol Hill.

Advisory Committee (ASRAC) Working Group in 2015, signaled clear progress; however, the rulemaking was suspended in January 2017 with publication of Executive Order 13771.

Among the unintended consequences of the suspension are that the fan industry is now faced with state-by-state regulation, which was initiated by California in 2017, and having a legacy fan-efficiency metric (Fan Efficiency Grade) being retained in the energy codes of states that have adopted ASHRAE or ICC model energy codes or standards since their 2012 editions. Thus, it is fair to say that the Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, has unintentionally increased regulatory burden and costs for the fan industry.

Therefore, we are submitting a petition to resume rulemaking for a federal test standard for commercial and industrial fans.

Respectfully,

Mr. Michael G. Ivanovich
Senior Director, Global Affairs, AMCA International
mivanovich@amca.org; +1 708-714-6619

Mr. Thomas F. Catania, Jr. Esq.
Consultant and Counsel to AMCA International

Mr. Barton James
President and CEO, ACCA

Mr. Vincent R. Sandusky
Chief Executive Officer, SMACNA

CC:
Mr. Alexander Fitzsimmons, Mr. David Nemtzow, Mr. John Cymbalsky, Mr. Daniel Cohen, Ms. Elizabeth Kohl, U.S. Department of Energy

Attachment: Petition for Adoption of Uniform Test Procedure for Certain Commercial and Industrial Fans and Blowers

BILLING CODE 2020–08316–C

Before the United States Department of Energy

Office of Energy Efficiency and Renewable Energy

In the Matter of Energy Conservation Program: Commercial and Industrial Fans and Blowers;

January 10, 2020

Petition for Adoption of Uniform Test Procedure for Certain Commercial and Industrial Fans and Blowers

Air Movement and Control Association (AMCA) International,[8] Air Conditioning Contractors of America (ACCA)[9] and Sheet Metal & Air Conditioning Contractors of America (SMACNA),[10] respectfully petition the U. S. Department of Energy (DOE) to develop a test procedure for commercial and industrial fans and blowers (CIFB) based on an AMCA draft test procedure (AMCA 214),[11] which is being developed by an American National Standards Institute- (ANSI-) compliant committee of AMCA members and energy-efficiency advocates.

AMCA, ACCA, and SMACNA believe such an action by the Department would be in the national interest and consistent with the Administration's objective of reducing regulatory burden, particularly on small- to medium-sized manufacturers.

Moreover, development of a CIFB test procedure based on AMCA 214 would accelerate the use of a new fan-efficiency metric that was agreed to in a term sheet approved by an Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) Working Group from the unfinished DOE CIFB rulemaking. The new metric is superior to the metric currently used in pre-2019 editions of ASHRAE and International Code Council model energy standards and codes, state energy codes, and voluntary and mandatory fan regulations in India, Malaysia, Thailand, and other Asian countries.

Need To Preempt Metric Used in State Energy Codes and Regulations

In 2010, AMCA published a rating standard defining a metric for fan efficiency, Fan Efficiency Grade (FEG), and led its placement into model energy codes and standards from 2012 onward.[12] FEG subsequently has been adopted into at least 12 state energy codes.[13]

During the DOE CIFB rulemaking that started in 2011, AMCA, working in collaboration with DOE and energy-efficiency advocates, developed superior metrics—Fan Energy Index (FEI) and Fan Electrical Power (FEP). These metrics were recommended in the term sheet approved by the ASRAC Working Group for Fans in 2015.

Compared with FEG, FEI is a wire-to-air metric for fans as extended products. It allows fan specifiers and purchasers to easily compare the power consumption of various potential fan selections, including motor and drive combinations. FEI also facilitates simpler enforcement by code officials because FEI ratings are easy to compare to minimum code requirements. Therefore, the new metric is designed to use market signals and better information to assist customers in selecting the most efficient fan for their specific requirements.

AMCA is convinced of the superiority of FEI and FEP, specifically their substantial energy-saving potential, their enabling more straightforward fan selection for system design, and their simpler enforceability by code officials.

DOE was expected to publish a proposed test procedure for fans soon after the 2015 conclusion of the ASRAC Working Group. However, DOE's work on fans was suspended following the January 20, 2017, publication of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs.

Without a federal CIFB test procedure, industry must continue to comply with state energy codes using the outdated FEG metric and endure the cost and resources of advocating for the adoption of FEI on a state-by-state basis. Without federal preemption, the phaseout of FEG will take many years to accomplish through regular code cycles (Minnesota, for example, has a six-year revision cycle and is now adopting the 2018 International Energy Conservation Code).

State appliance regulations are a completely different regulatory channel affecting the fan industry. The California Energy Commission is developing a CIFB efficiency regulation[14] based on FEI and FEP, with other states expected to follow suit. Without a federal test procedure, these states would be free to promulgate unique requirements that, in aggregate, could impose excessive regulatory burden.

In short, the Executive Order meant to ease regulatory burden has had the opposite effect of triggering considerable regulatory burden for the fan industry through expenditure of resources, greater uncertainty, and inefficiency.

Basis on Emerging Industry Standard

AMCA and energy-efficiency advocates are working with the California Energy Commission (CEC) to incorporate FEI into the Title 20 appliance-efficiency standard. To aid this and the efforts of other states certain to follow, AMCA and energy-efficiency advocates are developing a test procedure for FEI. The intent is to have AMCA 214 ANSI-accredited and referenced in state appliance regulations, encouraging uniform testing and rating requirements.

Calculating an FEI rating from fan-test data currently requires four different AMCA publications: Two calculation standards, one standardized method of test, and one operating manual. AMCA 214 weaves these publications together. It integrates and revises sections of ANSI/AMCA Standard 207, Fan System Efficiency and Fan System Input Power, for calculating part-load motor and drive efficiencies and ANSI/AMCA Standard 208, Calculation of the Fan Energy Index, for calculating FEI; incorporates by reference standardized methods of test appropriate for most fans;[15] and integrates and revises

[8] AMCA International Inc. is a not-for-profit association of manufacturers of fans, dampers, louvers, air curtains, and other air-system components for commercial HVAC, industrial-process, and power-generation applications. With programs such as certified ratings, laboratory accreditation, verification of compliance, and international-standards development, its mission is to advance the knowledge of air systems and uphold industry integrity on behalf of its 400 member companies worldwide.

[9] ACCA is a non-profit association whose membership includes more than 60,000 professionals from businesses in the indoor environment and energy services community. We work together to promote professional contracting, energy efficiency, and healthy, comfortable indoor environments.

[10] SMACNA is an international trade association representing 1,834 member firms in 97 chapters throughout the United States, Canada, Australia, and Brazil. A leader in promoting quality and excellence in the sheet metal and air conditioning industry, SMACNA has offices in Chantilly, Va., and on Capitol Hill.

[11] AMCA 214, Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers, is in the review/balloting stage with the intent of achieving ANSI standard accreditation in 2020.

[12] International Green Construction Code (2012); ANSI/ASHRAE/IES 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings (2013); ANSI/ASHRAE/USGBC/IES 189.1, Standard for the Design of High-Performance Green Buildings Except Low-Rise Residential Buildings (2014); International Energy Conservation Code (2015).

[13] States with FEG-based energy-code provisions include, but may not be limited to, Alabama, Florida, Hawaii, Idaho, Illinois, Maryland, Minnesota, New Jersey, New York, Oregon, Utah, Vermont, and Washington.

[14] For Title 20, see California Energy Commission Docket 17–AAER–06, Commercial and Industrial Fans and Blowers, at *https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=17-AAER-06*.

[15] AMCA 214 references ANSI/AMCA Standard 210/ASHRAE Standard 51, Laboratory Methods of

Continued

portions of the operating manual for fans in AMCA Publication 211, Certified Ratings Program Product Rating Manual for Fan Air Performance.

AMCA 214 establishes uniform definitions of FEI and FEP as well as means by which fans are tested and ratings calculated. Also, it provides definitions of key terms that are intended to be legally enforceable.

A federal test procedure would not solve all problems, as states still would be able to set their own minimum efficiency performance standards, labeling and compliance-filing requirements, and surveillance procedures. However, establishing metrics and the AMCA 214 test procedure would provide substantial relief for U.S. codes, standards, and regulations and promote and support worldwide uniformity.

To facilitate fan regulation by a state or an agency, AMCA 214 omits scoping statements that would restrict the test procedure to specific fan types or sizes and does not present labeling, compliance, or surveillance mechanisms that would be included in an efficiency standard.

Limit Scope of Test Procedure

AMCA petitions that the test-procedure scope for commercial fans be consistent with that in ANSI/ASHRAE/IES 90.1–2019, Energy Standard for Buildings Except Low-Rise Residential Buildings, and exempt embedded fans that are part of equipment listed under ANSI/ASHRAE/IES 90.1–2010 Section 6.4.1.1. For industrial fans, AMCA recommends omitting fans that cannot be tested to ANSI/AMCA Standard 210/ASHRAE Standard 51, Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, such as jet fans. AMCA also petitions that the exemptions in the 2015 ASRAC term sheet be followed.

Need To Allow Legacy Data

AMCA, ACCA and SMACNA petition that manufacturers and regulators be allowed to rely on previously established fan ratings to certify compliance with any state or federal efficiency standard (1) regardless of the date of the test, (2) even if the testing occurred prior to laboratory approval by the government entity, and (3) even if the testing was conducted before the federal test procedure was approved by DOE. Moreover, AMCA, ACCA and SMACNA petition that manufacturers and regulators be allowed to rely on ratings from a single fan to certify compliance with any state or federal efficiency standard and use test results based on the above-listed AMCA or International Organization for Standardization (ISO) standardized methods of test.

Conclusion

Without federal preemption, the fan industry will have to contend with state energy-code cycles over many years to remove a legacy metric. Additionally, it will have to negotiate with state regulators developing CIFB appliance standards. Appliance rulemaking processes and required participation are time-consuming and complex; legally enforceable definitions and test procedures must be developed. Because states are entitled to unique regulations, AMCA and manufacturers will be burdened with participating in rulemakings state by state, which will likely result in unique requirements and test procedures. In aggregate, small and medium-sized companies will be imperiled by burdensome costs and possible penalties resulting from unintended errors.

FEI is a metric for driving CIFB efficiency that is superior to the FEG metric currently used in many state energy codes and in other economies. FEI and FEP (which is used to calculate FEI) were agreed on by the ASRAC fan working group and the ASRAC Working Group.

AMCA 214 is a draft test procedure developed by industry experts and diverse stakeholders that DOE can use to accelerate the adoption of FEI on a national basis, eliminating the outdated FEG and reducing regulatory burden. Greater use of FEI will provide a convenient and effective tool for making better fan selections, which will reduce energy consumption, carbon emissions, and energy costs.

Therefore, AMCA, SMACNA, and ACCA respectfully petition DOE to adopt a test procedure for commercial and industrial fans based on AMCA 214 with the scope limitations proposed and allow historical data from tests performed to AMCA or ISO test standards.

End of Petition

[FR Doc. 2020–08316 Filed 4–22–20; 8:45 am]

BILLING CODE 6450–01–P

Testing Fans for Certified Aerodynamic Performance Rating, for most types of fans and permits substituting ISO 5801, Fans—Performance Testing Using Standardized Airways, for ANSI/AMCA Standard 210/ASHRAE Standard 51.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0418; Product Identifier 2017–SW–053–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters. This proposed AD was prompted by the discovery that certain longitudinal trim actuators, lateral trim actuators, and yaw trim actuators, which are certified for installation on MBB–BK117 C–2 helicopters, were erroneously listed as eligible for installation on MBB–BK 117 D–2 helicopters. This proposed AD would require removing the affected parts from service and prohibit installing the affected parts on MBB–BK 117 D–2 helicopters. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 8, 2020.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax: 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0418; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0418; Product Identifier 2017–SW–053–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2017–0094, dated May 29, 2017 (EASA AD 2017–0094), to correct an unsafe condition for Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters with a serial number (S/N) up to 20126 inclusive, excluding S/N 20109, 20119, and 20124. EASA advises that certain part-numbered longitudinal trim actuators, lateral trim actuators, and yaw trim actuators, which are certified for installation on Model MBB–BK117 C–2 helicopters, were erroneously listed as eligible for installation on Model MBB–BK117 D–2 helicopters in the applicable illustrated parts catalogue (IPC), up to Revision 7. EASA AD 2017–0094 states that one or more of these trim actuators could have been installed in service on Model MBB–BK 117 D–2 helicopters. EASA AD 2017–0094 also states that for Model MBB–BK 117 C–2 helicopters, it issued EASA AD No. 2013–0182, dated August 12, 2013 (EASA AD 2013–0182), to require a torque check of the attachment screws and repetitive visual inspections of two of these trim actuators, to address a possible unsafe condition that, if not detected and corrected, could lead to reduced control of the helicopter. EASA AD 2013–0182 prompted FAA AD 2016–21–03, Amendment 39–18684 (81 FR 72505, October 20, 2016). EASA AD 2017–0094 further states that the same unsafe condition could exist on MBB–BK 117 D–2 helicopters, if equipped with an affected part. EASA advises that the IPC has been revised, and to address this condition, EASA AD 2017–0094 requires replacing the affected parts with parts that are approved for installation on MBB–BK117 D–2 helicopters. EASA AD 2017–0094 also prohibits the installation of the affected parts on any helicopter.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information

Airbus Helicopters has issued Alert Service Bulletin (ASB) MBB–BK117 D–2–67A–005, Revision 0, dated April 3, 2017. This service information contains procedures for replacing the affected parts.

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

Proposed AD Requirements

This proposed AD would require, within 300 hours time-in-service, removing longitudinal trim actuator part number (P/N) 418–00878–001, lateral trim actuator P/N 418–00878–051, and yaw trim actuator P/N 418–00879–001 from service. This proposed AD would also prohibit the installation of these part-numbered actuators on Model MBB–BK 117 D–2 helicopters.

Differences Between This Proposed AD and the EASA AD

The EASA AD has a compliance time of ''Within 400 flight hours, or within 12 months, whichever occur first'' for the replacement. However, this proposed AD would require replacing affected parts within 300 hours time-in-service instead. The EASA AD prohibits the installation of an affected actuator on any helicopter, whereas this proposed AD would prohibit the installation of an affected actuator on any Model MBB–BK 117 D–2 helicopter instead.

Costs of Compliance

The FAA estimates that this proposed AD would affect 29 helicopters of U.S. registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

If required, replacing an actuator would take about 1.5 work-hours and parts would cost about $20,000 for an estimated cost of $20,128.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

2. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH: Docket No. FAA–2020–0418; Product Identifier 2017–SW–053–AD.

(a) Comments Due Date

The FAA must receive comments by June 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters, certificated in any category, with a serial number up to 20126 inclusive, excluding serial numbers 20109, 20119, and 20124, and with any of the following installed:

(1) Longitudinal trim actuator part number (P/N) 418–00878–001,

(2) Lateral trim actuator P/N 418–00878–051, or

(3) Yaw trim actuator P/N 418–00879–001.

(d) Subject

Joint Aircraft Service Component (JASC) Code 6700, Rotors flight control.

(e) Unsafe Condition

This AD was prompted by the discovery that certain longitudinal trim actuators, lateral trim actuators, and yaw trim actuators were erroneously listed as eligible for installation on MBB–BK 117 D–2 helicopters. The FAA is issuing this AD to address this condition, which could lead to reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 300 hours time-in-service, remove from service any longitudinal trim actuator P/N 418–00878–001, lateral trim actuator P/N 418–00878–051, and yaw trim actuator P/N 418–00879–001.

(2) After the effective date of this AD, do not install longitudinal trim actuator P/N 418–00878–001, lateral trim actuator P/N 418–00878–051, or yaw trim actuator P/N 418–00879–001 on any Model MBB–BK 117 D–2 helicopter.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(j) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD 2017–0094, dated May 29, 2017. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0418.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax: 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

Issued on April 17, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08623 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0413; Product Identifier 2017–SW–018–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Leonardo S.p.a. (Leonardo) Model A109E, A109S, and AW109SP helicopters. This proposed AD would require inspecting each fire extinguisher bottle for a crack. This proposed AD was prompted by a report of a cracked fire extinguisher bottle. The actions of this proposed AD are intended to address an unsafe condition on these helicopters.

DATES: The FAA must receive comments on this proposed AD by June 22, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0413; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Leonardo,

Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Eric Haight, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *eric.haight@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2016–0261R1, dated February 13, 2020, to correct an unsafe condition for Leonardo Model A109LUH, A109E, A109S, and AW109SP helicopters. EASA advises that a fractured bypass outlet assembly (assembly), which is a component of fire extinguishing bottle part number (P/N) 27300–1, was found during maintenance on a Model AW109SP helicopter. EASA states that this condition, if not detected and corrected, could affect the capability of the fire extinguishing system to extinguish a fire in the engine area, resulting in damage to the helicopter and injury to any occupants. To address this unsafe condition, the EASA AD requires repetitive inspections of the assembly, and if there is a crack, replacing the fire extinguisher bottle. Due to similarity of design, EASA advises other helicopter models may be subject to the same unsafe condition.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Leonardo Helicopters Bollettino Tecnico (BT) No. 109EP–152 for Model A109E helicopters, BT No. 109SP–108 for Model AW109SP helicopters, and BT No. 109S–073 for Model A109S helicopters, all dated December 15, 2016. The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No. 109S–073, Revision A, dated November 23, 2019, for Model A109S helicopters. This service information contains procedures for inspecting the assembly for a crack and replacing the fire extinguishing bottle if there is a crack.

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

Proposed AD Requirements

This proposed AD would require, within 25 hours time-in-service (TIS) and thereafter at intervals not exceeding 200 hours TIS, inspecting the weld beads of each fire extinguisher bottle P/N 27300–1 assembly for a crack. If there is a crack, the proposed AD would require replacing the fire extinguisher bottle before further flight. This proposed AD would also prohibit the installation of a fire extinguisher bottle P/N 27300–1 on any helicopter unless it has met the requirements of this AD.

Differences Between This Proposed AD and the EASA AD

The EASA AD applies to Model A109LUH helicopters; this proposed AD does not as that model helicopter is not type certificated in the U.S.

Interim Action

The FAA considers this proposed AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this proposed AD would affect 107 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Inspecting both assemblies would require about 2 work-hours, for a estimated cost of $170 per helicopter and $18,190 for the U.S fleet, per inspection cycle.

Replacing a fire extinguishing bottle would require about 3 work-hours and parts would cost about $6,432, for an estimated cost of $6,687 per helicopter.

According to Leonardo's service information, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Leonardo. Accordingly, the FAA has included all costs in this cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

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

2. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2020–0413; Product Identifier 2017–SW–018–AD.

(a) Applicability

This AD applies to Leonardo S.p.a. Model A109E, Model A109S, and Model AW109SP helicopters, certificated in any category, with a fire extinguisher bottle part number (P/N) 27300–1 installed.

Note 1 to paragraph (a) of this AD: Fire extinguisher bottle P/N 27300–1 may be installed as part of fire extinguisher kit P/N 109–0811–39–103, P/N 109–0811–39–107, or P/N 109–0811–39–109.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack on a fire extinguisher bottle bypass outlet assembly. This condition could result in failure of the fire extinguishing system in the event of a fire in the engine area and subsequent loss of control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by June 22, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 200 hours TIS, using a mirror and a light, inspect the weld beads of each fire extinguisher bottle bypass outlet assembly for a crack in the areas depicted in Figure 2 of Leonardo Helicopters Bollettino Tecnico (BT) No. 109EP–152, BT No. 109S–073, or BT No. 109SP–108, each dated December 15, 2016, or Alert Service Bulletin No. 109S–073 Revision A, dated November 23, 2018, as applicable to your model helicopter. Pay particular attention to each circled area. If there is a crack, before further flight, replace the fire extinguisher bottle.

(2) After the effective date of this AD, do not install a fire extinguisher bottle P/N 27300–1 on any helicopter unless it has been inspected as required by paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Eric Haight, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222 5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2016–0261R1, dated February 13, 2020. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2620, Extinguishing System.

Issued on April 17, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08622 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0410; Product Identifier 2019–SW–030–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model AS–365N2, AS 365N3, EC 155B, EC155B1, and SA–365N1 helicopters. This proposed AD would require modifying the main gearbox (MGB) tail rotor (T/R) drive flange installation. This proposed AD was prompted by several reported occurrences of loss of tightening torque of the Shur-Lok nut, which serves as a retainer of the T/R drive flange. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 22, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0410; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2019–0046, dated March 11, 2019 (EASA AD 2019–0046), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) Model SA 365 N1, AS 365 N2, AS 365 N3, EC 155 B, and EC 155 B1 helicopters, all serial numbers, with modification 0763B64 installed, except those with 0763C81 installed.

EASA advises of reported occurrences of loss of tightening torque of the Shur-Lok nut, which serves as a retainer of the T/R drive flange of the MGB. EASA also advises of subsequent investigation that determined that these occurrences were the result of failure of the Shur-Lok nut locking function, which is normally ensured by two anti-rotation tabs engaged into two slots at the end of the MGB output shaft pinion. EASA states this condition could lead to the loosening and disengagement of the Shur-Lok nut threads, possibly resulting in reduction of T/R drive control, rear transmission vibrations, and subsequent loss of control of the helicopter.

To address this unsafe condition, EASA issued a series of ADs, initially with EASA AD No. 2014–0165, dated July 14, 2014 (EASA AD 2014–0165), which required a one-time inspection of the radial play inside the T/R drive flange and the condition of the Shur-Lok nut. Shortly after, EASA issued EASA AD No. 2014–0179, dated July 25, 2014 (EASA AD 2014–0179) to supersede EASA AD 2014–0165. EASA AD 2014–0179 retained the requirements of EASA AD 2014–0165 and expanded the applicability of helicopters affected by the unsafe condition. EASA later revised EASA AD 2014–0179 to Revision 1, dated July 29, 2014, to revise the applicability and specify updated related service information, and again to Revision 2, dated April 11, 2016 (EASA AD 2014–0179R2), to reduce the applicability and specify additional updated related service information. Since EASA issued EASA AD 2014–0179R2, another occurrence was reported that involved an on-ground loss of T/R synchronization, resulting from disengagement of the Shur-Lok nut. This additional occurrence prompted EASA to issue EASA AD 2019–0046 to require installation of modification 07 63C81, which consists of installing a rear output stop with 5 spigots on the T/R shaft flexible coupling. According to Airbus Helicopters, the 5 spigots will come into contact with the row of 5 bolt heads of the front T/R shaft if the T/R drive flange moves backwards. This contact limits backward displacement of the T/R drive flange and subsequently prevents T/R drive flange disengagement.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other products of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–63.00.19, for Model AS365N, N1, N2, and N3 helicopters and non FAA-type certificated military Model AS365F, Fi, Fs, K, and K2 helicopters; and Airbus Helicopters ASB No. EC155–63A013 for Model EC155B and B1 helicopters, both Revision 1 and dated January 31, 2019. This service information specifies procedures for modification 0763C81 to install a rear (aft) output stop between the T/R drive flange and T/R drive shaft.

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

Proposed AD Requirements

This proposed AD would require compliance with certain procedures specified in the manufacturer's service information. This proposed AD would require, within 600 hours time-in-service, modifying the MGB T/R drive flange installation by removing the sliding flange from the flexible coupling and installing the sliding flange with aft output stop part number 365A32–7836–20 added, as per helicopter model and configuration. This proposed AD would also require removing from service certain washers, degreasing the bolt threads, applying a sealant between the interlay mating surfaces, and applying torque to the nuts.

Costs of Compliance

The FAA estimates that this proposed AD affects 46 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Modifying the MGB T/R drive flange installation would take about 14 work-hours and parts would cost about $2,704 for an estimated cost of $3,894 per helicopter and $179,124 for the U.S. fleet.

Authority for This Rulemaking

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

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

that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Will not affect intrastate aviation in Alaska, and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2020–0410; Product Identifier 2019–SW–030–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS–365N2, AS 365N3, EC 155B, EC155B1, and SA–365N1 helicopters, certificated in any category, with modification 0763B64 installed, except those with modification 0763C81.

(b) Unsafe Condition

This AD defines the unsafe condition as loss of tightening torque of the Shur-Lok nut, which serves as a retainer of the tail rotor (T/R) drive flange of the main gearbox. This condition could result in loss of the Shur-Lok nut, possibly resulting in disengagement of the T/R drive flange, reduction of T/R drive control, rear transmission vibrations, and subsequent loss of control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by June 22, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 600 hours time-in-service:

(1) For Model AS–365N2, AS 365N3, and SA–365N1 helicopters:

(i) Without removing the tail drive shaft flange (a), remove the sliding flange (b) from the flexible coupling (c) as shown in Detail ''B'' of Figure 1, PRE MOD, of Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–63.00.19, Revision 1, dated January 31, 2019 (ASB AS365–63.00.19); replace the 3 bolts (d) and remove from service the 3 washers (e).

(ii) Install the sliding flange (b) with aft output stop (1) part number (P/N) 365A32–7836–20 as shown in Detail ''B'' of Figure 1, POST MOD, of ASB AS365–63.00.19 and by following the Accomplishment Instructions, paragraph 3.B.2.b, of ASB AS365–63.00.19.

(2) For Model EC 155B and EC155B1 helicopters:

(i) Without removing the Shur-Lok nut (a), remove the sliding flange (b) from the flexible coupling (c) as shown in Detail ''B'' of Figure 1, PRE MOD, of Airbus Helicopters ASB No. EC155–63A013, Revision 1, dated January 31, 2019 (ASB EC155–63A013); replace the 3 bolts (d) and remove from service the 3 washers (e).

(ii) Install the sliding flange (b) with aft output stop (1) P/N 365A32–7836–20 as shown in Detail ''B'' of Figure 1, POST MOD, of ASB EC155–63A013 and by following the Accomplishment Instructions, paragraph 3.B.2.b, of ASB EC155–63A013.

Note 1 to paragraph (e)(2)(ii) of this AD: ASB EC155–63A013 refers to the ''aft output stop'' as ''rear output stop.''

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2019–0046, dated March 11, 2019. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6500, Tail Rotor Drive System.

Issued on April 17, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08583 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AD99, RIN 3038–AE31, RIN 3038–AE32, RIN 3038–AE60, RIN 3038–AE94

Extension of Currently Open Comment Periods for Rulemakings in Response to the COVID–19 Pandemic

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of currently open comment periods for rulemakings.

SUMMARY: The coronavirus disease 2019 (''COVID–19'') pandemic may present challenges to the ability of market participants and other members of the public to submit timely comments on the Commission's proposed rulemakings. Accordingly, the Commission is extending the comment period for the rulemakings listed herein until the dates specified herein in order to provide market participants and other members of the public an additional period of time to comment on the proposed rulemakings.

DATES: For those rulemakings listed in **SUPPLEMENTARY INFORMATION** for which the comment period is being extended, comments must be received on or before the dates specified herein.

ADDRESSES: You may submit comments by any of the following methods:

- *CFTC Website: comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Please submit your comments using only one method.

To ensure that your comments are considered to the fullest extent possible by the Commission, you should identify each of the proposed rulemakings to which your comment applies by providing the name and RIN number associated with each rulemaking.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: On this release, Laura B. Badian, Assistant General Counsel, (202) 418–5969, *lbadian@cftc.gov*; Mark T. Fajfar, Assistant General Counsel, (202) 418–6636, *mfajfar@cftc.gov,* in each case at the Office of the General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581. On any particular rulemaking, the Commission staff members listed in the associated notice of proposed rulemaking.

SUPPLEMENTARY INFORMATION:

Extension of Open Comment Periods on Rulemakings and Request for Comment

In response to the COVID–19 pandemic, the Commission has worked closely with the industry to identify relief or other assistance that may be needed to help ensure the industry can support orderly and liquid markets in the face of the coronavirus. These efforts include staff no-action relief letters that offer market participants temporary, tailored relief to mitigate market disruptions.[2]

The Commission, at its discretion, has traditionally considered comments submitted after a comment period closes but before adoption of a final rule or order. Nevertheless, in recognition of the challenges that market participants and other interested members of the public may face in commenting on proposed rulemakings as a result of the COVID–19 pandemic, the Commission is formally extending the comment period for the rulemakings listed herein until the dates specified herein.

The Commission is continuing to monitor the impact of the COVID–19 pandemic on derivatives markets and their participants and may consider additional comment period extensions and other relief as appropriate.

The comment periods for the following proposed rulemakings are being extended until the date specified below:

Title of rulemaking	Date proposed	Original closing date for comments	Extended closing date for comments
Position Limits for Derivatives	1/30/2020	4/29/2020	Friday, 5/15/2020.
Swap Execution Facility Requirements and Real-Time Reporting Requirements	1/30/2020	4/20/2020	Friday, 5/22/2020.
Certain Swap Data Repository and Data Reporting Requirements	5/13/2019	* 5/20/2020	Friday, 5/22/2020.
Amendments to the Real-Time Public Reporting Requirements	2/20/2020	5/20/2020	Friday, 5/22/2020.
Amendments to the Swap Data Recordkeeping and Reporting Requirements	2/20/2020	5/20/2020	Friday, 5/22/2020.

* Previously extended from 7/29/2019.

Issued in Washington, DC, on April 13, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Appendices to Extension of Currently Open Comment Periods for Rulemakings in Response to the COVID–19 Pandemic—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz and Stump voted in the affirmative. Commissioners Behnam and Berkovitz voted in the negative.

Appendix 2—Dissenting Statement of Commissioner Rostin Behnam

I strongly support extending all current open comment periods on rule proposals, which will allow commenters to solely focus their efforts on the immediate personal and professional needs of the day, and ensure—after we collectively get through these uncertain times—that commenters are able to provide the CFTC with the most fulsome comments to these important policy proposals. Unfortunately, today's Commission action does not extend current open comment periods in any meaningful way, and thus I respectfully must dissent.

Five open comment periods are extended by today's action. However, the comment periods for three of the five rules are extended for a mere two days. That is not an extension at all. Instead, it is essentially an announcement that the Commission will not be extending these deadlines. For two of these rules, the comment period opened on February 20, so the entire comment period has essentially spanned the COVID–19 pandemic. Market participants deserve an opportunity to comment outside of current market conditions, and better rules would result. Importantly, the COVID–19 pandemic itself may impact views on the proposed rules, and the CFTC should adjust comment

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

[2] *See, e.g.,* CFTC Letter No. 20–11 (Mar. 20, 2020) (granting temporary relief for commodity pool operators) and CFTC Letter No. 20–12 (Mar. 31, 2020) (granting temporary relief for foreign brokers exempt pursuant to Commission Regulation 30.5 to handle U.S. futures market orders). All CFTC staff relief granted in response to COVID–19 is available at *https://www.cftc.gov/coronavirus.*

periods to allow for consideration of these evolving impacts.

Similarly, today's action extends the comment period for position limits by a mere sixteen days. Prior position limits proposals have garnered hundreds of public comments totaling thousands of pages. Producing these comments presumably takes months of work and careful thought by market participants and other stakeholders. Extending the deadline to May 15 as market and public health uncertainty continues is not sufficient.

I commend agency Division Directors and staff, who are themselves adjusting in real-time to the new realities of social distancing and teleworking, for issuing no-action relief aimed at providing market participants and registrants with necessary relief.[1] These important actions have enabled market participants and registrants to focus their efforts on business continuity, market stability, and personnel management in these turbulent times. I also applaud the CFTC's recent actions to issue Customer Advisories notifying the public to be on high alert for fraudsters that are seeking to profit from recent market volatility related to COVID–19.[2]

I previously stated that the CFTC should temporarily table all non-critical policy work, shifting all our efforts and resources towards monitoring market and institutional stability and resiliency, prioritizing surveillance and enforcement, working with other regulators, and exhaustively engaging with market participants to consider necessary agency action that will alleviate market disruptions and support stable financial markets.[3]

Although markets continue to show signs of normalcy and stability since the most volatile days of the last two months, there remains significant uncertainty and a steep road ahead. Consequently, I believe comment periods should be of sufficient length to allow market participants to focus on the current crisis, which the public and country continue to endure. I stand ready to work with the Chairman, my fellow Commissioners, and market participants to reach agreement on meaningful extensions.

Appendix 3—Dissenting Statement of Commissioner Dan M. Berkovitz

I dissent from today's extensions of comment periods for several pending proposed rulemakings because the extensions are *too short.* Market participants and the public need more time to be able to provide high-quality comments on pending CFTC rulemakings in light of the disruptions resulting from the novel coronavirus pandemic.

Public comments serve a critical role in the Commission's rulemaking deliberative process on regulations that will impact market participants and safeguard derivatives markets for years to come. Not providing the public sufficient time to obtain additional perspective and develop meaningful comments in these extraordinary times is bad public policy.

The Commission should afford market participants and interested members of the public comment periods substantially longer than the standard periods that apply absent these extraordinary circumstances. At a minimum, the Commission should extend all pending comment periods by 60 days. The two-week and two-day extensions granted by the Commission today are inadequate.

The pandemic has disrupted—and destroyed—life across the country. To date, the coronavirus has killed more than 12,800 Americans.[1] The projected toll is expected to be much larger.[2] Nearly 300 million Americans (over 90 percent of the population) are under stay-at-home orders.[3] Nearly 10 million workers have filed jobless claims during the past two weeks.[4] Schools are closed. Non-essential travel is forbidden. By no means can the current circumstances be described as—or treated as—business-as-usual.

So far, the financial markets have been resilient and have performed their intended functions of price discovery and risk management. Our market infrastructures—exchanges, clearinghouses, and swap execution facilities—have met the challenges posed by record volatility and volumes. Market participants have continued to provide essential risk management tools to American companies to help them maintain operations through this time of national crisis.

I commend the work done by the CFTC staff in monitoring these markets and for taking appropriate action to ensure market participants can continue to access the markets while observing social distancing requirements. I also commend the Chairman and the agency's executive leadership team for enabling all of us at the CFTC to telework and carry out the mission of the agency from safe locations in accordance with state and federal requirements and guidelines.

The COVID–19 related regulatory relief granted by the CFTC over the past few weeks is clear recognition that the pandemic has disrupted normal operations of market participants. Many functions cannot be performed in a timely manner due to physical displacements and other extraordinary demands on market participants. Just three weeks ago, on March 17, 2020, in CFTC Letter No. 20–02, CFTC staff observed, ''[d]isruptions in transportation and limited access to facilities and support staff as a result of the COVID–19 pandemic could hamper efforts of market participants to meet their regulatory obligations.'' The staff noted that no-action relief has been requested ''where compliance is anticipated to be particularly challenging or impossible because of displacement of firm personnel from their normal business sites due to [social distancing] and closures . . . .''[5] Subsequent staff no-action relief letters similarly recognized the difficulties that market participants face in complying with CFTC requirements and requests.

To accommodate these extraordinary circumstances, the CFTC has granted relief from a variety of CFTC recordkeeping, reporting, and registration requirements. Specifically, the CFTC has granted relief from requirements to: Time-stamp records;[6] record oral conversations;[7] furnish Chief Compliance Officer Annual Reports to the Commission prior to September 1, 2020;[8] register as an Introducing Broker (IB);[9] submit annual compliance reports and fourth quarter financial reports prior to September 1, 2020;[10] comply with audit trail requirements;[11] file Form CPO–PQR pursuant to regulation 4.27;[12] submit commodity pool annual reports due on or before April 30, 2020;[13] distribute periodic account statements to pool participants due on or before April 30, 2020;[14] register as an IB (for foreign brokers acting under specified circumstances);[15] and register as a Major Swap Participant prior to September 30, 2020.[16]

The Commission's refusal to grant meaningful rulemaking comment period extensions stands in contrast to its swift recognition of requests by market

[1] CFTC Provides Relief to Market Participants in Response to COVID–19 (March 17, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8132-20*; CFTC Issues Second Wave of Relief to Market Participants in Response to COVID–19 (March 17, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8133-20*; CFTC Issues Third Wave of Relief to Market Participants in Response to COVID–19 (March 20, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8136-20*; CFTC Provides Further Relief to Market Participants in Response to COVID–19 (March 31, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8142-20.*

[2] CFTC Issue Customer Advisory on COVID–19 (March 18, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8134-20*; CFTC Issues Customer Advisory on Fee Scams (April 6, 2020).

[3] Statement of Commissioner Rostin Behnam Regarding COVID–19 and CFTC Digital Assets Rulemaking (March 24, 2020). *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement032420.*

[1] Worldometer, Coronavirus Cases, as of April 8, 2020, available at *https://www.worldometers.info/coronavirus/country/us/.*

[2] *See generally http://www.healthdata.org/.*

[3] Philip Bump, *Nearly all Americans are under stay-at-home orders. Some may have come too late.,* Washington Post, Mar. 2, 2020, available at *https://www.washingtonpost.com/politics/2020/04/02/nearly-all-americans-are-under-stay-at-home-orders-some-may-have-come-too-late/.*

[4] Rebecca Rainey and Norman McCaskill, *'No words for this': 10 million workers file jobless claims in just two weeks,* Politico, Apr. 2, 2020,available at *https://www.politico.com/news/2020/04/02/unemployment-claims-coronavirus-pandemic-161081.*

[5] CFTC Letter No. 20–02.

[6] *Id.* (members of Designated Contract Markets (DCMs) and swap execution facilities (SEFs)); CFTC Letter No. 20–03 (futures commission merchants and IBs); CFTC Letter No. 20–04 (Floor Brokers); CFTC Letter No. 20–05 (Retail Foreign Exchange Dealers); CFTC Letter No. 20–06 (swap dealers).

[7] CFTC Letter No. 20–03; CFTC Letter No. 20–04; CFTC Letter No. 20–05; CFTC Letter No. 20–06; CFTC Letter No. 20–07 (SEFs).

[8] CFTC Letter No. 20–03; CFTC Letter No. 20–06.

[9] CFTC Letter No. 20–04.

[10] CFTC Letter No. 20–08 (SEFs).

[11] CFTC Letter No. 20–09 (DCMs, to the extent noncompliance is caused by displacement resulting from the COVID–19 pandemic response).

[12] CFTC Letter No. 20–11 (relief permits Small or Mid-Sized CPOs to file the required annual reports, and Large CPOs to file quarterly reports for the first quarter 2020, up to 45 days later than required by regulation).

[13] *Id.*

[14] *Id.*

[15] CFTC Letter No. 20–12.

[16] CFTC Letter No. 20–10.

participants for relief from the Commission's reporting and registration regulations. It is not clear why the Commission believes that market participants who state that it is difficult to comply with fundamental reporting or registration requirements nonetheless will be able to evaluate proposed rules and prepare comments with minimal delay.

Today's extension of two weeks for the position limits rulemaking—a rule that has been a decade in the making—is insignificant given the scope and magnitude of the proposed changes to the existing position limits rules. Further, the commodity markets have experienced unprecedented price movements and stresses over the past several weeks and commenters and the Commission would be well-served to review and take into account how the markets performed in this environment in fashioning and considering public comments. There is no compelling reason to require public comments on a position limits rule that has been ten years in the making without fully considering how the market has performed in the recent conditions of extreme stress.

The two extensions of two days for the swap reporting rulemakings are not meaningful. In fact, they are almost disrespectful to the many industry professionals that are attempting to meet the Commission's comment deadlines under unprecedented circumstances. Typically, comment periods are measured in days. These extensions can be measured in hours. I doubt any market participant will find these extensions of any benefit.

It is unreasonable to require market participants to prepare comments on complex rulemakings at the same time they are struggling to comply with fundamental recordkeeping, reporting, and registration obligations. The Commission should extend these comments periods by at least 60 days.

[FR Doc. 2020–08109 Filed 4–22–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0031; FRL–10007–82–Region 5]

Air Plan Approval; Illinois; Reasonable Further Progress Plan and Other Plan Elements for the Chicago Nonattainment Area for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Illinois State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measures, and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Illinois portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago area) for the 2008 ozone national ambient air quality standard (NAAQS or standard). EPA is also proposing to approve the 2017 transportation conformity motor vehicle emissions budgets (MVEBs) for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. EPA is proposing to approve the state's submission as a SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emissions inventory, RFP, RFP contingency measures, I/M, and transportation conformity requirements for areas classified as moderate nonattainment for the 2008 ozone NAAQS. Final approval of the Illinois SIP as meeting the I/M and RFP requirements of the CAA for the 2008 ozone NAAQS will permanently stop the Federal Implementation Plan (FIP) clocks for those specific elements, which were triggered by EPA's December 11, 2017 finding that Illinois failed to submit certain required SIP elements for the 2008 ozone NAAQS.

DATES: Comments must be received on or before May 26, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2019–0031, at *http://www.regulations.gov*, or via email to *aburano.douglas@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 *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

A. Background on the 2008 Ozone Standard

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Promulgation of a revised NAAQS triggers a requirement for EPA to designate all areas of the country as nonattainment, attainment, or unclassifiable for the NAAQS. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.[2] Ozone nonattainment areas are classified based on the severity of their ozone levels as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years. The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.[3]

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and the ozone-specific planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources, and implement a nonattainment New Source Review (NSR) program for the relevant

[1] 73 FR 16436, codified at 40 CFR 50.15.
[2] CAA sections 107(d)(1) and 181(a)(1).
[3] CAA section 181(a)(1).

ozone NAAQS.[4] For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as Reasonably Available Control Technology (RACT) and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.[5]

B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,[6] EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin. On May 4, 2016,[7] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015, marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for the state to submit all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas. On August 23, 2019,[8] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2018, moderate area attainment deadline and thus reclassified the area from moderate to serious nonattainment. In that action, EPA established August 3, 2020 and March 23, 2021 as the due dates for serious area nonattainment plan SIP submissions for newly reclassified areas. Today's action does not address serious area nonattainment planning requirements.

B. Background on EPA's Finding of Failure To Submit SIPs for the 2008 Ozone NAAQS

On December 11, 2017, EPA found that three states failed to submit SIP revisions in a timely manner to satisfy certain moderate nonattainment plan requirements for the 2008 ozone NAAQS.[9] EPA found, *inter alia,* that Illinois failed to submit a SIP to meet the following requirements of the CAA for the Chicago area: A basic I/M program, contingency measures for volatile organic compounds (VOC) and oxides of nitrogen (NO_X), a nonattainment NSR program for moderate nonattainment areas,[10] an ozone attainment demonstration, RACT non-control techniques guidelines for major stationary sources of VOC, RACT for major stationary sources of NO_X, and RFP for VOC and NO_X.

This finding established certain deadlines for the imposition of sanctions if the states do not submit timely SIP revisions addressing the requirements for which EPA made the finding and for EPA to promulgate a FIP to address any outstanding SIP requirements. Specifically, Illinois was required to submit a complete SIP addressing the deficiencies that were the basis for the finding within 18 months of the effective date of the findings (*i.e.,* July 10, 2019) so as to avoid triggering, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) in the affected nonattainment area. Additionally, EPA is required to promulgate a FIP for the affected nonattainment area if EPA does not take final action to approve the state's submittal within 2 years of the effective date of the findings (*i.e.,* January 10, 2020).

On January 10, 2019, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision addressing moderate area requirements for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. On March 7, 2019, EPA found that the SIP revision fulfilled the completeness criteria in 40 CFR part 51, appendix V.[11] Through the completeness finding, EPA determined that the deficiencies which formed the basis for the December 11, 2017, finding had been corrected and, as a result, the sanctions clock at CAA section 179(a) and (b) was permanently stopped.

II. What is EPA's evaluation of the Illinois submittal?

IEPA's January 10, 2019, SIP revision for the Chicago area contains a number of nonattainment plan elements, including a revised 2011 base year emissions inventory for VOC and NO_X, a 15 percent RFP plan, a 3 percent contingency measure plan, 2017 VOC and NO_X motor vehicle emissions budgets, a VOC RACT certification and negative declarations, an enhanced I/M certification, an attainment demonstration, a reasonably available control measure (RACM) demonstration, and a NO_X RACT waiver request. In addition, on December 5, 2018 IEPA had submitted to EPA support for a Negative Declaration for the Oil and Gas Industry, which is the subject of a December 16, 2016 Control Technology Guideline. *See* 81 FR 74798 (October 27, 2016). EPA will be addressing the attainment demonstration, the contingency measure plan as it applies to the attainment demonstration, the RACM demonstration, NO_X RACT submission, and VOC RACT SIP submissions in a separate action.

A. Revised 2011 Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, comprehensive, accurate, and complete emissions inventories for all areas designated as nonattainment for the ozone NAAQS. An emissions inventory for ozone is an estimation of actual emissions of VOC and NO_X from all sources located in the relevant designated nonattainment area. For the 2008 ozone NAAQS, EPA has recommended that states use 2011 as a base year for the emissions estimates.[12] On March 7, 2016,[13] EPA approved the 2011 base year emissions inventory submitted by IEPA on September 3, 2014, for the Illinois portion of the Chicago area. IEPA included a revised 2011 base year emissions inventory in its January 10, 2019, submission. The revised 2011 base year emissions inventory only modifies the emissions estimates for the on-road and non-road mobile sectors, with emissions estimates for point and area sectors remaining unchanged from the inventory approved by EPA.

In the original 2011 base year emissions inventory approved by EPA, Illinois calculated 2011 on-road mobile

[4] CAA section 182(a).

[5] CAA section 182(b).

[6] 77 FR 34221, effective July 20, 2012.

[7] 81 FR 26697.

[8] 84 FR 44238.

[9] 82 FR 58118 (effective January 10, 2018).

[10] On May 23, 2018, IEPA submitted a SIP revision requesting EPA's approval of IEPA's certification that its existing SIP approved Nonattainment NSR regulations fully satisfy the Nonattainment NSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. On February 6, 2019 (84 FR 2063), EPA approved IEPA's certification. This final action permanently stopped the FIP clock triggered by EPA's December 11, 2017 finding.

[11] Letter from Edward Nam, Director, Air & Radiation Division, EPA Region 5 to Julie Armitage, Chief, Bureau of Air, IEPA.

[12] 78 FR 34178, 34190 (June 6, 2013).

[13] 81 FR 11671.

emissions using the 2010 version of the MOVES model. The current version of the MOVES model is 2014a. In addition, when compiling the 2014 inventory, IEPA used updated estimates of vehicle registrations (fleet mix) and vehicle miles traveled and found significant differences from the 2011 values. To maintain consistency of the inventory for comparison to future years, the 2014 VMT and vehicle population from 2014 was back-casted to 2011, using the same growth factor that was used for projecting the vehicle population and VMT from 2014 to 2017, 1.2 percent per year. With this data, MOVES2014a was run to obtain 2011 emissions.

The 2010 version of the MOVES model was also used to calculate non-road emissions in the original base year inventory. To maintain consistency, the 2011 non-road inventory was recalculated using MOVES2014a.[14] Because it is important to maintain a consistent methodology when comparing emissions inventories from different years and because MOVES2014a is the current version of the model, EPA is proposing to approve the updated 2011 base year emissions inventory as a revision to the Illinois SIP.

TABLE 1—REVISED 2011 BASE YEAR EMISSIONS INVENTORY IN TONS PER SUMMER DAY

[tpsd]

County	VOC					No_X				
	Point	Area	On-road	Non-road	Total	Point	Area	On-road	Non-road	Total
Cook	27.01	123.60	86.53	52.60	289.74	42.52	14.60	182.22	78.83	318.17
DuPage	4.11	25.77	20.19	16.38	66.45	5.49	4.53	45.63	19.19	74.85
Grundy (P)	1.87	0.51	0.23	0.66	3.26	5.39	0.06	0.91	0.99	7.35
Kane	3.25	13.45	10.48	8.37	35.55	3.80	1.77	22.27	14.41	42.25
Kendall (P)	0.50	1.33	0.70	0.92	3.45	0.77	0.19	1.53	1.08	3.57
Lake	2.14	19.35	14.69	16.89	53.07	13.74	3.52	32.47	15.01	64.74
McHenry	1.21	8.46	6.86	5.39	21.92	0.86	1.17	13.99	8.78	24.80
Will	8.16	17.57	14.56	9.10	49.40	47.42	1.30	33.61	17.80	100.13
Total	48.26	210.04	154.24	110.31	522.85	119.99	27.13	332.64	156.10	635.86

B. 15 Percent RFP Plan and 3 Percent Contingency Plan

1. Background

The CAA requires that states with areas designated as nonattainment for ozone achieve RFP toward attainment of the ozone NAAQS. CAA section 172(c)(2) contains a general requirement that nonattainment plans must provide for emissions reductions that meet RFP. For areas classified moderate and above, section 182(b)(1) imposes a more specific RFP requirement that a state had to meet through a 15 percent reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990. The state must meet the 15 percent requirement by the end of the 6-year period, regardless of when the nonattainment area attains the NAAQS. As with other nonattainment plan requirements for more recent iterations of the ozone NAAQS, EPA has promulgated regulations and guidance to interpret the statutory requirements of the CAA.

EPA's final rule to implement the 2008 ozone NAAQS (SIP Requirements Rule),[15] addressed, among other things, the RFP requirements as they apply to areas designated nonattainment and classified as moderate for the 2008 ozone NAAQS.[16] EPA interprets the 15 percent VOC emission reduction requirement in CAA section 182(b)(1) such that a state that has already met the 15 percent requirement for VOC for an area under either the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS would not have to fulfill that requirement through reductions of VOC again. Instead, EPA is interpreting CAA section 172(c)(2) to require states with such areas to obtain 15 percent ozone precursor emission reductions (VOC and/or NO_X) over the first 6 years after the baseline year for the 2008 ozone NAAQS. The state previously met the 15 percent VOC reduction requirement of CAA section 182(b)(1) for the Illinois portion of the Chicago area under the 1-hour ozone NAAQS. Therefore, the state may rely upon both VOC and NO_X emissions reductions to meet the RFP requirement for the 2008 ozone NAAQS.

EPA's SIP Requirements Rule indicates the base year for the 2008 ozone NAAQS, for which areas were designated nonattainment effective July 20, 2012, can be 2011 or a different year of the states choosing. However, states selecting a pre-2011 alternate baseline year must achieve 3 percent emission reductions each year after the initial 6-year period has concluded up to the beginning of the attainment year. For a multi-state area, states must agree on the same base year. Illinois, Indiana, and Wisconsin have selected the EPA-recommended base year of 2011.[17]

States may not take credit for VOC or NO_X reductions occurring from sources outside the nonattainment area for purposes of meeting the 15 percent RFP and 3 percent RFP requirements of CAA sections 172(c)(2), 182(b)(1) and 182(c)(2)(B). The Illinois 15 percent RFP represents emissions reductions which occurred in the Illinois portion of the nonattainment area from 2011 to 2017, thereby satisfying this requirement.

Except as specifically provided in section 182(b)(1)(D) of the CAA, all state control measures approved into the SIP or Federal measures that provide emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided that the reductions meet the standard requirements for creditability which

[14] MOVES does not calculate off-road emissions for commercial marine vessels, aircraft, or rail locomotives. Emission estimates for these source types remain unchanged from the original 2011 base year inventory.

[15] 80 FR 12264 (March 6, 2015).

[16] *Ibid.,* at 12271 and 40 CFR 51.1110.

[17] On February 16, 2018, the D.C. Circuit Court issued a decision in *South Coast Air Quality Management District* v. *EPA*, 882 F.3d 1138 (D.C. Cir. 2018), in which several parties challenged different aspects of EPA's SIP Requirements Rule for the 2008 Ozone NAAQS. In this decision, the Court upheld 2011 as a reasonable baseline year for the 2008 ozone NAAQS but vacated the provision allowing for an alternate year. Because Wisconsin, Illinois, and Indiana have selected 2011 as the baseline year, the decision does not impact the Illinois RP plan.

include being enforceable, quantifiable, permanent, and surplus in terms of not having previously been counted toward RFP.

States must also include contingency measures in their nonattainment plans. The contingency measures required for areas classified as moderate and above under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to attain or to meet any applicable RFP milestone. The state must submit these measures for approval by EPA into the SIP as adopted measures that would take effect without further rulemaking action by the state or the EPA upon a determination that an area failed to attain or to meet the applicable milestone. Per EPA guidance for purposes of the ozone NAAQS, contingency measures should represent one year's worth of RFP progress, amounting to reductions of at least 3 percent of the baseline emissions inventory for the nonattainment area.[18] The purpose of the contingency measures is to provide additional emission reductions in the event of a failure to attain or meet any applicable milestone, which would occur while the state is revising its SIP for the area to rectify the failure to attain or to meet RFP requirements.[19]

Regarding the contingency measures, EPA's prior guidance for purposes of the ozone NAAQS specifies that some portion of the contingency measures must include VOC reductions. This previous limitation is no longer necessary in all areas. In particular, EPA has concluded that states with nonattainment areas classified as moderate and above that have already completed the initial 15 percent VOC reduction required by CAA section 182(b)(1)(A)(i), can meet the contingency measures requirement based entirely on NO_X controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement. Also, EPA is continuing its long-standing policy that allows states to use promulgated Federal measures as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP.[20]

2. Illinois's 15 Percent RFP and 3 Percent RFP Contingency Measures Plan

To demonstrate that the Illinois portion of the Chicago area has achieved 15 percent RFP over the 6-year attainment planning period, Illinois is using a 2011 base year inventory and a 2017 RFP inventory. Illinois used growth factors to project emissions from 2011 to 2017. For point and area source categories along with non-road categories not calculated by the MOVES model, growth factors were primarily derived using Version 6.2 of the ''Notice of Data Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone NAAQS'' (NODA). This data set projected 2011 emissions to 2017 and 2025. For large NO_X emitting units, however, a growth factor was applied based on actual 2011 to 2016 growth in emissions as reported to the IEPA. In addition, when the NODA predicted that a coal-firing emission unit would shut down but it actually switched to natural gas, the state conservatively assumed a growth factor of 1.0. Two coal-fired sources were shut down in 2012. These sources were updated to zero in the 2017 inventory.

Illinois calculated on-road emissions using EPA's MOVES2014a model. Vehicle population and vehicle miles traveled were assumed to increase at a rate of 1.2 percent per year from 2011. Off-road emissions other than commercial marine vessels, aircraft, and rail locomotive were also calculated using the MOVES2014a model. The MOVES model incorporates a number of Federal emissions control programs into its projections. These emissions reduction measures are permanent and enforceable and are implemented in the nonattainment area. The MOVES model assumed increases in vehicle or equipment population and usage while projecting decreases in ozone precursor emissions from 2011 to 2017. The estimated emissions reductions are therefore not due to reductions in source activity, but to the implementation of control measures. Tables 2 and 3 list the Federal permanent and enforceable control programs modeled by the MOVES model.

TABLE 2—FEDERAL ON-ROAD EMISSION CONTROL PROGRAMS MODELED BY MOVES

On-road control program	Pollutants	Model year *	Regulation
Passenger vehicles, SUVs, and light duty trucks—emissions and fuel standards.	VOC & NO_X	2004–09+ (Tier 2), 2017+ (Tier 3).	40 CFR parts 85 & 86.
Light-duty trucks and medium duty passenger vehicle—evaporative standards.	VOC	2004–10	40 CFR part 86.
Heavy-duty highway compression engines	VOC & NO_X	2007+	40 CFR part 86.
Heavy-duty spark ignition engines	VOC & NO_X	2005–08+	40 CFR part 86.
Motorcycles	VOC & NO_X	2006–10 (Tier 1 & 2)	40 CFR part 86.
Mobile Source Air Toxics—fuel formulation, passenger vehicle emissions, and portable container emissions.	Organic Toxics & VOC	2009–15 **	40 CFR parts 59, 80, 85, & 86.
Light duty vehicle corporate average fuel economy standards.	Fuel efficiency (VOC & NO_X).	2012–16 & 2017–25	40 CFR part 600.

* The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

** The range in model years reflects phased implementation of fuel, passenger vehicle, and portable container emission requirements as well as the phasing by vehicle size and type.

[18] See the SIP Requirements Rule (80 FR at 12285) and April 16, 1992 General Preamble section III.A.3.c (57 FR 13498 at 13511).

[19] 80 FR 12285.

[20] *Id.*

TABLE 3—FEDERAL NON-ROAD EMISSION CONTROL PROGRAMS MODELED BY THE MOVES MODEL OR CONSIDERED IN DEVELOPMENT OF THE MAR INVENTORY

Nonroad control program *	Pollutants	Model year **	Regulation
Aircraft	VOC & NO_X	2000–2005+	40 CFR Part 87.
Compression Ignition	VOC & NO_X	2000–2015+ (Tier 4)	40 CFR parts 89 & 1039.
Large Spark Ignition	VOC & NO_X	2007+	40 CFR part 1048.
Locomotive Engines	VOC & NO_X	2012–2014 (Tier 3), 2015+ (Tier 4).	40 CFR part 1033.
Marine Compression Ignition	VOC & NO_X	2012–2018	40 CFR part 1042.
Marine Spark Ignition	VOC & NO_X	2010+	40 CFR part 1045.
Recreational Vehicle	VOC & NO_X	2006–2012 (Tiers 1—3)	40 CFR part 1051.
Small Spark Ignition Engine <19 Kw—emission standards.	VOC & NO_X	2005–2012 (Tiers 2 & 3)	40 CFR parts 90 & 1054.
Small Spark Ignition Engine <19 Kw—evaporative standards.	VOC	2008–2016	40 CFR parts 1045, 54, & 60.

* Compression ignition applies to diesel non-road compression engines including engines operated in construction, agricultural, and mining equipment. Recreational vehicles include snowmobiles, off-road motorcycles, and all-terrain vehicles. Small spark ignition engines include engines operated in lawn and hand-held equipment.

** The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

Table 4 shows Illinois's 2017 projected emissions inventory.

TABLE 4—PROJECTED 2017 EMISSIONS INVENTORY

[tpsd]

County	VOC					No_X				
	Point	Area	On-road	Non-road	Total	Point	Area	On-road	Non-road	Total
Cook	26.96	116.65	44.63	38.40	226.64	29.33	14.50	89.71	61.96	195.50
DuPage	4.07	22.98	10.60	12.22	49.87	6.77	4.64	22.72	12.94	47.07
Grundy (P)	1.91	0.48	0.11	0.44	2.94	9.81	0.06	0.45	1.45	11.76
Kane	3.22	12.12	5.43	6.28	27.05	3.36	1.84	11.00	9.69	25.89
Kendall (P)	0.51	1.27	0.37	0.67	2.81	0.87	0.19	0.76	0.73	2.55
Lake	2.14	17.04	7.70	12.45	39.33	15.93	3.74	16.17	11.36	47.20
McHenry	1.14	7.77	3.65	3.90	16.46	0.78	1.21	6.97	5.73	14.69
Will	8.16	16.49	7.59	6.69	38.92	56.72	1.25	16.62	13.43	88.01
Total	48.10	194.79	80.08	81.05	404.02	123.57	27.42	164.40	117.28	432.67

Illinois submitted documentation showing that emission reductions in the Illinois portion of the Chicago area met the 15 percent RFP and 3 percent RFP contingency measures requirements through shutdown of the two coal-fired electric generating units and Federal permanent and enforceable control measures within the on-road and non-road mobile source sectors. Table 5 shows the calculations Illinois used to determine that these reductions meet the RFP and RFP contingency measures requirements.

TABLE 5—2017 RFP AND CONTINGENCY TARGET LEVEL CALCULATIONS

[Emissions in tpsd]

Description	Formula	VOC	NO_X
A. 2011 Base Year Inventory		522.85	635.86
B. RFP Reductions totaling 15%		5%	10%
C. RFP Emissions Reductions Required Between 2011 & 2017	A*B	26.14	63.59
D. RFP Target Level for 2017	A–C	496.71	572.27
E. Contingency Percentage		0%	3%
F. Contingency Emission Reduction Requirements	A*E	0	19.08
G. RFP + Contingency Reduction Requirements	C+F	26.14	82.66
H. Reductions between 2011 and 2017:			
Federal on-road control programs		74.16	168.24
Federal non-road control programs		29.26	38.82
Crawford shutdown		negligible	8.11
Fisk shutdown		negligible	3.62
Total		103.42	218.79
I. Adjustments to reductions:			

TABLE 5—2017 RFP AND CONTINGENCY TARGET LEVEL CALCULATIONS—Continued

[Emissions in tpsd]

Description	Formula	VOC	NO_X
Agency hold-back		19.00	95.00
Allocation to mobile source budget		52.92	39.60
Total		71.92	134.60
J. Creditable reduction	H–I	31.50	84.19
K. Compare creditable reductions to RFP and contingency reduction requirements to determine if at least 18% reduction is achieved.	J>G	Yes	Yes
L. RFP + Contingency Target Level	A–G	496.71	553.20
M. 2017 Projected Emissions		404.02	432.67
N. Compare RFP & Contingency Target with 2017 Projected Emissions to determine if RFP and Contingency Measure Requirements Are Met.	M<L?	Yes	Yes

Illinois has demonstrated that emission reductions attributable to permanent and enforceable measures will result in at least an 18 percent reduction (15 percent for RFP and 3 percent for contingency measure requirements) in the Illinois portion of the Chicago area over the 6-year attainment planning time period, starting with the 2011 base year. Thus, EPA is proposing to approve the Illinois 15 percent RFP and 3 percent contingency measure plan for the Illinois portion of the Chicago area for the 2008 ozone standard.

EPA notes that the control measures Illinois is relying upon to meet the RFP contingency measures requirement are already implemented. Contingency measures may include Federal measures and local measures already scheduled for implementation, as long as the resulting emission reductions are in excess of those needed for attainment or to meet other nonattainment plan requirements. EPA interprets the CAA not to preclude a state from implementing such measures before they are triggered by a failure to meet RFP or failure to attain. For more information on contingency measures, see the General Preamble (57 FR 13510) and the SIP Requirements Rule (80 FR at 12285).

The appropriateness of relying on already-implemented control measures to meet the contingency measures requirement has been addressed in two Federal circuit court decisions. *See Louisiana Environmental Action Network (LEAN)* v. *EPA,* 382 F.3d 575, 586 (5th Cir. 2004); *Bahr* v. *United States EPA,* 836 F.3d 1218 (9th Cir. 2016), *cert. denied,* 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018). EPA believes that the language of CAA section 172(c)(9) and 182(c)(9) are ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, as long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to meet other nonattainment plan requirements or in the modeled attainment demonstration in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called ''early triggered'' contingency measures) as a valid means to meet the CAA's contingency measures requirement. The Ninth Circuit decision in *Bahr* leaves a split among the Federal circuit courts, with the Fifth Circuit upholding the Agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation. The Seventh Circuit in which Illinois is located has not addressed the issue, nor has the Supreme Court or any other circuit court other than the Fifth and Ninth.

Because there is a split in the Federal circuits on this issue, EPA expects that states located in circuits other than the Ninth may elect to rely on EPA's longstanding interpretation of CAA section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the Agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, EPA will carefully review each such measure, and intends to consult with states considering such measures early in the attainment plan development process.

As shown above, the emissions reductions projected through 2017 are sufficient to meet the requirements for RFP contingency measures, consistent with EPA's interpretation of the CAA to allow approval of already implemented control measures as contingency measures in states outside the Ninth Circuit. Therefore, we propose approval of the contingency measures submitted by the state in the nonattainment plan for the Illinois portion of the Chicago area.

C. 2017 MVEBs

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

Under the CAA, states are required to submit, at various times, control strategy plans for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas.[21] These control strategy plans (including RFP plans and attainment plans for purposes of the ozone NAAQS) and maintenance plans must include MVEBs for the relevant criteria pollutant or its precursor pollutants (VOC and NO_X for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will meet an

[21] See the SIP requirements for the 2008 ozone standard in the SIP Requirements Rule (80 FR 12264).

RFP milestone or provide for attainment or maintenance of the NAAQS.[22] The MVEB serves as a ceiling on emissions from an area's planned transportation system.[23]

When reviewing control strategy or maintenance plan submissions, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. *See* 40 CFR 93.118(f). This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004.[24] Additional information on the adequacy process for transportation conformity purposes is available in a June 30, 2003, proposed rule titled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes.'' [25]

The Illinois RFP and contingency measure plan includes VOC and NO_X MVEBs for the Illinois portion of the Chicago area for 2017. EPA reviewed the VOC and NO_X MVEBs through the adequacy process. Illinois's January 10, 2019, RFP and contingency measure SIP submission, including the VOC and NO_X MVEBs for the Illinois portion of the Chicago area, was available for public comment on EPA's adequacy website on February 22, 2019, found at: *https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa.* The EPA public comment period on adequacy of the 2017 MVEBs for the Illinois portion of the Chicago area closed on March 25, 2019. No comments on the submittal were received during the adequacy comment period. The submitted RFP and contingency measure plan, which included the MVEBs, was endorsed by the Governor's designee and was subject to a state public hearing. The MVEBs were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBs were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with the 15 percent RFP and 3 percent RFP contingency measures requirements of the 2008 8-hour ozone standard.

TABLE 6—2017 VOC AND NO_X MVEBS FOR THE ILLINOIS PORTION OF THE CHICAGO AREA

[tpsd]

	2017 on-road emissions	Allocation of surplus reductions to on-road mobile sector	2017 MVEBs
VOC	80.08	52.92	133.00
NO_X	164.40	39.60	204.00

As shown in Table 6, the 2017 MVEBs exceed the estimated 2017 on-road sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, Illinois allocated a portion of the surplus RFP and contingency plan reductions to the mobile sector. Illinois has demonstrated that the Illinois portion of the Chicago area can meet the 15 percent RFP and 3 percent RFP contingency measure requirements of the 2008 ozone NAAQS with mobile source emissions of 133.00 tpsd of VOC and 204.00 tpsd of NO_X in 2017, because despite partial allocation of the RFP and RFP contingency measures plan surplus reductions, emissions will remain under 2017 RFP plus contingency measure target levels. EPA has found adequate and is thus proposing to approve the 2017 VOC and NO_X MVEBs for use to determine transportation conformity in the Illinois portion of the Chicago area under the 2008 ozone NAAQS because EPA has determined that the area can meet the 15 percent RFP and 3 percent RFP contingency measure requirements of the 2008 ozone NAAQS with mobile source emissions at the levels of the MVEBs.

D. Motor Vehicle I/M Program Certification

The requirement to adopt a motor vehicle I/M program for moderate ozone nonattainment areas is described in CAA section 182(b)(4), and the regulations for basic and enhanced I/M programs are found at 40 CFR part 51, subpart S. Under these cumulative requirements, states with areas classified as moderate nonattainment for ozone with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt basic I/M programs, while serious and higher classified ozone nonattainment areas outside of the northeast ozone transport region with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. The Chicago area meets the criteria for mandatory I/M under the 2008 ozone NAAQS.

The Illinois portion of the Chicago area was required to adopt an enhanced I/M program under the 1-hour ozone NAAQS. EPA approved Illinois's enhanced I/M program on February 22, 1999 (64 FR 8517) and on August 13, 2014 (79 FR 47377). The Illinois I/M program for the Chicago nonattainment area is governed by: 625 ILCS 5/13C—Illinois Vehicle Emissions Inspection Law of 2005; 35 Illinois Administrative Code 240—Emissions Standards and Limitations for Mobile Sources; and 35 Illinois Administrative Code 276—Procedures to be followed in the performance of inspections of Motor

[22] 40 CFR 93.101.

[23] The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

[24] 69 FR 40004.

[25] 68 FR 38974, 38984.

Vehicle Emissions. These requirements remain in place in the Illinois ozone SIP. In its January 10, 2019, submission, Illinois certified that the existing SIP-approved enhanced I/M program in place for the Chicago area satisfies the I/M requirements of section 182(b)(4) of the CAA for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. We agree that Illinois has satisfied the CAA section 182(b)(4) I/M requirement for the Chicago area for the 2008 ozone NAAQS.

III. What action is EPA proposing?

EPA is proposing to approve revisions to the Illinois SIP pursuant to section 110 and part D of the CAA and EPA's regulations because IEPA's January 10, 2019, SIP plan submission satisfies the emissions inventory, RFP, RFP contingency measures, transportation conformity, and I/M requirements of the CAA for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. Final approval of these portions of IEPA's January 10, 2018 SIP revision would permanently stop the FIP clocks triggered by the December 11, 2017 finding with respect to a basic I/M program and RFP. Final approval of these portions of IEPA's submittal will not affect the FIP clocks triggered by the December 11, 2017 finding for the following SIP elements: Contingency measures for VOC and NO_X, an attainment demonstration, RACT non-control techniques guidelines for major stationary sources of VOC, and RACT for major stationary sources of NO_X.

IV. Statutory and Executive Order Reviews

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, 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 application of those requirements would be inconsistent with the CAA; 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).

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).

List of Subjects in 40 CFR Part 52

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

Dated: April 8, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–07817 Filed 4–22–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0159; FRL–10008–16–Region 6]

Air Plan Approval; Texas; Construction Prior to Permit Amendment Issuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas (TX) State Implementation Plan (SIP) proposed January 29, 2020 and submitted for parallel processing by the State on January 30, 2020. The proposal amends certain air quality permitting rules located in Title 30 of the Texas Administrative Code (TAC), Section 116, Control of Air Pollution by Permits for New Construction or Modification. These revisions amend the State's New Source Review permitting regulations via the addition of new, proposed Section 116.118, *Construction While Permit Application Pending.* This proposed new section will allow applicants for certain permit amendments to begin construction after the executive director has completed a technical review and issued a draft permit including the permit amendment for public review and comment, *i.e.,* prior to final permit issuance. Non-substantive, administrative-type, editorial changes, such as grammar, re-lettering, and reference revisions and/or corrections are also included in the revisions the EPA is proposing for approval.

DATES: Written comments must be received on or before May 26, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2020–0159, at *https://www.regulations.gov* or via email to *layton.elizabeth@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to

make. 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 Elizabeth Layton, 214–665–2136, *layton.elizabeth@epa.gov.* 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.*

Docket: The index to the docket for this action is available electronically at *https://www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Elizabeth Layton, EPA Region 6 Office, Air Permits Section, 214–665–2136, *layton.elizabeth@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160–51.164. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Additionally, 40 CFR 51.160 through 51.163 outline the federal requirements which apply to minor permit issuance, including the required administrative, public participation, and federally enforceable procedures.

On January 30, 2020, the Texas Commission on Environmental Quality (TCEQ) submitted on behalf of the State of Texas, a letter [1] requesting the parallel processing review of the January 29, 2020, proposed amendments to 30 TAC Section 116, Control of Air Pollution by Permits for New Construction or Modification, including proposed new Section 116.118, *Construction While Permit Application Pending.* Under the EPA's ''parallel processing'' procedure, the EPA proposes a rulemaking action on a proposed SIP revision concurrently with State's public review process. See 40 CFR 2.3 of Appendix V to part 51 for the requirements and procedure for parallel processing. The January 30, 2020, SIP revision request will not meet all the SIP approvability criteria and deemed complete until the State concludes the public process and submits the final, adopted SIP revision with a letter from the Governor or Governor's designee to the EPA. The EPA is proposing to approve the January 29, 2020, proposed SIP revision upon completion of the State public process and final submittal to the EPA. If the State's proposed SIP revision is not significantly or substantively changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any relevant comments received on our rulemaking. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the TCEQ and submitted formally to the EPA for approval as a revision to the Texas SIP. See 40 CFR Appendix V to part 51.

This action addresses the January 29, 2020, proposed revisions to the Texas SIP that amend the State's minor NSR permitting rules by proposing the addition of new 30 TAC Section 116.118, *Construction While Permit Application Pending,* which allows an applicant for a permit amendment to begin construction, at their own risk, after the executive director has completed a technical review and issued a draft permit for public review and comment. Historically, the permit applicant would not be able to begin construction until the final permit was issued. As specified in the new rule, the applicant assumes all risk when commencing construction under proposed new Section 116.118, and the applicant's investment (financial or otherwise) in any construction activities commenced prior to final permit issuance is prohibited from being used by the permitting authority as a factor when making the determination to issue the applicant's requested amendment. The new, proposed section does not allow for any pre-permit construction prohibited by federal law.

II. The EPA's Evaluation

On January 29, 2020, the TCEQ proposed revisions to the Texas SIP (Rule Project No. 2019–129–116–AI) which revise their rules that address the applicable requirements for air pollution control permits for new construction or modification under 30 TAC Chapter 116, Sections 116.110, 116.116, 116.710, and 116.721; and the addition of proposed new Section 116.118. These proposed revisions were submitted to the EPA with a request for parallel processing on January 30, 2020. The proposed revisions to 30 TAC Chapter 116 were partly in response to the passage of House Bill (HB) 2726, 86th Texas Legislature, 2019. This legislation revised Texas Health and Safety Code (THSC), Section 382.004, Construction While Permit Application Pending, to provide applicants for permit amendments the option to begin construction after the permitting authority has completed a technical review and issued the draft permit, but prior to final permit issuance.

The proposed January 29, 2020, revisions amend the Texas SIP at 30 TAC Subsections 116.110(a), 116.116(b), (e) and (f), 116.710(a), 116.721(a), and include the addition of new Section 116.118, comprised of Subsections 116.118(a)(1)–(8), (b), and (c)(1)–(2). The proposed revisions to Subsections 116.110(a), 116.116(b), 116.710(a) and 116.721(a) add a reference to proposed new Section 116.118 to include the option to begin construction when a draft permit is issued. The proposed revisions to Subsections 116.116(e)(2)(B), (D) and (E), and (8)(A) are non-substantive, grammatical edits such as grammatical number and case changes. The proposed revisions to Subsections 116.116(e)(3), 116.116(f) and 116.721(d)(1) are also non-substantive, grammatical-type, editorial

[1] Please see January 30, 2020, letter addressed to the Regional Administrator at the U.S. EPA, Region 6 requesting parallel processing from TCEQ included in the docket to this rulemaking action.

changes intended to improve readability by replacing the word ''notwithstanding'' with ''regardless of.''

The language in Section 116.110 regarding *change in ownership, submittal under seal of Texas licensed professional engineer* and *responsibility for permit application,* originally approved at Subsections 116.110(d), (e) and (f), was part of a July 22, 1998, submittal and subsequently approved into the SIP on November 14, 2003 (68 FR 64543). However, in a July 14, 2014, final action, regarding revisions to the Texas NSR SIP addressing the Texas Minor NSR Flexible Permits Program, the EPA made an error in our amendatory language pertaining to 30 TAC Section 116.110 by excluding Subsection 116.110(d) from the SIP (See 79 FR 40666). In the July 14, 2014, final rule, we note the SIP approved version of 30 TAC Section 116.110 is the July 22, 1998, submission, which includes the aforementioned language at Subsections (d), (e), and (f). Additionally, in 2002, the State inserted new rule language at 116.110(c) regarding compliance history, which is not included in SIP, but required the re-lettering of the provisions listed above at Subsections 116.110(d), (e), and (f) to Subsections 116.110(e), (f), and (g), respectively. This re-lettering was adopted without changes by the State on August 23, 2002, but not yet submitted for SIP action. The TCEQ requested the EPA address this ministerial correction to the SIP and revise the table at 40 CFR 52.2270(c) to accurately reflect the inclusion of these provisions in the SIP with their appropriate re-lettering in the January 30, 2020, letter requesting the parallel processing of this proposed rulemaking (letter is included in the docket for this proposed action).

The addition of proposed new Section 116.118 allows an applicant to begin construction at their own risk after the executive director has completed the technical review process and issued a draft permit for public review and comment in the purpose provisions at Subsection 116.118(a)(1). Subsections 116.118(a)(2)–(8) contain the proposed new section's applicability requirements and exclusions. Subsection 116.118(a)(2) excludes concrete batch plants located within 880 yards of property being used as a residence, from being eligible for pre-permit construction under Section116.118. The applicability requirements of the new, proposed section are bound by and only authorize construction to the extent permissible under federal law. Subsection 116.118(a)(3) specifies that projects subject to federal PSD or NNSR permitting are not eligible for pre-permit construction under Section 116.118. Subsections 116.118(a)(4) and 116.118(a)(5) specify that Plant-wide Applicability (PAL) permits and projects triggering case-by-case determination of Maximum Achievable Control Technology (MACT) under the federal CAA Section 112(g), respectively, are not eligible for pre-permit construction under proposed new Section 116.118. Subsection 116.118(a)(6) excludes qualified facility changes implemented under Section 116.116(e) from the proposed pre-permit construction provisions at Section 116.118. Subsection 116.118(a)(7) specifies that requests, claims, registrations, or applications for a standard permit under 30 TAC Chapter 116 Subchapter F (*Standard Permits*) or permit by rule (PBR) under 30 TAC Chapter 106 (*Permits by Rule*) are not eligible for pre-permit construction under proposed Section 116.118. Subsection 116.118(a)(8) specifies that Section 116.118 does not relieve or exempt the applicant or project from any other applicable state or federal requirements, including requirements for public notice and participation, federal applicability, emission control technology, and distance limitations. Compliance with the public notice requirements at 30 TAC Chapter 39 is required in Subsection 116.118(b) for any permit amendment applicant using the pre-permit construction provisions in Section 116.118. Subsection 116.118(c)(1) clarifies that although Section 116.118 allows for pre-permit construction for eligible projects, operation of a facility is still strictly forbidden prior to final permit issuance. Subsection 116.118(c)(2) prohibits the State's permitting authority (TCEQ) from considering investment (of any kind) made by the permit amendment applicant in pre-permit construction under Section 116.118 as a factor when making the determination to grant the permit amendment requested in the application.

As discussed in detail above, new proposed Section 116.118 allows certain preconstruction activities prior to obtaining a final construction permit, provided that specific conditions are met. The EPA has preliminarily determined that proposed new Section 116.118, allowing for construction to commence after the issuance of the draft permit, but prior to final permit amendment issuance (under certain conditions), is consistent with the requirements of CAA sections 110(a)(2)(C) and 110(l), and federal regulations at 40 CFR 51.160–51.164, 51.165 and 51.166. Section 110(a)(2)(C) of the CAA requires that state SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are maintained. Federal regulations at 40 CFR 51.160(b) require states to have legally enforceable procedures to prevent the construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. The proposed revisions to the Texas NSR permitting rules under proposed new Section 116.118 allow construction to commence only after the State has conducted a comprehensive technical review of the amendment application and issued a draft permit for public review and comment. The permit amendment application must satisfy all applicable requirements in the technical review process before the State issues the draft permit and preliminary decision. The State's technical analysis includes, but is not limited to, evaluating the emission sources, confirming the applicant included air pollution control measures, which are at least as stringent as best available control technology (BACT), verifying the proposed emissions will not jeopardize the NAAQS, and ensuring the application satisfies all state and federal regulatory requirements. Therefore, the issuance of the draft permit provides the State's demonstration that the permit amendment will not jeopardize attainment or violate the NAAQS, thereby satisfying the federal requirements located in sections 110(a)(2)(c) and 110(l) of the Act, and the federal enforceability, public notice, responsible agency identification, and administrative procedural requirements at 40 CFR 51.160–51.163. The proposed Texas regulations also expressly forbid preconstruction activities that are not permissible under federal law.[2] Further, other states' rules allowing for commencement of construction prior to final permit issuance where those rules applied exclusively to minor NSR have been approved by the EPA. These include the EPA's approval of analogous regulations into the Mississippi SIP on July 10, 2006, and the West Virginia SIP on October 5, 2018 (See 71 FR 38773 and 83 FR 50266, respectively).

The TCEQ's existing NSR permitting rules for both minor and major sources are approved by the EPA into the SIP and the proposed revisions to the State's minor NSR permit rules are consistent with the requirements of the CAA and

[2] See 40 CFR 51.165(a)(1)(xv), 51.166(b)(11), and 52.21(b)(11).

EPA's regulations. When reviewing SIP submissions, the EPA's role is to approve state choices provided they meet the criteria of the CAA, and the applicable federal regulations pertaining to the specific submitted revision(s) being acted on. The EPA has reviewed the proposed changes to the Texas NSR regulations and preliminarily finds them to be consistent with CAA sections 110(a)(2)(C) and 110(l), and the EPA's NSR regulations located at 40 CFR 51.160–51.164.

III. Proposed Action

The EPA has made the preliminary determination that the January 29, 2020, regulations proposed for adoption by the TCEQ, and submitted to the EPA for parallel processing on January 30, 2020, as proposed revisions to the Texas SIP and the State's minor NSR permit rules, are in accordance with the CAA and the EPA's regulations, policy, and guidance for NSR permitting. The EPA's analysis indicates the proposed revisions to 30 TAC Section 116 satisfy the federal requirements for air pollution control permits and will not cause or contribute to an increase in the NAAQS; thus, will not interfere with attainment or reasonable further progress. Therefore, pursuant to section 110(l) of the CAA, the EPA proposes approval of the following revisions, proposed on January 29, 2020, and submitted by the TCEQ on January 30, 2020 with a request for parallel processing:

- Revisions to 30 TAC Section 116.110 (except for Sections 116.110(a)(5), (c) and (d) that are not part of the Texas SIP);
- Revisions to 30 TAC Section 116.116;
- Addition of 30 TAC Section 116.118;
- Revisions to 30 TAC Section 116.710;
- Revisions to 30 TAC Section 116.721.

Additionally, the EPA proposes a ministerial change to 40 CFR 52.2270(c) to clarify that 30 TAC Section 116.110 Subsections (d) change in ownership, (e) submittal under PE seal, and (f) responsibility for permit application were approved on November 14, 2003, and include their appropriate re-lettering to 30 TAC Subsections 116.110(e), (f), and (g), respectively, from the January 30, 2020, parallel processing request.

The EPA is proposing this action in parallel with the state's rulemaking process. We cannot take a final action until the State completes its rulemaking process, adopts its final regulations, and submits these final adopted regulations as revisions to the Texas SIP. If during the response to comments process, the State rule is changed significantly from the proposed rule and the rule upon which the EPA proposed, the EPA may have to withdraw our initial proposed rule and re-propose based on the final SIP submittal.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 14, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–08156 Filed 4–22–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200413–0111]

RIN 0648–BJ49

Fisheries of the Exclusive Economic Zone Off Alaska; Reclassifying Sculpin Species in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 121 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area (BSAI FMP) and Amendment 110 to the FMP for Groundfish of the Gulf of Alaska (GOA) (GOA FMP), collectively referred to as Amendments 121/110. If approved, this proposed rule would prohibit directed fishing for sculpins by federally permitted groundfish fishermen and specify a sculpin retention limit in the GOA and BSAI groundfish fisheries. This action is necessary to properly classify sculpins in the BSAI and GOA FMPs. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Amendments 121/110, the BSAI and GOA FMPs, and other applicable laws.

DATES: Submit comments on or before May 26, 2020.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2020–0004, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0004,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the draft Environmental Assessment and the Regulatory Impact Review (collectively referred to as the ''Analysis'') prepared for this proposed rule may be obtained from *www.regulations.gov.*

Electronic copies of the Initial Regulatory Flexibility Analyses for the BSAI and GOA Groundfish Harvest Specifications for 2020–2021 may be obtained from *www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and GOA under the BSAI and GOA FMPs (the FMPs), respectively. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI and GOA FMPs appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendments 121/110 to the BSAI and GOA FMPs, respectively. The Council submitted Amendments 121/110 for review by the Secretary of Commerce (Secretary), and a Notice of Availability (NOA) of Amendments 121/110 was published in the **Federal Register** on March 23, 2020, with comments invited through May 22, 2020. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may also address Amendments 121/110. However, all comments addressing Amendments 121/110 must be received by May 22, 2020 to be considered in the approval/disapproval decision on Amendments 121/110. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by May 22, 2020, whether specifically directed to the FMP amendments, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendments 121/110 and addressed in the response to comments in the final rule.

Background

In October 2019, the Council voted to recommend Amendments 121/110 to reclassify sculpins as non-target ecosystem component (EC) species, not in need of conservation and management. Sculpins are currently classified as target species in the FMPs, though as discussed below, sculpins are currently only caught incidental to other target fisheries. To implement amendments 121/110, NMFS proposes regulations to prohibit directed fishing for sculpins by federally permitted groundfish fishermen and to specify a sculpin retention limit in the GOA and BSAI groundfish fisheries. The following sections of this preamble provide (1) groundfish stock classification in the FMPs and a brief history of this proposed action; (2) the National Standards (NS) guidance for determining which species require conservation and management; (3) a description of Amendments 121/110; and (4) the regulatory changes made by this proposed rule.

Stock Classification in FMPs and a Brief History of This Proposed Action

Among other requirements, FMPs must comply with the Magnuson-Stevens Act NS (16 U.S.C. 1851). NMFS has implemented regulations to provide guidance on the interpretation and application of these NS. Relevant to this proposed rule, the NS guidelines at 50 CFR 600.305(d)(11), (12) and (13) define three classifications for stocks in an FMP: (1) Target stocks in need of conservation and management that fishers seek to catch; (2) non-target stocks in need of conservation and management that are caught incidentally during the pursuit of target stocks; and (3) EC species that do not require conservation and management, but may be listed in an FMP in order to achieve ecosystem management objectives.

Under the groundfish FMPs, and harvest limit regulations at § 679.20, NMFS must establish an overfishing level (OFL), an acceptable biological catch (ABC) and a total allowable catch (TAC) for each stock or stock complex (*i.e.,* species or species group) that is assigned a target or a non-target species category classification. Overfishing occurs when the amount of catch of a stock or stock complex jeopardizes the capacity of the stock or stock complex to produce the maximum sustainable yield on a continuing basis. NMFS manages fisheries in an effort to ensure that no OFLs are exceeded in any year. Regulations at §§ 679.20(d)(1) through (3) define the process NMFS uses to limit or prohibit fishing to prevent overfishing and maintain total catch at or below the OFL. The FMPs define the ABC as the level of a species or species

group's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. Regulations at §§ 679.20(d)(1) and (2) describe the range of management measures that NMFS uses to maintain total catch at or below the ABC. The FMPs define the TAC as the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty. The TAC must be set lower than or equal to the ABC. Regulations at §§ 679.20(d)(1) and (2) describe the range of management measures that NMFS uses to maintain total catch at or below the TAC.

NMFS establishes the OFL, ABC, and TAC for each species or species group through the annual harvest specification process. For the most recent example of the annual harvest specifications, please see the proposed 2020/2021 annual harvest specifications (84 FR 66129, December 3, 2019 and 84 FR 66109, December 3, 2019).

In 2010, Amendments 96/87 to the BSAI and GOA FMPs, respectively, established the EC category and designated prohibited species (salmon, steelhead trout, crab, halibut, and herring) and forage fish species (as defined in Table 2c to 50 CFR part 679 and § 679.20(i)) as EC species in the groundfish FMPs (75 FR 61639, October 6, 2010). Under Federal regulation at 50 CFR 600.310(d)(1), EC species are identified as non-target species for which catch specifications (*i.e.,* an OFL, ABC, or TAC) are not required. For these EC species, NMFS maintained regulations that (1) prohibited directed fishing for forage fish, and (2) established a limit, known as the maximum retainable amount (MRA), on the amount of incidental harvest of forage fish while directed fishing for other groundfish species. Regulations at 50 CFR 679.2 define the term ''directed fishing.'' Regulations at § 679.20(e) describe the application and calculation of MRAs.

In 2015, NMFS implemented Amendments 100/91 to the BSAI and GOA FMPs, respectively, to add grenadiers (family *Macrouridae*) to the EC category (80 FR 11897, March 5, 2015). The Council and NMFS added grenadiers to the FMPs in the EC category because grenadiers did not require conservation and management, but the Council acknowledged their role in the ecosystem and limited the groundfish fisheries' potential impact on grenadiers. Adding grenadiers to the EC category allowed for improved data collection and catch monitoring appropriate for grenadiers given their abundance, distribution, and catch. Additional detail is provided in the final rule implementing Amendments 100/91 (80 FR 11897, March 5, 2015).

In 2018, NMFS implemented Amendments 117/106 to the BSAI and GOA FMPs, respectively, to add squid species to the EC category (83 FR 31460, July 6, 2018). The Council and NMFS moved squid from the target category in the FMPs to the EC category after making a determination that squid did not require conservation and management, but, similar to grenadiers, still acknowledged their role in the ecosystem and established an MRA to limit groundfish fisheries' potential impact on squid. Recordkeeping and reporting requirements were retained to monitor bycatch of squid. Additional detail is provided in the final rule implementing Amendments 117/106 (83 FR 31460, July 6, 2018).

Sculpins are currently classified as target species in the groundfish FMPs and directed fishing for sculpins is allowed. However, sculpins are not a target species for any groundfish fishery in the BSAI or GOA. Sculpins are only caught incidentally to other target groundfish species. Sculpins are incidentally caught primarily in the BSAI by vessels using trawl gear directed fishing for yellowfin sole, rock sole, and Atka mackerel, as well as by vessels directed fishing for Pacific cod with hook-and-line, pot, and trawl gear (Table 3–4 and Table 3–5 of the Analysis). Sculpins are caught primarily in the GOA by vessels in the Pacific cod and shallow-water flatfish directed fisheries, and IFQ halibut fisheries (Table 3–6 of the Analysis).

For both the BSAI and GOA, sculpins are managed as a Tier 5 species, which is the least preferred method of specifying an overfishing limit when limited biological reference points are available. Only Tier 6 species, for which no biological reference points are available, are below Tier 5 in terms of limited information available. Nonetheless, specification of OFL for Tier 5 species reflects the best estimate possible for sculpins with the available data. As described in Section 3.2.3 of the Analysis, model estimates of sculpin abundance in the BSAI and GOA have been fairly stable over the years with no conservation concerns apparent.

Stock assessments provide the scientific basis for determining whether a stock is experiencing overfishing (*i.e.,* when a stock's recent harvest rate exceeds sustainable levels) or overfished (*i.e.,* already depleted), and for calculating a sustainable harvest rate and forecasting catches that correspond to that rate. For stocks in Tiers 4–6, no determination can be made of overfished status or approaching an overfished condition as information is insufficient to estimate the Maximum Sustainable Yield (MSY) stock level. Therefore, it is not possible to determine whether the sculpin complex is overfished or whether it is approaching an overfished condition because it is managed under Tier 5. However, in the absence of directed fishing, they are very unlikely to be overfished. Sculpins, in general, are not retained. As noted in Section 3.2.2 of the Analysis, sculpin catch has been substantially below ABC and OFL, and has been a small proportion of the biomass each year.

Determining Which Species Require Conservation and Management

Section 302(h)(1) of the Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that is in need of conservation and management. ''Conservation and management'' is defined in section 3(5) of the Magnuson-Stevens Act. The NS guidelines at § 600.305(c) (revised on October 18, 2016, 81 FR 718585) provide direction for determining which stocks will require conservation and management and provide direction to regional councils and NMFS for how to consider these factors in making this determination. Specifically, the guidelines direct regional councils and NMFS to consider a non-exhaustive list of ten factors when deciding whether stocks require conservation and management.

Section 2.2.1 in the Analysis considers each of the 10 factors' relevance to sculpins. The analysis shows that while sculpins are currently classified as a target species in the FMPs, there has been no directed fishing for sculpins since they were included in the FMPs. Sculpins are not important to commercial, recreational, or subsistence users, nor are they important to the National or regional economy. There are no developing fisheries for sculpins in the EEZ off Alaska nor in waters of the State of Alaska. Because there is no directed fishing and incidental fishing-related mortality is low, there is very little probability that sculpins will become overfished. Sculpins are very unlikely to be in need of rebuilding, and are not targeted as a major food product in Alaska. There are no conservation concerns for sculpins since they are not targeted, are rarely retained, and future uses of sculpins remain available. Maintaining sculpins as a target species in the BSAI and GOA FMPs is not likely to change stock condition.

Amendments 121/110

In October of 2019, the Council recommended, and NMFS now proposes, Amendments 121/110 to reclassify sculpins as EC category species in the FMPs. Based on a review of the best available scientific information, and after considering NS guidelines, the Council and NMFS determined that sculpins are not in need of conservation and management, and that classifying sculpins in the EC category is an appropriate action. While the Council determined that sculpins are not in need of conservation and management as defined by the Magnuson-Stevens Act, and after considering the revised NS guidelines, the Council and NMFS determined that there are benefits to retaining sculpins as an EC species complex in the FMPs because they are a component of the ecosystem as benthic predators.

Amendments 121/110 would establish the sculpins EC species complex in the groundfish FMPs to clarify that they are non-target species and not in need of conservation and management. Recordkeeping and reporting requirements would be maintained to monitor the effects of incidental catch of sculpins in the groundfish fisheries. Amendments 121/110 would allow NMFS to prohibit directed fisheries for sculpins and limit the retention and commercial sale of sculpins. Commercial sale of retained sculpins would be allowed, subject to MRAs, only if the retained catch is processed into fishmeal, in accordance with current Federal regulations at § 679.20(i)(5). The limitation on processing and sale of EC species as anything other than fishmeal is status quo for all species moved to the EC; however, the Council is considering changing this limitation for squid and may also consider it for sculpin species to allow them to be processed and sold in other product forms, and that would be addressed with a subsequent action. By virtue of being classified as EC species, catch specifications for sculpins (*i.e.,* OFLs, ABCs, and TACs) would no longer be required.

Though the Council determined, and NMFS concurs, that sculpins are not in need of conservation and management, sculpin population status and bycatch should be monitored to continually assess vulnerability of sculpins to the groundfish fisheries. Therefore, the proposed rule retains recordkeeping and reporting requirements for sculpin bycatch. The proposed rule would prohibit directed fishing for sculpins to meet the intent of Amendments 121/110 that sculpins are not a target species complex. Because the definition of directed fishing at § 679.2 is based on a MRA, the proposed rule would specify a retention limit for sculpins so that NMFS could implement the prohibition on directed fishing to meet the intent of Amendments 121/110.

Proposed Rule

In addition to classifying sculpins as an EC species in the FMPs under Amendments 121/110, the Council recommended and NMFS proposes regulations to limit and monitor the incidental catch of sculpins. This proposed rule would—

- prohibit directed fishing for sculpins in the BSAI and GOA groundfish fisheries;
- maintain recordkeeping and reporting of sculpins in the BSAI and GOA groundfish fisheries, but modify the regulations for clarity; and
- specify a sculpins retention limit, or MRA, of 20 percent in the BSAI and GOA Federal groundfish fisheries.

To prohibit directed fishing, this proposed rule would revise §§ 679.20(i) and 679.22(i) to prohibit directed fishing for sculpins at all times in the BSAI and GOA groundfish fisheries. This prohibition is consistent with the regulations and management approach for other EC species. NMFS prohibits directed fishing for forage fish, grenadiers, and squids.

To clarify definitions, this proposed rule would add a definition for sculpins at § 679.2. Recordkeeping and reporting requirements at § 679.5 would not be modified by this proposed rule and would continue to require a vessel operator or manager in a BSAI or GOA groundfish fishery to record and report retained and discarded sculpins in logbooks, landing reports, and production reports. However, this proposed rule would clarify the recordkeeping and reporting requirements by adding an instruction to § 679.5 to use the sculpin species code in Table 2c to 50 CFR part 679 (Table 2c) to record and report sculpin catch. Table 2c lists the species reporting codes for non-target EC groundfish FMP species. NMFS would modify Table 2c to add one sculpin species code and remove the existing sculpin species code from Table 2a to 50 CFR part 679 (species reporting codes for target groundfish FMP species) because sculpins would be removed as a target species in the groundfish FMPs. These revisions would maintain NMFS' ability to monitor the catch, retention, and discard of sculpins.

Section 679.20 provides the general limitations for the BSAI and GOA groundfish fisheries. Because a TAC would no longer be specified for sculpins, this proposed rule would remove sculpins from § 679.20(b)(2), which specifies the amount of the TAC that is reserved for inseason management flexibility.

The MRA is the proportion or percentage of retained catch of a species closed for directed fishing (incidental catch species) to the retained catch of a species open for directed fishing (basis species). This proposed rule would move sculpins out of the basis species category and into the incidental catch species category consistent with the prohibition on directed fishing for sculpins under this proposed rule. In the GOA, sculpins are included in the ''other species'' category (along with octopuses and sharks) for MRA purposes under the existing regulations. To specify a separate MRA for sculpins in the GOA, this proposed rule would remove sculpins from footnote 6, ''other species'' in Table 10 to 50 CFR part 679 and add sculpins as an incidental catch species with an MRA of 20 percent. This proposed rule would similarly revise Table 11 to 50 CFR part 679 to remove sculpins as a basis species in the BSAI and add sculpins to footnote 7 to indicate that forage fish, grenadiers, squids, and sculpins are all defined in Table 2c.

In developing this proposed rule, the Council and NMFS considered a range of sculpins MRA percentages: 2 percent, 10 percent, and 20 percent. Sculpins, in general, are not retained, and fishery observer data indicate that the retention rate has been below 10 percent in the BSAI and below 20 percent in the GOA. The Analysis (Table 3–7) shows that since 2013, the retention rate has been below 5 percent in both the BSAI and GOA. Table 3–8 in the Analysis shows the low percentage of retained sculpins compared to the total retained groundfish. In the BSAI, the proportion of retained sculpins relative to retained groundfish ranges from a low of 0.00 percent to a high of 0.02 percent. In the GOA, the percent of retained sculpins relative to groundfish ranges from a low of 0.00 percent to a high of 0.04 percent. As noted in Section 3.2.2 of the Analysis, sculpin catch has been substantially below ABC and OFL, and has been a small proportion of the biomass each year. Section 2.3.1 of the Analysis discusses the rationale for selecting an MRA of 20 percent. A MRA of 20 percent relative to all basis species discourages targeting of sculpins and minimizes regulatory discards. Because there are no conservation concerns for sculpins and retention of sculpins has been low, a lower MRA would not further discourage targeting, but may

result in increased regulatory discards of sculpins. Therefore, the Council recommended and NMFS proposes specifying a MRA for sculpins of 20 percent in both the BSAI and GOA groundfish fisheries.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendments 121/110, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment period.

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

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendments 121/110 and the regulatory revisions in this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate any vessel operator harvesting sculpins in the federally managed groundfish fisheries in the BSAI and GOA. The thresholds applied to determine if an entity or group of entities are ''small'' under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide (50 CFR 200.2). The most recent estimates of the number of fishing vessels participating in the BSAI and GOA groundfish fisheries that are small entities are provided in Table 2 in the IRFAs for the BSAI and GOA Harvest Specifications for 2020–2021 (see **ADDRESSES**). In 2018, there were 182 catcher vessels and 3 catcher/processors in the BSAI, and 756 catcher vessels and 3 catcher/processors in the GOA. These estimates likely overstate the number of small entities in the groundfish fisheries off Alaska because some of these vessels are affiliated through common ownership or membership in a cooperative and the affiliated vessels together would exceed the $11.0 million annual gross receipts threshold for small entities.

For operators of vessels currently participating in these fisheries, the economic impacts of this proposed rule are primarily beneficial or neutral. Removing sculpins from the BSAI target species category would remove the sculpins TAC from inclusion in the 2 million metric ton optimum yield (OY) cap in the BSAI. The amount of the OY cap that has been reserved for sculpins would be available to increase the TAC limit or limits for other BSAI target species. This effect would benefit participants in the BSAI fisheries that experience TAC increases relative to what the TACs would have been without this proposed rule. Some of the entities that experience benefits from increased TACs in the future may be small entities. The effects on target species TACs would be neutral for the GOA fisheries, as the OY has not constrained TACs in the GOA to date. Therefore, removing the sculpins TAC in the GOA will not allow for an increase in the TAC for another target species.

The only potential adverse economic impact that has been identified for this proposed rule is that vessel owners or operators who may wish to conduct directed fishing for sculpins in the future, and who would wish to retain more sculpins than they would be allowed to retain under the 20 percent MRA, would not be able to do so. This potential adverse impact would not affect any current participants relative to opportunities available to them because there has been no directed fishing for sculpins. Therefore, no current participants would lose an economic opportunity that is available to them today or has been available to them.

Recordkeeping, Reporting, and Other Compliance Requirements

Under this proposed rule, requirements for recording and reporting the catch and discard of sculpins in logbooks or on catch or production reports will be maintained as they are in existing regulations. The proposed rule would make only minor modifications to clarify the recordkeeping and reporting requirements in § 679.5, Table 2a to 50 CFR part 679, and Table 2c to 50 CFR part 679. Therefore, moving sculpins from the target species category to the EC category will not change recordkeeping and reporting costs for fishery participants or impose any additional or new costs on participants.

Duplicate, Overlapping, or Conflicting Federal Rules

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

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council and NMFS considered two alternatives. Among the two alternatives, Alternative 2 Option 3 (the preferred alternative) provides the most economic benefits to current participants in the BSAI and GOA groundfish fisheries. The primary economic benefit of this proposed rule is to reduce the potential constraints imposed by the OFLs, ABCs, and TACs for sculpins on BSAI and GOA groundfish fisheries. Among the three options considered for the sculpins MRA (2 percent, 10 percent, and 20 percent), the 20 percent MRA that was selected minimizes the economic impact on any fishing vessel that is a small entity because it provides the greatest opportunity to retain sculpins as incidental catch in other groundfish fisheries.

Alternative 1 is the no action alternative and would continue to classify sculpins as target species in the groundfish FMPs. OFLs, ABCs, and

TACs would continue to be set for sculpins as a species group in both the BSAI and GOA. Relative to Alternative 2, Alternative 1 could be considered less beneficial to small entities because all catch specifications would need to be maintained, and current constraints on the BSAI and GOA groundfish fisheries would continue. However, Alternative 2 (the preferred alternative) also could be considered more restrictive to small entities than Alternative 1 if the prohibition on directed fishing for sculpins under the proposed rule limits future participants' ability to conduct directed fishing for sculpins more so than would occur under the status quo. Alternative 1 allows NMFS to determine annually whether to open a directed fishery for sculpins.

Alternative 2 would classify sculpins in the BSAI and GOA in the EC category and implement a regulation prohibiting directed fishing for sculpins that could only be revised through subsequent rulemaking. However, the Council recommended and NMFS proposes that the benefits of the proposed rule to current fishery participants, including small entities, outweigh the potential future adverse impacts of the prohibition against directed fishing for sculpins. In addition, this provision can be re-evaluated by the Council and NMFS in the future if fishery participants want to develop directed fisheries for sculpins.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control Numbers 0648–0213 and 0648–0515. This proposed rule would make minor revisions to the information collection requirements to clarify the location of the species code for sculpins in the tables to 50 CFR part 679 to note that sculpins should be reported as non-target EC species rather than target species. The requirements for recording and reporting the catch and discard of sculpins in logbooks or on catch or production reports will not change. These minor revisions do not change the public reporting burden or costs.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**), by email to *OIRA_Submission@omb.eop.gov,* or by fax to (202) 395–5806.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *http://www.reginfo.gov/public/do/PRASearch#.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

■ 2. In § 679.2, add a definition for ''Sculpins'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Sculpins (see Table 2c to this part and § 679.20(i)).

* * * * *

■ 3. In § 679.5, revise paragraph (a)(3) introductory text, and paragraphs (c)(3)(vi)(F), and (c)(4)(vi)(E) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(3) *Fish to be recorded and reported.* The operator or manager must record and report the following information (see paragraphs (a)(3)(i) through (iv) of this section) for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), forage fish (see Table 2c to this part), grenadiers (see Table 2c to this part), squids (see Table 2c to this part), and sculpins (see Table 2c to this part). The operator or manager may record and report the following information (see paragraphs (a)(3)(i) through (iv) of this section) for non-groundfish (see Table 2d to this part):

* * * * *

(c) * * *

(3) * * *

(vi) * * *

(F) *Species codes.* The operator must record and report required information for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), forage fish (see Table 2c to this part), grenadiers (see Table 2c to this part), squids (see Table 2c to this part), and sculpins (see Table 2c to this part). The operator may record and report information for non-groundfish (see Table 2d to this part).

* * * * *

(4) * * *

(vi) * * *

(E) *Species codes.* The operator must record and report required information for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), forage fish (see Table 2c to this part), grenadiers (see Table 2c to this part), squids (see Table 2c to this part), and sculpins (see Table 2c to this part). The operator may record and report information for non-groundfish (see Table 2d to this part).

* * * * *

■ 4. In § 679.20, revise paragraph (b)(2) introductory text, paragraph (i) heading, and paragraphs (i)(3) through (5) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(2) *GOA.* Initial reserves are established for pollock, Pacific cod, flatfish, octopuses, and sharks, which are equal to 20 percent of the TACs for these species or species groups.

* * * * *

(i) *Forage fish, grenadiers, squids, and sculpins.*

* * * * *

(3) *Closure to directed fishing.* Directed fishing for forage fish, grenadiers, squids, and sculpins is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish, grenadiers, squids, and sculpins is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish, grenadiers, squids, or sculpins not exceeding the maximum retainable amount may be processed into fishmeal for sale, barter, or trade.

* * * * *

■ 5. In § 679.22, revise paragraph (i) to read as follows:

§ 679.22 Closures.

* * * * *

(i) *Forage fish, grenadiers, squids, and sculpins closures.* See § 679.20(i)(3).

■ 6. Revise Table 2a to part 679 to read as follows:

TABLE 2a TO PART 679—SPECIES CODES: FMP GROUNDFISH

Species description	Code
Atka mackerel (greenling)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
FLOUNDER:	
Alaska plaice	133
Arrowtooth	121
Bering	116
Kamchatka	117
Starry	129
Octopuses	870
Pacific cod	110
Pollock	270
ROCKFISH:	
Aurora (*Sebastes aurora*)	185
Black (BSAI) (*S. melanops*)	142
Blackgill (*S. melanostomus*)	177
Blue (BSAI) (*S. mystinus*)	167
Bocaccio (*S. paucispinis*)	137
Canary (*S. pinniger*)	146
Chilipepper (*S. goodei*)	178
China (*S. nebulosus*)	149
Copper (*S. caurinus*)	138
Darkblotched (*S. crameri*)	159
Dusky (*S. variabilis*)	172
Greenstriped (*S. elongatus*)	135
Harlequin (*S. variegatus*)	176
Northern (*S. polyspinis*)	136
Pacific Ocean Perch (*S. alutus*)	141
Pygmy (*S. wilsoni*)	179
Quillback (*S. maliger*)	147
Redbanded (*S. babcocki*)	153
Redstripe (*S. proriger*)	158
Rosethorn (*S. helvomaculatus*)	150
Rougheye (*S. aleutianus*)	151
Sharpchin (*S. zacentrus*)	166
Shortbelly (*S. jordani*)	181
Shortraker (*S. borealis*)	152
Silvergray (*S. brevispinis*)	157
Splitnose (*S. diploproa*)	182
Stripetail (*S. saxicola*)	183
Thornyhead (all *Sebastolobus* species)	143
Tiger (*S. nigrocinctus*)	148
Vermilion (*S. miniatus*)	184
Widow (*S. entomelas*)	156
Yelloweye (*S. ruberrimus*)	145
Yellowmouth (*S. reedi*)	175
Yellowtail (*S. flavidus*)	155
Sablefish (blackcod)	710
SHARKS:	
Other (if salmon, spiny dogfish or Pacific sleeper shark—use specific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
SKATES:	
Alaska (*Bathyraja parmifera*)	703
Aleutian (*B. aleutica*)	704
Whiteblotched (*B. maculate*)	705
Big (*Raja binoculata*)	702
Longnose (*R. rhina*)	701
Other (if Alaska, Aleutian, whiteblotched, big, or longnose skate—use specific species code)	700
SOLE:	
Butter	126
Dover	124
English	128
Flathead	122

TABLE 2a TO PART 679—SPECIES CODES: FMP GROUNDFISH—Continued

Species description	Code
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Turbot, Greenland	134

■ 7. Revise Table 2c to part 679 to read as follows:

TABLE 2c TO PART 679—SPECIES CODES: FMP FORAGE FISH SPECIES (ALL SPECIES OF THE FOLLOWING FAMILIES), GRENADIER SPECIES, SQUIDS, AND SCULPINS

Species identification	Code
FORAGE FISH:	
Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
Capelin smelt (family *Osmeridae*)	516
Deep-sea smelts (family *Bathylagidae*)	773
Eulachon smelt (family *Osmeridae*)	511
Gunnels (family *Pholidae*)	207
Krill (order *Euphausiacea*)	800
Lanternfishes (family *Myctophidae*)	772
Pacific Sand fish (family *Trichodontidae*)	206
Pacific Sand lance (family *Ammodytidae*)	774
Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family *Stichaeidae*)	208
Surf smelt (family *Osmeridae*)	515
GRENADIERS:.	
Giant Grenadiers (*Albatrossia pectoralis*)	214
Other Grenadiers	213
SQUID:	
Squids	875
SCULPINS:	
Sculpins	160

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

Table 10 to Part 679—Gulf of Alaska Retainable Percentages.

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

Notes to Table 10 to Part 679				
1	Shortraker/rougheye rockfish			
		SR/RE	*Sebastes* borealis (shortraker) (152)	
			S. aleutianus (rougheye) (151)	
		SR/RE ERA	Shortraker/rougheye rockfish in the Eastern Regulatory Area (ERA).	
	Where an MRA is not indicated, use the MRA for SR/RE included under Aggregated Rockfish			
2	Deep-water flatfish	Dover sole (124), Greenland turbot (134), Kamchatka flounder (117), and deep-sea sole		
3	Shallow-water flatfish	Flatfish not including deep-water flatfish, flathead sole (122), rex sole (125), or arrowtooth flounder (121)		
4	Other rockfish	Western Regulatory Area	means other rockfish and demersal shelf rockfish	
		Central Regulatory Area		
		West Yakutat District		
		Southeast Outside District	means other rockfish	
		Other rockfish		
		S. aurora (aurora) (185)	*S. variegates* (harlequin)(176)	*S. brevispinis* (silvergrey)(157)
		S. melanostomus (blackgill)(177)	*S. wilsoni* (pygmy)(179)	*S. diploproa* (splitnose)(182)
		S. paucispinis (bocaccio)(137)	*S. babcocki* (redbanded)(153)	*S. saxicola* (stripetail)(183)
		S. goodei (chilipepper)(178)	*S. proriger* (redstripe)(158)	*S. miniatus* (vermilion)(184)
		S. crameri (darkblotch)(159)	*S. zacentrus* (sharpchin)(166)	*S. reedi* (yellowmouth)(175)
		S. elongatus (greenstriped)(135)	*S. jordani* (shortbelly)(181)	
		S. entomelas (widow)(156)	*S. flavidus* (yellowtail)(155)	
	In the Eastern Regulatory Area only, Other rockfish also includes *S. polyspinis* (northern)(136)			
5	Demersal shelf rockfish (DSR)	*S. pinniger* (canary)(146)	*S. maliger* (quillback)(147)	*S. ruberrimus* (yelloweye)(145)
		S. nebulosus (china)(149)	*S. helvomaculatus* (rosethorn)(150)	
		S. caurinus (copper)(138)	*S. nigrocinctus* (tiger)(148)	
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO). Catcher vessels in the SEO have full retention of DSR (see § 679.20(j)).		
6	Other species	Octopuses (870)	Sharks (689)	
7	Aggregated rockfish	Aggregated rockfish (see § 679.2) means any species of the genera *Sebastes* or *Sebastolobus* except *Sebastes ciliates* (dark rockfish), *Sebastes melanops* (black rockfish), and *Sebastes mystinus* (blue rockfish), except in:		
		Southeast Outside District	where DSR is a separate species group for those species marked with an MRA	
		Eastern Regulatory Area	where SR/RE is a separate species group for those species marked with an MRA	
8	n/a	Not applicable		

Notes to Table 10 to Part 679			
9	Aggregated forage fish (all species of the following taxa)	Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
		Capelin smelt (family *Osmeridae*)	516
		Deep-sea smelts (family *Bathylagidae*)	773
		Eulachon smelt (family *Osmeridae*)	511
		Gunnels (family *Pholidae*)	207
		Krill (order *Euphausiacea*)	800
		Lanternfishes (family *Myctophidae*)	772
		Pacific Sand fish (family *Trichodontidae*)	206
		Pacific Sand lance (family *Ammodytidae*)	774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and shannys (family *Stichaeidae*)	208
		Surf smelt (family *Osmeridae*)	515
10	Skates Species and Groups	Alaska (*Bathyraja. Parmifera*)	703
		Aleutian (*B. aleutica*)	704
		Whiteblotched (*Raja binoculata*)	705
		Big Skates (*Raja binoculata*)	702
		Longnose Skates (*R. rhina*)	701
		Other Skates (*Rathyraja* and *Raja spp.*)	700
11	Aggregated non-groundfish	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.	
12	Grenadiers	Giant grenadiers (*Albatrossia pectoralis*)	214
		Other grenadiers (all grenadiers that are not Giant grenadiers)	213

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

Table 11 to Part 679—BSAI Retainable Percentages.

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

[1] **Sablefish**: for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).
[2] **Other flatfish** includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, arrowtooth flounder and Kamchatka flounder.
[3] **Other rockfish** includes all "rockfish" as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.
[4] The **Other species** includes sharks, skates, and octopuses.
[5] **na** = not applicable
[6] **Aggregated rockfish** includes all "rockfish" as defined at § 679.2, except shortraker and rougheye rockfish.
[7] **Forage fish, grenadiers, squids, and sculpins** are all defined at Table 2c to this part.
[8] All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.

[FR Doc. 2020–08145 Filed 4–22–20; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 85, No. 79

Thursday, April 23, 2020

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

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers for Publication of Legal Notices in the Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, Grasslands, and the Regional Office of the Northern Region to publish legal notices for public comment and decisions subject to predecisional administrative review. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the objection processes.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to administrative review that are made the first day following the date of this publication. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Cody Hutchinson, Regional Administrative Review and Litigation Coordinator, Northern Region, 26 Fort Missoula Road, Missoula, Montana 59804; or by phone at (406) 329–3381 or email at *cody.hutchinson@usda.gov.*

SUPPLEMENTARY INFORMATION: The newspapers to be used are as follows:

Northern Region Regional Forester Decisions for:

Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette;

Northern Idaho and Eastern Washington: Coeur d'Alene Press and Lewiston Tribune; North Dakota and South Dakota: Bismarck Tribune.

Northern Region Forest Supervisor and District Ranger Decisions for:

Beaverhead-Deerlodge National Forest—The Montana Standard;

Bitterroot National Forest—Ravalli Republic;

Custer Gallatin National Forest—Billings Gazette and Bozeman Chronicle (Montana); Rapid City Journal (South Dakota);

Dakota Prairie Grasslands—Bismarck Tribune (North and South Dakota);

Flathead National Forest—Daily Inter Lake;

Helena-Lewis and Clark National Forest—Helena Independent Record;

Idaho Panhandle National Forests—Coeur d'Alene Press;

Kootenai National Forest—The Missoulian;

Lolo National Forest—The Missoulian;

Nez Perce-Clearwater National Forests—Lewiston Morning Tribune.

Supplemental notices may be placed in any newspaper, but timeframes and deadlines will be calculated based upon notices in newspapers of record listed above.

Lisa A. Northrop,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2020–08660 Filed 4–22–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a meeting on Wednesday May 13, 2020 at 2:00 p.m. Central time. The Committee will discuss publication of their study of civil rights and mass incarceration in the state, as well as other civil rights topics for future study.

DATES: The meeting will take place on Wednesday May 13, 2020 at 2:00 p.m. Central time. Public Call Information: Dial: 888–254–3590, Conference ID: 1556806.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. These meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the

Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Arkansas
Future Plans and Actions
Public Comment
Adjournment

Dated: April 17, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–08598 Filed 4–22–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Wyoming Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (MDT) Wednesday, May 13, 2020. The purpose of the meeting is for the committee to review their report on hate crimes.

DATES: Wednesday, May 13, 2020 at 1:00 p.m. MDT.

Public Call Information:
Dial: 888–207–0293.
Conference ID: 235909.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–207–0293, conference ID number: 235909. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzliAAA.*

Please click on ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Discuss Report
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: April 20, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–08661 Filed 4–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Survey of State Government Research and Development.

OMB Control Number: 0607–0933.

Form Number(s): Survey Frame Review Module; SRD–1 (State Agency Form).

Type of Request: Revision of a currently approved collection.

Number of Respondents: State Governors—52, State Coordinators—52, Department/Agency respondents—700.

Average Hours per Response: State Governors—5 minutes, State Coordinators—1 hour, Department/Agency respondents—3 hours (previously 2 hours).

Burden Hours: 2,156. (The burden requested is higher than the figure included in the presubmission notice because we only determined the amount of burden increase for Agency respondents after cognitive testing was done.)

Needs and Uses: The Census Bureau is requesting clearance to conduct the Survey of State Government Research and Development (SGRD) for the 2020–2022 survey years with the revisions outlined in this document. The Census Bureau conducts this survey on behalf of the National Science Foundation's (NSF) National Center for Science and Engineering Statistics (NCSES). The NSF Act of 1950 includes a statutory charge to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government.'' This mandate was further codified in the America COMPETES Reauthorization Act of 2010 § 505, which requires NSF's National Center for Science & Engineering Statistics to ''collect, acquire, analyze, report, and disseminate . . . statistical data on (A) research and development trends . . .'' NCSES also provides the official U.S. statistics on R&D to the Organization for Economic Cooperation and Development (OECD). OECD measures R&D through R&D personnel data and R&D expenditures. Under the aegis of this legislative mandate, NCSES and its predecessors have sponsored surveys of research and development (R&D) since 1953, including the SGRD since 2006. This survey has helped to expand the scope of R&D collections to include state governments, where previously there had been no regularly established collection efforts, and thus a gap in the national portfolio of R&D statistics.

NCSES sponsors surveys of R&D activities of Federal agencies, higher education institutions, and private industries. The results of these surveys provide a consistent information base for both federal and state government officials, industry professionals, and researchers to use in formulating public policy and planning in science and technology. These surveys allow for the analysis of current and historical trends of R&D in the U.S. and in international comparisons of R&D with other countries. The data collected from the SGRD fills a void that previously existed

for collection of R&D activities. Although NCSES conducted periodic data collections of state government R&D in 1995, 1988 and 1987, more frequent collection was necessary to account for the changing dynamic of state governments' role in performing and funding R&D and their role as fiduciary intermediaries of federal funds for R&D. The survey is a census of state government departments, agencies, commissions, public authorities, and other dependent entities as defined by the Census Bureau's Census of Governments program, that performed or funded R&D activities in a given fiscal year.

The Census Bureau, serving as collection agent, employs a methodology similar to the one used to collect information from state and local governments on other established censuses and surveys. This methodology involves identifying a central coordinator in each state who will assist Census Bureau staff in identifying appropriate state agencies to be surveyed. Since not all state agencies have the budget authority or operational capacity to perform or fund R&D, NCSES and Census Bureau staffs have identified those agencies most likely to perform or fund R&D based on state session laws, authorizing legislation, budget authority, previous R&D activities, and reports issued by state government agencies. The state coordinators, based on their knowledge of the state government's own activities and priorities, are asked to confirm which of the selected agencies identified should be sent the survey for a given fiscal year or to add additional agencies to the survey frame. These state coordinators also verify the final responses at the end of the data collection cycle and may assist with nonresponse follow-up with individual state agencies. The collection approach using a central state coordinator is used successfully at the Census Bureau in surveys of local school districts, as well as the annual surveys of state and local government finance.

The FY 2020 survey will include the same content that was collected during the FYs 2016–2019 survey cycles along with two new questions on R&D personnel at state agencies. The new questions are Questions 10 and 11 on the survey form.

Cognitive testing of the new questions was conducted by the NCSES and a report will be available for OMB upon their request.

Adding these new questions to the SGRD will improve measures of the national R&D workforce. The addition of these question will help the NCSES fulfil its mandate to provide statistics on research and development for the benefit of U.S. policy makers and for international comparisons of R&D competitiveness.

Final survey results produced by NCSES contain state and national estimates and are useful to a variety of data users interested in R&D performance, including: The National Science Board; the OMB; the Office of Science and Technology Policy (OSTP) and other science policy makers; institutional researchers; and private organizations; and many state governments.

Legislators, policy officials, and researchers rely on statistics to make informed decisions about R&D investment at the Federal, state, and local level. These statistics are derived from the existing NCSES sponsored surveys of Federal agencies, higher education institutions, and private industry. The total picture of R&D expenditures, however, had been incomplete due to the lack of data from state governments prior to this implementation of the SGRD in 2006, which now fills that void.

State government officials and policy makers garner the most benefit from the results of this survey. Governors and legislatures need a reliable, comprehensive source of data to help in evaluating how best to attract the high-tech R&D industries to their state. Officials are able to evaluate their investment in R&D based on comparisons with other states. These comparisons include the sources of funding, the type of R&D being conducted, and the type of R&D performer.

State governments serve a unique role within the national portfolio of R&D. Not only are they both performers and funders of R&D like other sectors such as the Federal Government, higher education, or industry, but they also serve as fiduciary intermediaries between the Federal Government and other R&D performers while also providing state specific funds for R&D. The information collected from the SGRD provides data users with perspective on this complex flow of funds. Survey results are used at the Federal level to assess and direct investment in technology and economic issues. Congressional committees and the Congressional Research Service use results of the R&D surveys. The BEA uses these data to estimate the contribution of state agency-funded R&D to the overall impact of treating R&D as an investment in BEA's statistics of gross domestic product by state-area.

NSF also uses data from this survey in various publications produced about the state of R&D in the U.S. The Science and Engineering Indicators, for example, is a biennial report mandated by Congress and describes quantitatively the condition of the country's R&D efforts, and includes data from the SGRD. Survey results are also included in the National Patterns of Research and Development report's tabulations.

The availability of state R&D survey results are posted to NSF's web page allowing for public access from a variety of other data users as well. Media, university researchers, nonprofit organizations, and foreign government officials are also consumers of state R&D statistics. All users are able to utilize this information in an attempt to better understand the Nation's R&D resources.

Affected Public: State, local or tribal governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 8(b); Title 42 U.S.C., Sections 1861–76 (National Science Foundation Act of 1950, as amended).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0607–0933.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–08656 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–017]

Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers/exporters of passenger vehicle and light truck tires from the People's Republic of China (China) during the period of review (POR) January 1, 2017 through December 31, 2017.

DATES: Applicable April 23, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, 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) 482–4261.

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on October 18, 2019.[1] We invited interested parties to comment on the *Preliminary Results.* On December 2, 2019, we received case briefs from the following interested parties: Cooper (Kunshan) Tire Co., Ltd. (Cooper); Shandong Longyue Rubber Co., Ltd. (Longyue); the Government of China (GOC); and Vogue Tyre & Rubber Co., Ltd., Sailun Jinyu Group Co., Ltd. and its affiliates, Sailun Jinyu Group (Hong Kong) Co., Limited, Sailun Tire International Corp., Shandong Jinyu Industrial Co., Ltd., Seatex International Inc., Seatex PTE. Ltd., Dynamic Tire Corp., and Husky Tire Corp., Shandong Wanda Boto Tyre Co., Ltd., and ITG Voma Corporation (collectively, Other Interested Parties). On December 13, 2019, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, AFL–CIO (the petitioner) submitted a rebuttal brief. On February 5, 2020, Commerce extended the period for issuing the final results of this review until April 15, 2020.[2]

Scope of the Order

The products covered by the order are certain passenger vehicle and light truck tires from the China. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[3]

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be access directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on case briefs and evidence on the record, we made certain changes from the *Preliminary Results.* Commerce has changed the carbon black benchmark for both respondents, adjusted the denominator used for subsidies received by Cooper's affiliate Qingdao Ge Rui Da Rubber Co., Ltd., and corrected various ministerial errors for both respondents. These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying all of Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we calculated a countervailable subsidy rate for the mandatory respondents, Cooper and Longyue. For the non-selected companies subject to this review,[5] we followed Commerce's practice, which is to base the subsidy rates on an average of the subsidy rates calculated for those companies selected for individual review, excluding *de minimis* rates or rates based entirely on adverse facts available.[6] In this case, for the non-selected companies, we have calculated a rate by weight-averaging the calculated subsidy rates of Cooper and Longyue using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR. We find the countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (%)
Cooper (Kunshan) Tire Co., Ltd. (Cooper)[7]	17.15
Shandong Longyue Rubber Co., Ltd. (Longyue)	27.00
Non-Selected Companies Under Review[8]	20.05

Disclosure

We will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[9]

Assessment Rates

Consistent with 19 CFR 351.212(b)(2), we intend to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review, to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after January 1, 2017 through December 31, 2017, at the *ad valorem* rates listed above.

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part; 2017,* 84 FR 55913 (October 18, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results,'' dated February 15, 2020.

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

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Appendix II.

[6] *See, e.g., Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 18806, 18811 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386 (June 29, 2010).

[7] As discussed in the *Preliminary Results* PDM, Cooper is cross-owned with Cooper Tire Asia-Pacific (Shanghai) Trading Co., Ltd., Cooper Tire (China) Investment Co. Ltd., and Qingdao Ge Rui Da Rubber Co., Ltd.

[8] *See* Appendix II.

[9] *See* 19 CFR 351.224(b).

companies listed above. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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 sanctionable violation.

Notification to Interested Parties

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

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VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Programs Determined To Be Countervailable
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  Comment 9: Inland Freight Expenses for Cooper and GRT's Carbon Black Benchmark
  Comment 10: Cooper's Loan Benefit Calculation
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  Comment 13: GRT's Grant Benefit Calculation
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Appendix—Non-Selected Companies Under Review

Appendix II

Non-Selected Companies Under Review

1. Anhui Jichi Tire Co., Ltd.
2. Bridgestone (Tianjin) Tire Co., Ltd.
3. Bridgestone Corporation
4. Dynamic Tire Corp.
5. Hankook Tire China Co., Ltd.
6. Husky Tire Corp.
7. Jiangsu Hankook Tire Co., Ltd.
8. Mayrun Tyre (Hong Kong) Limited
9. Qingdao Fullrun Tyre Corp., Ltd.
10. Qingdao Sunfulcess Tyre Co., Ltd.[10]
11. Sailun Jinyu Group Co., Ltd.
12. Sailun Jinyu Group (Hong Kong) Co., Limited
13. Sailun Tire International Corp.
14. Seatex International Inc.
15. Seatex PTE, Ltd.
16. Shandong Achi Tyres Co., Ltd.
17. Shandong Anchi Tyres Co., Ltd.
18. Shandong Duratti Rubber Corporation Co., Ltd.
19. Shandong Haohua Tire Co., Ltd.
20. Shandong Hengyu Science & Technology Co., Ltd.
21. Shandong Jinyu Industrial Co., Ltd.
22. Shandong Province Sanli Tire Manufactured Co., Ltd.
23. Shandong Wanda Boto Tyre Co., Ltd.
24. Triangle Tyre Co., Ltd.
25. Winrun Tyre Co., Ltd.

[FR Doc. 2020–08559 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–DS–P

[10] This company was mistakenly listed in the *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018), and *Preliminary Results* as Qingdao Sunfulcess Trye Co., Ltd.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX051]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Approved Industry-Funded Monitoring Service Providers; Correction

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

ACTION: Notice of approved industry-funded monitoring service providers; correction.

SUMMARY: This action corrects an error in the notice of approved industry-funded monitoring service providers published in the **Federal Register** on April 14, 2020.

ADDRESSES: The list of NMFS-approved industry-funded monitoring service providers is available at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/fisheries-observers/industry-funded-monitoring-northeast,* or by sending a written request to: 55 Great Republic Drive, Gloucester, MA 01930, Attn: Maria Fenton.

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, (978) 281–9196.

SUPPLEMENTARY INFORMATION: On April 14, 2020, we published a notice announcing the names of approved industry-funded monitoring (IFM) service providers for the Atlantic herring fishery (85 FR 20677). That notice erroneously omitted ''industry-funded observer'' from the list of IFM services that East West Technical Services LLC is approved to provide.

Correction

In the **Federal Register** of April 14, 2020, in FR Doc. 2020–07859, on page 20678, Table 1, is corrected to read as follows:

TABLE 1—COMPANIES APPROVED TO PROVIDE IFM SERVICES TO ATLANTIC HERRING VESSELS DURING IFM YEARS 2020–2021

Provider	Approved IFM service(s)	Contact information
Fathom Resources, LLC	Industry-funded observer, at-sea monitoring, portside sampling.	855 Aquidneck Ave., Unit 9, Middletown, RI 02842. 508–990–0997 (p); 508–991–7372 (f). *www.fathomresources.com.*

TABLE 1—COMPANIES APPROVED TO PROVIDE IFM SERVICES TO ATLANTIC HERRING VESSELS DURING IFM YEARS 2020–2021—Continued

Provider	Approved IFM service(s)	Contact information
A.I.S., Inc	Industry-funded observer, at-sea monitoring, portside sampling.	540 Hawthorn St, North Dartmouth, MA 02747. 508–990–9054 (p); 508–990–9055 (f). *www.aisobservers.com.*
East West Technical Services LLC	Industry-funded observer, at-sea monitoring, portside sampling.	P.O. Box 643864, Vero Beach, FL 32964. 860–910–4957 (p); 860–223–6005 (f). *www.ewts.com.*
Saltwater Inc		733 N St, Anchorage, AK 99501. 907–276–3241 (p); 907–258–5999 (f) *www.saltwaterinc.com.*

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

Dated: April 17, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–08575 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Space-Based Data Collection System (DCS) Agreements.

OMB Control Number: 0648–0157.

Form Number(s): None.

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

Number of Respondents: 225.

Average Hours per Response: 0.5 hours.

Burden Hours: 113.

Needs and Uses: The National Oceanic and Atmospheric Administration (NOAA) operates two space-based data collection systems (DCS) per 15 CFR part 911: The Geostationary Operational Environmental Satellite (GOES) DCS and the Polar-Orbiting Operational Environmental Satellite (POES) DCS, also known as the Argos system. Both the GOES DCS and the Argos DCS are operated to support environmental applications, *e.g.,* meteorology, oceanography, hydrology, ecology, and remote sensing of Earth resources. In addition, the Argos DCS currently supports applications related to protection of the environment, *e.g.,* hazardous material tracking, fishing vessel tracking for treaty enforcement, and animal tracking. Presently, the majority of users of these systems are government agencies and researchers and much of the data collected by both the GOES DCS and the Argos DCS are provided to the World Meteorological Organization via the Global Telecommunication System for inclusion in the World Weather Watch Program.

Current loading on both of the systems does not use the entire capacity of that system, so NOAA is able to make its excess capacity available to other users who meet certain criteria. Applications are made in response to the requirements in 15 CFR 911 (under the authority of 15 U.S. C. 313, Duties of the Secretary of Commerce and others), using system use agreement (SUA) forms. The application information received is used to determine if the applicant meets the criteria for use of the system. The system use agreements contain the following information: (1) The period of time the agreement is valid and procedures for its termination, (2) the authorized use(s) of the DCS, and its priorities for use, (3) the extent of the availability of commercial services which met the user's requirements and the reasons for choosing the government system, (4) any applicable government interest in the data, (5) required equipment standards, (6) standards of operation, (7) conformance with applicable International Telecommunication Union (ITU) and Federal Communications Commission (FCC) agreements and regulations, (8) reporting time and frequencies, (9) data formats, (10) data delivery systems and schedules and (11) user-borne costs.

Accepted applicants use the NOAA DCS to collect environmental data and in limited cases, non-environmental data via the Argos DCS, to support other governmental and non-governmental research or operational requirements, such as for law enforcement purposes. The applicants must submit information to ensure that they meet these criteria. NOAA does not approve agreements where there is a commercial service available to fulfill the user requirements (per 15 CFR part 911).

Affected Public: Not-for-profit institutions; Federal government; state, local, or tribal government; business or other for-profit organizations.

Frequency: Annual, every 3 years, every 5 years (per regulations).

Respondent's Obligation: Required to obtain or maintain benefits.

Legal Authority: 15 CFR 911.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0157.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–08657 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA133]

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 68 Discard Mortality Webinar I for Gulf of Mexico and Atlantic Scamp.

SUMMARY: The SEDAR 68 stock assessment of Gulf of Mexico and Atlantic Scamp will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 68 Discard Mortality Webinar I will be held on Thursday, May 14, 2020, from 10 a.m. to 12 p.m. Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in Discard Mortality Webinar I is as follows:

- Participants will review discard mortality information for use in the assessment of Gulf of Mexico and Atlantic scamp.

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

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 20, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–08620 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU008

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be May 6, 2020, 9:00 a.m.–12:00 p.m., PT.

ADDRESSES: Meeting is by conference call and webinar.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: *Katherine.Cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter is located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-.* The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task Force web page: *http://www.westcoast.fisheries.noaa.gov/columbia_river/index.html.*

Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics include discussion of scenarios for achieving Columbia Basin salmon and steelhead goals; social, cultural, economic, and ecosystem considerations; options for future collaboration; and content of the Phase 2 report.

Time and Date

The meeting is scheduled for May 6, 2020, 9:00 a.m.–12:00 p.m., PT by conference call and webinar. Access information for the public will be posted at *https://www.fisheries.noaa.gov/event/columbia-basin-partnership-task-force-meeting-5* by May 1, 2020.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katherine Cheney, 503–231–6730, by April 24, 2020.

Dated: April 17, 2020.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2020–08558 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA137]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico (GMFMC) and South Atlantic Fishery Management (SAFMC) Councils will hold a joint workgroup for Section 102 for the Modernizing Recreational Fisheries Management Act of 2018.

DATES: The meeting will convene on Monday, May 18, 2020, from 9 a.m. to 12 p.m., EST.

ADDRESSES: The meeting will take place via webinar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, May 18, 2020; 9 a.m.–12 p.m.

The meeting will begin with introductions, election of a Workgroup Chair, review of the Scope of Work, and development of a Workgroup Charge, work plan, and timeline. The Workgroup will receive an overview of Section 102: Fishery Management Measures of the Modernizing Recreational Fisheries Management Act of 2018 and review PowerPoint presentations made to the Council Coordinating Committee in November 2019. The workgroup will also review proposals put forward at the 2018 National Saltwater Recreational Fisheries Summit and prioritize alternative strategies for further consideration at the next meeting. They will review the outcomes from the SAFMC workshop and regional meetings on alternative recreational management strategies and prioritize alternative strategies for further consideration at the next meeting; and, discuss the characteristics of potential candidate species for alternative management strategies.

The Workgroup will discuss other business items, if any.

—Meeting adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Workgroup meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Workgroup for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Workgroup will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

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

Dated: April 20, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–08621 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: NTIA/FCC Web-based Frequency Coordination System.

OMB Control Number: 0660–0018.

Form Number(s): N/A.

Type of Request: Regular submission (extension of currently approved information collection).

Number of Respondents: 5,500.

Average Hours per Response: 15 minutes.

Burden Hours: 1375.

Needs and Uses: NTIA hosts a web-based system that collects specific identification information (*e.g.,* company name, location and projected range of the operation, etc.) from applicants seeking to operate in existing and planned radio frequency (RF) bands that are shared on a co-primary basis by federal and non-federal users. The web-based system provides a means for non-federal applicants to rapidly determine the availability of RF spectrum in a specific location, or a need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum. The system helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security.

Affected Public: Applicants seeking to operate in the 71–76 GHz, 81–86 GHz, and 92–95 GHz radio frequency bands.

Frequency: Once per applicant.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0660–0018.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–08655 Filed 4–22–20; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on May 19, 2020, from 10:00 a.m. to 2:00 p.m., the Global Markets Advisory Committee (GMAC) will hold a public meeting in the Conference Center at the Commodity Futures Trading Commission's headquarters in Washington, DC or via teleconference as circumstances permit. At this meeting, the GMAC will hear a presentation and consider recommendations from the GMAC's Subcommittee on Margin Requirements for Non-Cleared Swaps.

DATES: The meeting will be held on May 19, 2020, from 10:00 a.m. to 2:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by May 26, 2020.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 or via teleconference as circumstances permit. You may submit public comments, identified by ''Global Markets Advisory Committee,'' by any of the following methods:

- *CFTC Website: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Andree Goldsmith, GMAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–6624.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–877–951–7311.

International Toll and Toll Free: Will be posted on the CFTC's website, *http://www.cftc.gov,* on the page for the meeting, under Related Links.

Pass Code/Pin Code: 5887903.

The meeting time and agenda may change to accommodate other GMAC priorities. Additionally, the location of the GMAC meeting may change as circumstances require. For time, agenda and location updates, please visit the GMAC committee website at: *https://www.cftc.gov/About/CFTCCommittees/GlobalMarketsAdvisory/gmac_meetings.html.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website at: *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. App. 2.)

Dated: April 20, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–08608 Filed 4–22–20; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decisions for the Environmental Impact Statement United States Air Force F–35A Operational Beddown Air National Guard

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of availability.

SUMMARY: On April 14, 2020, the United States Air Force (USAF) signed the Record of Decisions for the Environmental Impact Statement United States Air Force F–35A Operational Beddown Air National Guard.

ADDRESSES: Mr. Ramon Ortiz, NGB/A4AM, 3501 Fetchet Avenue, Joint Base Andrews MD 20762–5157, (240) 612–7042; *usaf.jbanafw.ngb-a4.mbx.a4a-nepa-comments@mail.mil.*

SUPPLEMENTARY INFORMATION: The USAF has decided to base the F–35As with associated construction at the 115th Fighter Wing (115 FW) at Dane County Regional Airport in Madison, Wisconsin for the 5th Operational Beddown and at the 187th Fighter Wing (187 FW) at Montgomery Regional Airport, Montgomery, Alabama for the 6th Operational Beddown. Subsequent to construction, delivery of the F–35A aircraft is anticipated to occur between April 2023 and June 2024. These decisions are distinct from one another and will proceed independently.

Air Force decisions documented in the Record of Decisions were based on matters discussed in the Final Environmental Impact Statement, inputs from the public and regulatory agencies, and other relevant factors. The Final Environmental Impact Statement was made available to the public on February 28, 2020 through a Notice of Availability in the **Federal Register** (Volume 85, Number 40, Page 11986) with a wait period that ended on March 30, 2020.

Authority: This Notice of Availability is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

Adriane S. Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–08597 Filed 4–22–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Monday, May 18, 2020 from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held by videoconference/teleconference. Participant access information will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility.'')

FOR FURTHER INFORMATION CONTACT: CAPT Gregory H. Gorman, U.S. Navy, 703–275–6060 (Voice), 703–275–6064 (Facsimile), *gregory.h.gorman.mil@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *http://www.health.mil/dhb*. 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) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150. Availability of Materials for the Meeting: Additional information, including the agenda, is available at the DHB website, *http://www.health.mil/dhb*. A copy of the agenda or any updates to the agenda for the May 18, 2020, meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific taskings before the DHB. In addition, the DHB will receive information briefings on current issues related to military medicine.

Agenda: The DHB anticipates receiving a decision briefing on the DoD Measles, Mumps, and Rubella Booster Immunization Practices review, briefings on Medical Artificial Intelligence and on the Defense Health Agency Markets, and progress updates from the Neurological/Behavioral Health Subcommittee on the Examination of Mental Health Accession Screening: Predictive Value of Current Measures and Processes review and the Health Care Delivery Subcommittee on the Active Duty Women's Health Care Services review. Any changes to the agenda can be found at the link provided in this **SUPPLEMENTARY INFORMATION** section.

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 from 10:00 a.m. to 3:00 p.m. on May 18, 2020. The meeting will be held by videoconference/teleconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to *dha.ncr.dhb.mbx.defense-health-board@mail.mil* or by contacting Ms. Michele Porter at (703) 275–6012 no later than Monday, May 11, 2020. Once registered, the web address and audio number will be provided. Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Michele Porter at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the Federal Advisory Committee Act, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB Designated Federal Officer (DFO), Captain Gorman, at *gregory.h.gorman.mil@mail.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting.

Dated: April 20, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–08640 Filed 4–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Office of Indian Education (OIE) Formula Grant to Local Educational Agencies

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On February 7, 2020, we published in the **Federal Register** a notice of application deadline for the fiscal year (FY) 2020 OIE Formula Grants, Catalog of Federal Domestic Assistance (CFDA) number 84.060. On March 2, 2020, we published in the **Federal Register** a notice correcting the original notice of application deadline to extend the deadline for Part I of the OIE Formula Grant application, and updated the program contact information. This notice extends the deadline date for transmittal of Part II of Electronic Application System for Indian Education (EASIE) applications until June 19, 2020 at 11:59 p.m.

DATES: *Deadline for Transmittal of EASIE Part II:* June 19, 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Crystal C. Moore, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W236, Washington, DC 20202. Telephone: (202) 453–5593. Email: *Indian_Education@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 7, 2020, we published in the **Federal Register** (85 FR 7298) a notice of application deadline for the FY 2020 OIE Formula Grants, CFDA number 84.060. On March 2, 2020, we published in the **Federal Register** (85 FR 12279) a notice correcting the original notice of application deadline to extend the deadline for Part I of the EASIE application for OIE Formula Grants, and updated the program contact information.[1] We are extending the deadline for transmittal of Part II of EASIE applications to June 19, 2020 at 11:59 p.m.

We are extending the deadline date for transmittal of applications in order to allow applicants impacted by recent school closures related to the COVID–19 pandemic additional time to submit their applications or amended applications. This extended deadline for

[1] *www.federalregister.gov/documents/2020/03/02/2020-04255/indian-education-formula-grants-to-local-educational-agencies.*

transmittal of applications applies to all OIE applicants.

Note: All other information in the February 7 and March 2, 2020 notices of application deadlines (85 FR 7298 and 85 FR 12279) and the other application requirements, including application submission instructions and requirements, remain the same.

Information about the OIE Programs is available on the Department's website at *https://oese.ed.gov/offices/office-of-indian-education/indian-education-formula-grants/.*

Program Authority: Sections 6111–6119 of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 7421–7429.

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. 2020–08532 Filed 4–22–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8315–015]

Eagle Creek Sartell Hydro, LLC; Notice of Intent to File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 8315–015.

c. *Date Filed:* February 27, 2020.

d. *Submitted By:* Eagle Creek Sartell Hydro, LLC (Eagle Creek).

e. *Name of Project:* Sartell Hydroelectric Project.

f. *Location:* On the Mississippi River in Stearns and Benton Counties, Minnesota. No federal lands are located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Michael Scarzello, Regulatory Director, Eagle Creek Sartell Hydro, LLC, 116 N. State Street, P.O. Box 167, Neshkoro, WI 54960; phone: (973) 998–8400.

i. *FERC Contact:* Michael Davis at (202) 502–8339; or email at *Michael.Davis@ferc.gov.*

j. Eagle Creek filed its request to use the Traditional Licensing Process on February 27, 2020. Eagle Creek provided public notice of its request on February 19, 2020. In a letter dated April 17, 2020, the Director of the Division of Hydropower Licensing approved Eagle Creek Sartell Hydro, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation the Minnesota State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Eagle Creek as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Eagle Creek filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 8315. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2023.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08632 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: CP20–167–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Application for the abandonment of firm transportation service of Transcontinental Gas Pipe Line Company, LLC.

Filed Date: 4/15/20.

Accession Number: 20200415–5144.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: RP20–790–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: Penalty Crediting Report of El Paso Natural Gas Company, L.L.C. under RP20–790.

Filed Date: 4/16/20.
Accession Number: 20200416–5101.
Comments Due: 5 p.m. ET 4/28/20.

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 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08637 Filed 4–22–20; 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: EC20–51–000.
Applicants: Tri-State Generation and Transmission Association, Inc., Guzman Energy, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Tri-State Generation and Transmission Association, Inc., et al.
Filed Date: 4/17/20.
Accession Number: 20200417–5040.
Comments Due: 5 p.m. ET 5/8/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–116–000.
Applicants: Elm Branch Solar 1, LLC.
Description: NOTICE OF SELF-CERTIFICATION OF EXEMPT WHOLESALE GENERATOR STATUS.
Filed Date: 4/16/20.
Accession Number: 20200416–5151.
Comments Due: 5 p.m. ET 5/7/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1316–005; ER11–2753–006.
Applicants: Silver State Solar Power North, LLC, Cedar Point Wind, LLC.
Description: Notification of Change in Status of the Enbridge MBR Companies.
Filed Date: 4/16/20.
Accession Number: 20200416–5165.
Comments Due: 5 p.m. ET 5/7/20

Docket Numbers: ER17–1794–004.
Applicants: Innovative Solar 42, LLC.
Description: Notice of Non-Material Change in Status of Innovative Solar 42, LLC.
Filed Date: 4/17/20.
Accession Number: 20200417–5156.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1061–001.
Applicants: Turquoise Nevada LLC.
Description: Tariff Amendment: Deferral of Filing of First Amendment to Amended and Restated SFA to be effective 2/22/2020.
Filed Date: 4/16/20.
Accession Number: 20200416–5129.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1582–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: ISO–NE; Defer Eff Date of Previously-Accepted Resource Dispatchability Revisions to be effective 1/1/2021.
Filed Date: 4/16/20.
Accession Number: 20200416–5115.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1583–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: RS 326—LGIA between Colstrip Transmission Owners and Broadview Solar II, LLC to be effective 4/9/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5000.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1584–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Niagara Mohawk E&P Agreement (SA 2531) between NMPC and NY Transco to be effective 3/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5006.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1585–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–04–17_SA 3475 ATXI-City of Roses Wind Energy GIA (J848) to be effective 4/3/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5041.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1586–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5615 and First Revised ICSA, SA No. 5500; Queue No. AC1–216 to be effective 3/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5051.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1587–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Columbiana PV II LGIA Filing to be effective 4/8/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5053.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1588–000.
Applicants: Portland General Electric Company.
Description: § 205(d) Rate Filing: Broadview Solar II LLC LGIA to be effective 4/9/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5066.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1589–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–04–17_SA 3476 ATC-Grant County Solar GIA (J947) to be effective 4/3/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5074.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1590–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the PJM Tariff, OA and RAA re Load Management Testing Requirements to be effective 6/16/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5151.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1591–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Filing of Rate Schedule FERC No. 279 between Tri-State and Niobrara to be effective 4/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5160.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1592–000.
Applicants: California Independent System Operator Corp.
Description: § 205(d) Rate Filing: 2020–04–17 Clarify RA Obligations from CCE3 Initiative and related matters to be effective 7/1/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5172.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1593–000.
Applicants: Highlander Solar Energy Station 1, LLC.

Description: Baseline eTariff Filing: Highlander Solar Energy Station 1 MBR to be effective 4/18/2020.

Filed Date: 4/17/20.

Accession Number: 20200417–5175.

Comments Due: 5 p.m. ET 5/8/20.

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 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08639 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD20–3–000]

Town of Erie, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On April 15, 2020, the Town of Erie, Colorado, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Lynn R. Morgan WTF Hydroelectric Facility would have an installed capacity of 93 kilowatts (kW), and would be located along an existing raw water pipeline that feeds the existing Lynn R. Morgan Water Treatment Facility near the Town of Erie, Boulder County, Colorado.

Applicant Contact: Todd Fessenden, 645 Holbrook Street, PO Box 750, Erie, CO 80516, Phone No. 303–926–2700, Email: *tfessenden@erieco.gov.*

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, Email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A 93-kW turbine-generator; (2) short 16-inch-diameter inlet and outlet pipelines connecting to the existing raw water pipeline; (3) an approximately 29-foot by 20-foot powerhouse; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of up to 578 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Lynn R. Morgan WTF Hydroelectric Facility will not alter the primary purpose of the conduit, which is to transport raw water to a municipal water treatment facility. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments 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. 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.

Locations of Notice of Intent: The Commission provides all interested

[1] 18 CFR 385.2001–2005 (2019).

persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD20–3) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. 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, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: April 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08635 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14797–001]

California Department of Water Resources; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 14797–001.

c. *Date filed:* November 20, 2019.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Devil Canyon Project.[1]

f. *Location:* Along the East Branch of the California Aqueduct, in San Bernardino County, California. The project occupies 220.98 acres of United States lands administered by the U.S. Department of Agriculture, Forest Service, as part of the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gwen Knittweis, Chief, Hydropower License Planning and Compliance Office, California Department of Water Resources, P.O. Box 924836, Sacramento, California 94236–0001; (916) 557–4554; email—*Gwen.Knittweis@water.ca.gov.*

i. *FERC Contact:* Kyle Olcott at (202) 502–8963; or email at *kyle.olcott@ferc.gov.*

j. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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–14797–001.

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, but is not ready for environmental analysis at this time.

l. The project consists of: (1) A 249-foot-tall, 2,230-foot-long zoned earth and rockfill dam impounding a 995-acre reservoir; (2) intake structures and two 1.3-mile-long steel penstocks; (3) a powerhouse with four turbine-generating units; (4) a switchyard with four step-up transformers; and (5) appurtenant facilities. The project's estimated annual generation is 836 gigawatt-hours.

m. 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 website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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. 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.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments—July 2020

Request Additional Information (if necessary)—September 2020

Issue Scoping Document 2—October 2020

Issue notice of ready for environmental analysis—October 2020

Commission issues EA—April 2021

Comments on EA—May 2021

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

[1] The proposed Devil Canyon Project is currently licensed as part of the South SWP Project (P–2426). The applicant proposes to relicense the Devil Canyon Project separately.

Dated: April 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08629 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–136–000]

Guardian Pipeline L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on April 8, 2020, Guardian Pipeline L.L.C. (Guardian), 100 West Fifth Street, ONEOK Plaza, Tulsa, Oklahoma 74103, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act and its blanket certificate issued in Docket No. CP00–36–000 for authorization to construct and operate the Graymont Western Lime Project in Fond du Lac County, Wisconsin. Guardian states the proposed project will consist of a new delivery point connecting Guardian to Graymont Western Lime, Inc., which will measure a gas volume of 5 million cubic feet (MMcf) per day with a potential for expansion up to 13.2 MMcf per day. Guardian estimates the cost of the project to be approximately $822,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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.

Any questions regarding this prior notice request should be directed to Denise Adams, Director of Regulatory Affairs, Guardian Pipeline L.L.C., 100 West Fifth Street, ONEOK Plaza, Tulsa, Oklahoma 74103, by telephone at (918) 732–1408, or by email at *denise.adams@oneok.com.*

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene, or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: April 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08631 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–55–000]

Port Arthur LNG Phase II, LLC, PALNG Common Facilities Company, LLC; Notice of Schedule for Environmental Review of the Port Arthur LNG Expansion Project

On February 19, 2020, Port Arthur LNG Phase II, LLC (PALNG–II) and PALNG Common Facilities Company, LLC (PCFC) filed an application in Docket No. CP20–55–000 requesting authorization pursuant to section 3 of the Natural Gas Act to construct and operate new natural gas liquefaction facilities. The proposed project is known as the Expansion Project (Project) and would add a total of approximately 13.5 million tonnes per annum (MTPA) of liquefaction capacity for export overseas at the Port Arthur LNG Liquefaction Terminal authorized under Docket No. CP17–20–000.

On March 4, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—January 15, 2021

90-Day Federal Authorization Decision Deadline—April 15, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies

are kept informed of the Project's progress.

Project Description

The Expansion Project would be located on approximately 900 acres near the City of Port Arthur in Jefferson County, Texas, entirely within the previously authorized Port Arthur LNG Liquefaction Terminal site. The Project would include two new liquefaction trains (Trains 3 and 4), each with its own gas treatment facilities and capable of producing 6.73 MTPA; and associated utilities and infrastructure related to Trains 3 and 4.

Background

On June 25, 2019, the Commission staff granted PALNG–II and PCFC's request to use the FERC's Pre-filing environmental review process and assigned the Expansion Project Docket No. PF19–5. On October 1, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment Statement for the Planned Port Arthur LNG Expansion Project, and Request for Comments on Environmental Issues* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF19–5 and sent to affected landowners; federal, state, and local government agencies; elected officials; and other interested parties. In response to the NOI, comments were received from the Texas Historical Commission and the Sabine Center for Climate Change Law, All substantive comments will be addressed in the EA.

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration and U.S. Department of Energy are cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–55), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: April 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08630 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12790–015]

Andrew Peklo III; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 16, 2020.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for a non-capacity amendment to the license.

b. *Project No:* 12790–015.

c. *Date Filed:* January 17, 2020.

d. *Applicant:* Andrew Peklo III.

e. *Name of Project:* Pomperaug Hydroelectric Project.

f. *Location:* The project will be located at an existing dam on the Pomperaug River, in the town of Woodbury, Litchfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Andrew Peklo, 29 Pomperaug Road, Woodbury, CT 06798, (203) 263–4566.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 16, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–12790–015. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Andrew Peklo III requests approval for an amendment to the license for the Pomperaug Hydro Project. Andrew Peklo III is proposing to use two 45 kilowatt (kW) turbines (for a total generating capacity of 90 kW) instead of the authorized one 76 kW turbine. The applicant states that there would be no change in the Project's hydraulic operating range or the approved instantaneous run-of-river mode of operation.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) 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, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08638 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD20–4–000]

Campbell's Ferry Ranch, LLC; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On April 15, 2020, Campbell's Ferry Ranch, LLC, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Campbell's Ferry Micro-Hydro Unit would have an installed capacity of 1.1 kilowatts (kW), and would be located along an existing irrigation pipeline on the applicant's property near Dixie, Idaho County, Idaho.

Applicant Contact: Douglas Tims, HC83 Box 8023, Cascade, ID 83611, Phone No. 208–344–7119, Email: *doug@rivertraveler.com.*

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, Email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A 1.1-kW turbine-generator; (2) an approximately 10-foot by 10-foot powerhouse; and (3) appurtenant facilities. The proposed project would have an estimated annual generation of up to 1.5 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Campbell's Ferry Micro-Hydro Unit will not alter the primary purpose of the conduit, which is to transport water for irrigation and fire suppression. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments 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. 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

[1] 18 CFR 385.2001–2005 (2019).

accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD20–4) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. 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, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: April 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08636 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC20–85–000]

Black Marlin Pipeline LLC; Notice of Filing

Take notice that on April 7, 2020 Black Marlin Pipeline LLC submitted a request for a waiver of the reporting requirement to file the FERC Form 2–A—Annual Report for Nonmajor Natural Gas Companies and 3–Q Quarterly Financial Report of Natural Gas Companies for calendar year 2020 and subsequent years.

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 or 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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 18, 2020.

Dated: April 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08633 Filed 4–22–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0131; FRL–10008–05]

Draft Scopes of the Risk Evaluations To Be Conducted for Seven Chemical Substances Under the Toxic Substances Control Act; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by the Toxic Substances Control Act (TSCA), which was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act in June 2016, EPA is announcing the availability of the draft scope documents for the risk evaluations to be conducted for 7 of 20 High-Priority Substances designated in December 2019. The draft scope document for each chemical substance includes the conditions of use, hazards, exposures, and the potentially exposed or susceptible subpopulations the EPA plans to consider in conducting the risk evaluation for that chemical substance. EPA is also opening a 45-calendar day comment period on these draft scope documents to allow for the public to provide additional data or information that could be useful to the Agency in finalizing the scope of the risk evaluations; comments may be submitted to this docket and the individual dockets for each of the chemical substances.

DATES: Comments must be received on or before June 8, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0131, or the applicable docket ID number for the individual chemical substances identified in Unit III., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Ross Geredien, Risk Assessment Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency (Mailcode 7403M), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1864; email address: *geredien.ross@epa.gov. For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to entities that manufacture (including import) a chemical substance regulated under TSCA (*e.g.,* entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, and users; non-governmental organizations in the environmental and public health sectors; state and local government agencies; and members of the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What is the Agency's authority for taking this action?

This action directly implements TSCA section 6(b)(4)(D), 15 U.S.C. 2605(b)(4)(D).

C. What action is the Agency taking?

EPA is publishing the draft scopes of the risk evaluations for 7 of 20 chemical substances designated as High-Priority Substances for risk evaluation under TSCA. Through the risk evaluation process, EPA will determine whether the chemical substances present an unreasonable risk of injury to health or the environment under the conditions of use, in accordance with TSCA section 6(b)(4). EPA announced the availability of the draft scopes of the risk evaluations for 13 of 20 chemical substances designated as High-Priority Substances for risk evaluation under TSCA on April 6, 2020 (Ref. 1).

II. Background

TSCA section 6(b)(1) requires EPA to prioritize chemical substances for risk evaluation (15 U.S.C. 2605(b)(1)). Effective December 20, 2019, EPA designated 20 chemical substances as High-Priority Substances for risk evaluation (Ref. 2), which initiated the risk evaluation process for those chemical substances (15 U.S.C. 2605(b)(3)(A); 40 CFR 702.17). The purpose of risk evaluation is to determine whether a chemical substance presents an unreasonable risk to health or the environment, under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation (15 U.S.C. 2605(b)(4)(A)). As part of this process, EPA must evaluate both hazard and exposure, exclude consideration of costs or other non-risk factors, use scientific information and approaches in a manner that is consistent with the requirements in TSCA for the best available science, and ensure decisions are based on the weight-of-scientific-evidence (15 U.S.C. 2605(b)(4)(F)). This process will culminate in a determination of whether or not the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use (40 CFR 702.47).

III. Draft Scopes for 7 of 20 Designated High Priority Chemical Substances

The 7 chemical substances for which EPA is publishing the draft scopes of the risk evaluations are identified in the following Table, along with the corresponding Chemical Abstract System Registry Number (CASRN) and docket ID numbers.

TABLE—DRAFT SCOPES FOR 7 OF 20 DESIGNATED HIGH PRIORITY CHEMICAL SUBSTANCES

Chemical substance	CASRN	Docket ID No.
Butyl benzyl phthalate (BBP) (1,2-Benzenedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester)	85–68–7	EPA–HQ–OPPT–2018–0501
Dibutyl phthalate (DBP) (1,2-Benzenedicarboxylic acid, 1,2-dibutyl ester)	84–74–2	EPA–HQ–OPPT–2018–0503
Dicyclohexyl phthalate (1,2-Benzenedicarboxylic acid, 1,2-dicyclohexyl ester)	84–61–7	EPA–HQ–OPPT–2018–0504
Di-ethylhexyl phthalate (DEHP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-ethylhexyl) ester)	117–81–7	EPA–HQ–OPPT–2018–0433
Di-isobutyl phthalate (DIBP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-methylpropyl) ester)	84–69–5	EPA–HQ–OPPT–2018–0434
Formaldehyde	50–00–0	EPA–HQ–OPPT–2018–0438
Phthalic anhydride (1,3-Isobenzofurandione)	85–44–9	EPA–HQ–OPPT–2018–0459

The draft scope of the risk evaluation for each of these 7 chemical substances includes the conditions of use, hazards, exposures, and the potentially exposed or susceptible subpopulations the EPA plans to consider. Development of the scope is the first step of a risk evaluation. The draft scope of each risk evaluation will include the following components (40 CFR 702.41(c)):

- The conditions of use, as determined by the Administrator, that the EPA plans to consider in the risk evaluation.
- The potentially exposed populations that EPA plans to evaluate; the ecological receptors that EPA plans to evaluate; and the hazards to health and the environment that EPA plans to evaluate.
- A description of the reasonably available information and the science approaches that the Agency plans to use.
- A conceptual model that will describe the actual or predicted relationships between the chemical substance, the conditions of use within the scope of the evaluation and the receptors, either human or environmental, with consideration of the life cycle of the chemical substance—from manufacturing, processing, distribution in commerce, storage, use, to release or disposal—and identification of human and ecological health hazards EPA plans to evaluate for the exposure scenarios EPA plans to evaluate.
- An analysis plan, which will identify the approaches and methods EPA plans to use to assess exposure, hazards, and risk, including associated uncertainty and variability, as well as a strategy for using reasonably available information and science approaches.
- A plan for peer review.

With the publication of the draft scopes, EPA is providing a 45-calendar day public comment period. Note that, as a result of the Ninth Circuit Court of Appeals' decision in *Safer Chemicals, Healthy Families* v. *U.S. EPA,* 943 F.3d 397, 425 (9th Cir. 2019), EPA will no longer exclude legacy uses or associated disposal from the definition of ''conditions of use.'' Rather, when these activities are intended, known, or reasonably foreseen, these activities will be considered uses and disposal, respectively, within the definition of ''conditions of use.''

EPA encourages commenters to provide information they believe might be missing or may further inform the risk evaluation. EPA will publish a notice in the **Federal Register**

announcing the availability of the final scopes within six months of the initiation of risk evaluations that occurred on December 20, 2019 (Ref. 2).

IV. References

The following is a listing of the documents that are specifically referenced in this **Federal Register** notice. The docket for this action includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket. For assistance in locating these referenced documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Draft Scopes of the Risk Evaluations to be Conducted for Thirteen Chemical Substances Under the Toxic Substances Control Act; Notice of Availability. **Federal Register**. 85 FRxx, April 9, 2020 (FRL–10007–11).
2. EPA. High-Priority Substance Designations Under the Toxic Substances Control Act and Initiation of Risk Evaluation on High-Priority Substances; Availability. **Federal Register**. 84 FR 71924, December 30, 2019 (FRL–10003–15).

Authority: 15 U.S.C. 2601 *et seq.*

Andrew Wheeler,

Administrator.

[FR Doc. 2020–08613 Filed 4–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2020–0216; FRL–10008–65–Region 1]

Notice of Availability of Proposed Modifications to NPDES General Permits for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems in Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Proposed Permit Modifications; Request for Public Comment.

SUMMARY: The Environmental Protection Agency (EPA) is providing this notice of availability (NOA) for proposed limited modifications to the final National Pollutant Discharge Elimination System (NPDES) general permits for discharges of stormwater from small Municipal Separate Storm Sewer Systems (MS4s) in Massachusetts and New Hampshire under the Clean Water Act (CWA). The proposed modifications represent the results of mediation supervised by the U.S. Court of Appeals for the District of Columbia Circuit Mediation Program between EPA and petitioners the National Association of Homebuilders (NAHB), the Home Builders and Remodelers Association of Massachusetts, Inc. (HBRAMA), the New Hampshire Home Builders Association (NHHBA), the Center for Regulatory Reasonableness (CRR), the Massachusetts Coalition for Water Resources Stewardship (MCWRS), the Town of Franklin, Massachusetts (Franklin), the City of Lowell, Massachusetts (Lowell), the Conservation Law Foundation (CLF), and the Charles River Watershed Association (CRWA). EPA and the petitioners have entered into settlement agreements that include commitments for EPA to propose certain modifications to the 2016 Massachusetts Small MS4 General Permit and the 2017 New Hampshire Small MS4 General Permit, and then to take final action on each proposal.

DATES: Written comments on the proposed permit modifications must be received by June 8, 2020.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R01–OW–2020–0216, online at *www.regulations.gov* (EPA's preferred method). For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.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 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, please contact the persons 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://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Newton Tedder, Water Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, MC 06–4 Boston, MA 02109; telephone number: 617–918–1038; email address: *tedder.newton@epa.gov;* or

Suzanne Warner, Water Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, MC 06–4, Boston, MA 02109; telephone number: 617–918–1383; email address: *warner.suzanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Permit Modifications

On April 4, 2016, EPA issued a final NPDES general permit for discharges of stormwater from small MS4s in Massachusetts (the MA MS4 Permit) under CWA section 402(p). 33 U.S.C. 1342(p). On July 18, 2016, CRR filed a petition for review of the permit in the U.S. Court of Appeals for the D.C. Circuit. CLF, CRWA, MCWRS, Franklin, NAHB, HBRAMA, and the City of Lowell also filed petitions for review of the permit, all of which were consolidated with CRR's petition in the D.C. Circuit. *Center for Regulatory Reasonableness, et al.* v. *EPA,* No. 16–1246 (DC Cir.) (2016 Massachusetts Small MS4 General Permit consolidated cases). On January 18, 2017, EPA issued a final NPDES general permit for discharges of stormwater from small MS4s in New Hampshire (the NH MS4 Permit). On February 1, 2017, CLF filed a petition for review of the permit in the U.S. Court of Appeals for the First Circuit. CRR, NAHB, and NHHBA later filed petitions for review in the D.C. Circuit. The First Circuit then transferred the CLF petition to the D.C. Circuit, where the D.C. Circuit consolidated it with the CRR, NAHB, and NHHBA petitions. *Center for Regulatory Reasonableness et. al* v. *EPA, Conservation Law Foundation, Intervenor* No. 17–1060 (DC Cir.) (2017 New Hampshire Small MS4 General Permit consolidated cases). The parties to both cases entered into mediation in 2017, and the D.C. Circuit has held the cases in abeyance. On December 27, 2019, EPA published three proposed settlement agreements in the **Federal Register** for a 30-day public comment period. *See* ''Proposed Settlement Agreements, Clean Water Act Claims,'' 84 FR 71407 (Dec. 27, 2019). EPA's planned proposed permit modifications to the Massachusetts and New Hampshire permits and statements of basis describing those proposed modifications were attached as Exhibits A and B to the Massachusetts and New Hampshire proposed settlement agreements. EPA and the petitioners executed the settlement agreements on April 15, 2020. The first two settlement

agreements describe the modifications that EPA is proposing to the MA MS4 Permit and NH MS4 Permit. Pursuant to the settlement agreements, the proposed permit modifications reflect the substantive agreements that parties reached during mediation. In the settlement agreements, the petitioners agree not to submit adverse public comments on the Draft Permit Modifications, except that the Petitioners reserve their rights to submit any form of comment on EPA's proposed modification to the NH MS4 permit Part 2.3.6.a, and the definitions of ''new development'' and ''redevelopment'' in NH MS4 permit Appendix A. The agreements specify that EPA will take final action on each proposed modification within nine months of posting this NOA of the Draft Permit Modifications; that petitioners will then dismiss their current petitions for review with prejudice; and that petitioners agree not to challenge EPA's respective final actions if they modify the permits in a manner substantially similar to the proposed modifications (with one exception, discussed in the New Hampshire settlement agreement). The third settlement agreement commits Lowell, Massachusetts to voluntarily dismiss its petition without prejudice and commits EPA to process Lowell's individual permit application and then to take final action on Lowell's individual permit application. Today's notice includes only the proposed MA MS4 and NH MS4 proposed permit modifications. EPA will propose an individual permit for Lowell at a later date.

EPA is reopening, reexamining, and accepting comments on only the parts of the MA MS4 and NH MS4 permits that the proposed modifications specify. In the MA MS4 permit, only the following permit parts are open for modification and comment: parts 2.0; 2.1; 2.1.1; 2.1.2.a; 2.2.; 2.2.2; 2.3.3; 2.3.5; 2.3.6; 2.3.7.a; 2.3.7.b; 4.1; 4.4; Appendix F part A.I; Appendix F part A.II; Appendix F Attachments 2 and 3; and Appendix H. In the NH MS4 permit, only the following permit parts are open for modification and comment: 2.0; 2.1; 2.1.1; 2.1.2.a; 2.2.; 2.2.2 (paragraphs 2 and 3); 2.3.3.1; 2.3.5; 2.3.5.3; 2.3.6.a; 2.3.7.2.b.iii; 3.1.3; 4.1.4; 4.4.2.3; Appendix A; Appendix F part III and Attachment 3; and Appendix H.

EPA has emailed notifications of the Draft Permit Modifications to regulated parties, parties to this mediation, and other interested parties on EPA Region 1's NPDES permit mailing list. For a period of forty-five (45) days following the date of publication of this notice, the Agency will accept written comments on the proposed permit modifications. Pursuant to 40 CFR 124.12(a), EPA may hold a public hearing during the comment period for any interested persons to submit oral comments. If EPA determines there is sufficient interest in a public hearing, EPA will post the details of the public hearing at EPA Region 1's website and will notify via email the petitioners, eligible permittees, and any other party who requests to be notified. EPA has requested that Massachusetts and New Hampshire provide a water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341. After considering any significant public comments on the permit sections that are open for proposed modification, EPA will take final action on the Draft Permit Modifications within nine months of the Agency's posting of the NOAs of the Draft Permit Modifications on its website.

Commenters must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period. Any supporting material which is submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in this proceeding, or consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

II. Additional Information About Commenting on the Proposed Permit Modifications

A. *How can I get a copy of the proposed permit modifications?* The official public docket for this action, EPA–R01–2020–0216, contains copies of the proposed permit modifications and statements of basis. These documents are also posted on EPA Region 1's website at *https://www.epa.gov/npdes-permits/npdes-stormwater-permit-program-new-england#smallms4program.* The official public docket is available for public viewing at U.S. EPA Region 1, John W. McCormack Building, 5 Post Office Square, Boston, MA 02109. Please contact the persons listed in **FOR FURTHER INFORMATION CONTACT**.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.'' It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

Use of the *www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will

be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Dated: April 17, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–08645 Filed 4–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10008–66–OA]

Notification of Public Meetings of the Science Advisory Board; COVID–19 Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces its intent to convene a panel of experts drawn from the Chartered Science Advisory Board, the SAB Chemical Assessment Advisory Committee (CAAC), and the SAB Drinking Water Committee (DWC) to provide rapid advice on scientific and technical issues related to the COVID–19 Pandemic and opportunities for current and future EPA research activities that might enhance and inform EPA's current and any future responses to SARS–CoV–2. The Staff Office announces two public meetings: (1) A teleconference of the SAB COVID–19 Review Panel to conduct a review of EPA's research activities in response to SARS CoV–2 and (2) a teleconference of the Chartered SAB to review the draft report of the SAB COVID–19 Review Panel.

DATES: The public teleconference of the SAB COVID–19 Review Panel will be held on Thursday, April 30, 2020, from 1:00 p.m. to 5:00 p.m. (Eastern Time) and the public teleconference of the Chartered SAB will be held on Wednesday, May 20, 2020, from 1:00 p.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Zaida Figueroa, Designated Federal Officer (DFO), via telephone/voice mail (202) 566–2643, or email at *figueroa.zaida@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB anticipates that the scope and scale of COVID–19 Pandemic will lead EPA Program Offices to request advice on an array of scientific and technical issues. Rapid advice from nationally recognized scientists and public health experts will assist the Agency in developing and implementing timely and scientifically appropriate responses to the COVID–19 Pandemic.

To expedite the development of scientific advice, pursuant to FACA and EPA policy, notice is hereby given that the SAB will convene a panel of experts drawn from the Chartered SAB, the SAB CAAC and the SAB DWC to provide rapid advice on scientific and technical issues of the COVID–19 Pandemic. Panel members will be invited to serve based on their scientific and technical expertise, knowledge, and experience; availability and willingness to serve; and absence of financial conflicts of interest. The panel will provide advice on opportunities for current and future EPA research activities that might enhance and inform EPA's current and any future responses to SARS–CoV–2.

The SAB will hold a public teleconference on Thursday, April 30, 2020, to convene the SAB COVID–19 Review Panel for deliberations. The Chartered SAB will then hold a teleconference on May 20, 2020 to review the SAB COVID–19 Review Panel's draft report.

Due to the exceptional circumstances of the ongoing COVID–19 Pandemic and the need to act quickly, the SAB is providing less than 15 days' notice in the **Federal Register** as there is insufficient time prior to the advisory committee meeting as required by the final rule on Federal Advisory Committee Management codified in 41 CFR 102–3.150(b). Information on the panel's peer review activities will be posted on the SAB website at *http://epa.gov/sab* as they become available.

Availability of Meeting Materials: All meeting materials, including the agenda will be available on the SAB web page at *http://epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Written Statements: Given the need for expedited advice on the COVID–19 Pandemic scientific related issues, written statements will be accepted throughout the advisory process. However, for timely consideration by SAB members, statements should be received in the SAB Staff Office by April 26, 2020, for consideration by the SAB COVID–19 Review Panel at the public teleconference on April 30, 2020. Written statements should be received in the SAB Staff Office by May 15, 2020, for consideration by the Chartered SAB as part of their quality review of the panel's work at the public teleconference on May 20, 2020. Written statements should be supplied to the DFO at the contact information above via email. The SAB Staff Office does not publish documents with signatures on its website. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least five days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: April 17, 2020.

V Khanna Johnston,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2020–08586 Filed 4–22–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012426–004.

Agreement Name: The OCEAN Alliance Agreement.

Parties: American President Lines, LLC; APL Co. Pte. Ltd.; CMA CGM S.A.; COSCO Shipping Lines Co., Ltd.; Evergreen Line Joint Service Agreement; OOCL (Europe) Limited; and Orient Overseas Container Line Limited.

Filing Party: Robert Magovern; Cozen O'Connor.

Synopsis: The amendment revises Article 2 to remove COSCO SHIPPING Lines (Europe) GmbH as a sub-party to the Agreement and adds India to the geographic scope of the Agreement.

Proposed Effective Date: 5/31/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1214.

Dated: April 17, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–08624 Filed 4–22–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member Meeting

DATES: April 27, 2020, 10:00 a.m., Telephonic.

Open Session

1. Approval of the Minutes of the March 23, 2020 Board Meeting
2. Monthly Reports:
   (a) Participant Activity Report
   (b) Legislative Report
3. Quarterly Reports:
   (a) Investment Policy
   (b) Audit Status
   (c) Budget Review
4. CliftonLarsonAllen's Annual Financial Audit Review
5. Department of Labor, Employee Benefits Security Adminitration's Annual Audit Presentation
6. Office of Technology Services' Annual Report

Closed Session

Information covered under 5 U.S.C. 552b(c)(4) and (c)(9)(b).

Contact Person for More Information: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION: Dial-in (listen only) information: Number: 1–877–446–3914, Code: 3808327.

Dated: April 17, 2020.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020–08535 Filed 4–22–20; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 181 0162]

Axon Enterprise, Inc. and Safariland, LLC; Analysis of Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 2020.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Axon and Safariland; File No. 181 0162'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jennifer Milici (202–326–2912), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website (for April 17, 2020), at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 26, 2020. Write ''Axon and Safariland; File No. 181 0162'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Axon and Safariland; File No. 181 0162'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the

Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 26, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') with Safariland, LLC (''Safariland''). The Consent Agreement seeks to resolve allegations against Safariland in the administrative complaint issued by the Commission on January 3, 2020.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or issue the Order.

II. Challenged Conduct

This matter involves Safariland's sale to Axon Enterprise, Inc. (''Axon'') of its body-worn camera systems division, VieVu, LLC (''VieVu''). The merger eliminated direct and substantial price and innovation competition between dominant supplier Axon and its closest competitor, VieVu, to serve large metropolitan police departments. According to the complaint, customers lost VieVu as a bidder for new contracts, which enabled Axon to impose substantial price increases.

In addition to transferring VieVu from Safariland to Axon, the parties' agreements included several non-compete and customer non-solicitation provisions, which grounded the inclusion of Safariland as a party to the administrative proceeding. These provisions barred Safariland from competing with Axon now and in the future on all of Axon's products, limited solicitation of customers and employees by either company, and stifled potential innovation or expansion by Safariland. These restraints, some of which were intended to last more than a decade, substantially lessened actual and potential competition and were not reasonably limited to protect a legitimate business interest, according to the complaint.

III. The Order

Since the complaint issued, Safariland and Axon rescinded the agreement provisions that the complaint alleges are anticompetitive. To ensure that the parties do not enter new agreements with similar anticompetitive provisions, Part II of the Order enjoins Safariland from entering into any agreement with Axon that incorporates the language or substance of the rescinded provisions.

Part III of the Order requires Safariland to obtain prior approval from the Commission before it enters into any agreement with Axon that restricts competition between Axon and Safariland. By permitting agreements between Axon and Safariland, subject to prior approval, rather than imposing an absolute ban on future agreements between the parties, the Order permits agreements the parties can demonstrate are competitively neutral or procompetitive.

Part IV of the Order addresses Safariland's litigation assistance obligations. These provisions will help facilitate efficient discovery from Safariland in the ongoing litigation against Axon.

Part V contains antitrust compliance program and recordkeeping requirements. Part VI requires Safariland to file with the Commission verified written compliance reports. Part VII requires Safariland to notify the Commission in advance of changes in Safariland's structure, including any acquisition, merger or consolidation of Safariland, irrespective of Hart-Scott-Rodino reporting obligations. Part VIII requires that Safariland provide the Commission with access to certain information for the purpose of determining or securing compliance with the Order, and Part IX states that the purpose of the Order is to remedy the harm alleged in Paragraphs 44–53 and 59–60 of the complaint.

Part X provides that the Order will terminate 10 years from the date it is issued.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the Order. It does not constitute an official interpretation of the Order or in any way to modify its terms.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–08604 Filed 4–22–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice; partial withdrawal.

SUMMARY: On Wednesday, April 15, 2020, the Centers for Medicare & Medicaid Services (CMS) published a notice entitled, ''Agency Information Collection Activities: Submission for OMB Review; Comment Request.'' That notice invited public comments on two separate information collection requests specific to document identifiers: CMS–10716 and CMS–R–262. Through the publication of this document, we are withdrawing the portion of the notice requesting public comment on the information collection request titled ''CMS Plan Benefit Package (PBP) and Formulary CY 2021.'' Form number CMS–R–262 (OMB control number 0938–0673).

DATES: The original comment period for the document that published on April 15, 2020, remains in effect and ends May 15, 2020.

SUPPLEMENTARY INFORMATION: In FR document, 2020–07884, published on April 15, 2020, (85 FR 21009), we are withdrawing item 2 ''CMS Plan Benefit Package (PBP) and Formulary CY 2021'' which begins on page 21010.

Dated: April 20, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–08651 Filed 4–22–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5392]

Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations; Draft Guidance for Industry; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the notice of availability entitled ''Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations; Draft Guidance for Industry'' that appeared in the **Federal Register** of January 30, 2020. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice published January 30, 2020 (85 FR 5445). Submit either electronic or written comments on the draft guidance by July 28, 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–5392 for ''Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations.'' 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 Office of Communication, Outreach and

Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Shruti Modi, 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

In the **Federal Register** of January 30, 2020 (85 FR 5445), FDA published a notice with a 90-day comment period to request comments on the document entitled ''Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations; Draft Guidance for Industry.'' FDA is extending the comment period, in response to a request from a stakeholder, until July 22, 2020. The Agency believes that a 90-day extension allows adequate time for interested persons to submit comments without significantly delaying publication of the final version of the guidance.

II. Reference

The following reference is on display in the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.*

1. Email from Mr. Aleksandr Merenkov, Regulatory Intelligence Specialist, Regeneron Pharmaceuticals, Inc., to Jenifer Roe, Regulatory Counsel, Center for Biologics Evaluation and Research, FDA (March 26, 2020).

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: April 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–08609 Filed 4–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 9⅝%, as fixed by the Secretary of the Treasury, is certified for the quarter ended March 31, 2020. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2020–08564 Filed 4–22–20; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Chris Kornak at 240–627–3705 or *Chris.Kornak@nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Use of the Intracellular Signaling Domain of Receptor CD28H as a Component of Chimeric Antigen Receptors To Overcome Inhibition of Cytotoxic Lymphocytes by Checkpoint Receptors

Description of Technology: Engineered chimeric antigen receptors (CARs) that are expressed in cytotoxic T cells and natural killer (NK) cells have been used to specifically target tumor cells. However, CAR–T and CAR–NK cells are still subject to downregulation by their inhibitory receptors after injection into patients.

Scientists at NIAID have developed CAR constructs that overcome inhibition of NK cells by receptors for human major histocompatibility complex molecules HLA–E and HLA–C, based on *in vitro* studies. The CAR contains an antigen binding domain of receptor CD28 homolog (CD28H), a CD28H transmembrane domain (TM), a CD28H signaling domain, and other intracellular signaling domains, such as 2B4 (CD244) and CD3 zeta chain (CD3zeta). A variant of this CAR, in which the antigen binding domain of CD28H is replaced by a single-chain antibody variable region (scFv) that binds to CD19, rendered NK cells resistant to inhibition by HLA–E and HLA–C on $CD19^+$ tumor cells.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Method of adoptive therapy where CAR–NK cell or CAR–T cell is the effector cell.

Competitive Advantages:

- Resistant to inhibition of NK cells or T cells by HLA–E and HLA–C.
- Manufacturing efficiency.
- CAR–NK can be developed without the need to genetic silencing of TCR.

Development Stage:

• Pre-clinical.

Inventors: Eric O. Long (NIAID), Xiaoxuan Zhuang (NIAID).

Publications: Zhuang X and Long E.O., ''CD28 homolog is a strong activator of natural killer cells for lysis of B7H7-positive tumor cells.'' Cancer Immunol Res 7(6):939–951. *https://cancerimmunolres.aacrjournals.org/content/7/6/939.long.* April 24, 2019.

Trends Immunol: ''Inhibition-resistant CARs for NK cell cancer immunotherapy'' Trends Immunol 40:1078–1081, December 2019.

Intellectual Property: HHS Reference No. E–097–2020–0–PCT–01, PCT Patent Application No. PCT/US2020/024985.

Licensing Contact: To license this technology, please contact Chris Kornak at 240–627–3705 or *Chris.Kornak@nih.gov,* and reference E–097–2020–0.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Chris Kornak at 240–627–3705 or *Chris.Kornak@nih.gov.*

Dated: April 12, 2020.

Wade W. Green,

Acting Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2020–08562 Filed 4–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Amy F. Petrik, Ph.D., 240–627–3721; *amy.petrik@nih.gov.* Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD, 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows:

Recombinant Prefusion Measles and Mumps F and F–HN (H) Glycoproteins for Vaccine Development.

Description of Technology: The Measles virus (MeV) and Mumps virus (MuV) are highly contagious paramyxoviruses that can be transmitted by respiratory droplets from or on direct contact with an infected person. The resulting diseases can lead to serious complications or death among children. The existing vaccines for MeV and MuV are live attenuated virus vaccines which are administered in two subcutaneous doses at 1 year of age and as early as one month later. Two doses of a combination measles, mumps and rubella vaccine are 97% effective against measles and 88% against mumps. A single dose of a combination measles, mumps, and rubella vaccine is 93% effective against measles and 78% effective against mumps.

Despite the effectiveness of the current licensed vaccines against MeV and MuV, incidences of both have increased in recent years. Contributing factors include reduced vaccination rates (especially in the U.S) due to vaccine hesitancy and circulation of divergent strains against which the licensed MMR vaccine offers limited protection.

In the case of MuV, recent studies have shown that immunity wanes significantly after the second MMR vaccination which normally occurs in childhood. In response to recent recurring MuV disease outbreaks in the U.S and Europe, the Advisory Committee on Immunization Practices is advising a third MMR vaccination to boost protection. However, existing immunity neutralizes a third MMR vaccination limiting its effectiveness. Genotype G MuV is the main cause of recent outbreaks in the US and Europe, and a genotype-matched vaccine has been suggested as a solution for the recurring outbreaks.

Researchers at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases (NIAID) used structure-guided design to create immunogen constructs aimed at stabilizing the measles and mumps F glycoproteins in their prefusion conformations. This was achieved by following the discovery that the pre-fusion stabilized F glycoproteins from other members of the paramyxoviridae family induced high titer neutralizing responses.

The researchers developed recombinant immunogens based on: (a) The measles F glycoprotein trimer stabilized in its prefusion conformation (preF–MeV); (b) genotype G mumps F glycoprotein trimers stabilized in its prefusion conformation (preF–MuV); (c) a chimera in which a genotype G mumps F glycoprotein trimer stabilized in its prefusion conformation is fused with mumps HN protein (preF–HN); and (d) a chimera in which a genotype G mumps F glycoprotein trimer stabilized in its prefusion conformation is fused with measles H protein (preF–MuV/MeV H).

The prefusion stabilization of both the mumps and measles F glycoproteins relies on amino acid substitutions to allow the formation of intra-protomer disulfide bonds. Researchers found that the preF and preF–HN immunogens are stable for over a month at 37 °C and hypothesize that lyophilized product would be stable at room temperature for months.

When mice are immunized in a prime-boost-boost regimen with the MuV immunogen constructs, the group receiving the preF–HN immunogens elicited similar antibody titers against genotype G MuV and Jeryl Lynn strain of MuV (genotype A) indicating that the preF–HN immunogens offer broad protection against divergent strains of MuV. Interestingly, mice immunized in a prime-boost regimen with the pre–F MuV/MeV H chimeric immunogen elicited antibody titers to both MuV and MeV that are above the determined protective thresholds.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications:

• The products can be used as measles or mumps vaccines.

Competitive Advantages:

• Currently, there is no licensed recombinant measles or mumps vaccine for use as boosters as a third vaccination.

• The preF–HN immunogens offer broad protection against divergent strains of mumps.

• The stabilized prefusion F molecules may be deliverable as mRNA vaccines, increasing yields of expressed antigen and presentation of the optimal conformation of target proteins.

• PreF and preF–HN immunogens are stable for over a month at 37 °C, the lyophilized product may be stable at room temperature for months.

• Recombinant vaccine production is scalable, cost-effective vaccine production can be achieved.

Development Stage: Preclinical Research.

Inventors: Barney Graham, Ph.D. (NIAID); Guillaume Stewart-Jones, Ph.D. (NIAID).

Intellectual Property: HHS Reference Number E–153–2019 includes U.S. Provisional Patent Application Number 62/946,902 filed 12/11/2019.

Licensing Contact: To license this technology, please contact Amy F. Petrik, Ph.D., 240–627–3721; *amy.petrik@nih.gov.*

Dated: April 12, 2020.

Wade W. Green,

Acting Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2020–08561 Filed 4–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Thio Compounds and Thalidomide Analogues for the Treatment of Neurological Diseases

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute on Aging and the National Cancer Institute, institutes of the National Institutes of Health, Department of Health and Human Services, are contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the U.S. and foreign Patents and Patent Applications listed in the Supplementary Information section of this notice to AevisBio, Inc. located in 814 W Diamond Ave., Suite 203, Gaithersburg, MD 20870.

DATES: Only written comments and/or applications for a license which are received by the National Institute on Aging c/o National Cancer Institute's Technology Transfer Center on or before May 8, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Merissa Baxter, Ph.D., Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, Rm. 1E406 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702, Telephone: 240–276–7234, Email: *merissa.baxter@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectually Property

United States Patent No. 8,927,725, issued January 6, 2015 and entitled ''Thio Compounds'' [HHS Reference No. E–045–2012–0–US–01]; United States Patent No. 9,084,783, issued July 21, 2015 and entitled ''Thio Compounds''[HHS Reference No. E–045–2012–0–US–02]; United States Patent No. 9,623,020, issued April 18, 2017 and entitled ''Thio Compounds'' [HHS Reference No. E–045–2012–0–US–03]; United States Patent No. 10,220,028, issued March 5, 2019 and entitled ''Thio Compounds'' [HHS Reference No. E–045–2012–0–US–04]; US Provisional Patent Application No. 62/235,105, filed on September 30, 2015 and entitled ''Thalidomide Analogs and Methods of Use'' [HHS Reference No. E–208–2015–0–US–01]; PCT Patent Application No. PCT/US2016/054430, filed on September 29, 2016 and entitled, ''Thalidomide Analogs and Methods of Use'' [HHS Reference No. E–208–2015–0–PCT–02]; Australian Patent Application No. 2016330967, filed on September 29, 2016 and entitled ''Thalidomide Analogs and Methods of Use'' [HHS Reference No. E–208–2015–0–AU–03]; Canadian Patent Application No. 3000661, filed on September 29, 2019 and entitled ''Thalidomide Analogs and Methods of Use'' [HHS Reference No. E–208–2015–0–CA–04]; European Patent Application No. 16782148.7, filed on September 29, 2019 and entitled ''Thalidomide Analogs and Methods of Use'' [HHS Reference No. E–208–2015–0–EP–05]; South Korean Patent Application No. 10–2018–7012347, filed on April 13, 2018 and entitled ''Thalidomide Analogs and Methods of Use'' [HHS Reference No. E–208–2015–0–KR–06]; and United States Patent Application No. 15/764,193, filed on March 28, 2018 and entitled ''Thalidomide Analogs and Methods of Use'' [HHS Reference No. E–208–2015–US–07].

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be world-wide, and the field of use may be limited to the use of Licensed Patent Rights for the following: ''The development, production, and commercialization of a select subset of thalidomide/lenalidomide/pomalidomide (POMA) analogue compounds for the therapeutic treatment of neurological disorders prevalent in aging: Specifically, Traumatic Brain Injury (TBI), Alzheimer's disease (AD), Parkinson's disease (PD), and Multiple Sclerosis (MS).''

These technologies disclose novel thalidomide, lenalidomide, and pomalidomide analogues that can potentially be used for the treatment of neurological diseases, autoimmunity, and/or cancer.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Institute on Aging receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 13, 2020.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2020–08560 Filed 4–22–20; 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–2014]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On March 13, 2020, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous

table. This notice provides corrections to that table, to be used in lieu of the information published. The table provided here represents the proposed flood hazard determinations and communities affected for Ellsworth County, Kansas and Incorporated Areas.

DATES: Comments are to be submitted on or before June 11, 2020.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are 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.

You may submit comments, identified by Docket No. FEMA–B–2014, 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 in the table 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 also used to calculate the appropriate flood insurance premium rates for new buildings built after 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 may only 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://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations 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 will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 85 FR 14694 in the March 13, 2020, issue of the **Federal Register**, FEMA published a table titled Ellsworth County, Kansas and Incorporated Areas. This table contained inaccurate information as to the community map repository for the City of Lorraine featured in the table.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published. (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
Ellsworth County, Kansas and Incorporated Areas Project: 17–07–0009S Preliminary Date: August 14, 2019	
City of Holyrood	City Hall, 110 South Main Street, Holyrood, KS 67450.
City of Lorraine	City Hall, 238 Main Street, Lorraine, KS 67459.
Unincorporated Areas of Ellsworth County	Ellsworth County Courthouse, 210 North Kansas Avenue, Ellsworth, KS 67439.

[FR Doc. 2020–08455 Filed 4–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2020–N054; FXES11130200000–201–FF02ENEH00]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act of 1973, as amended (ESA), prohibits certain activities that may impact endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please submit your written comments by May 26, 2020.

ADDRESSES:

Document availability: Request documents by phone or email: Susan Jacobsen, 505–248–6641, *susan_jacobsen@fws.gov.*

Comment submission: Submit comments by email to *fw2_te_permits@fws.gov.* Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–123456).

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Classification

and Restoration Division, 505–248–6641. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing but also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Releasing documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the application number when submitting comments.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE802211	Texas State University; Austin, Texas.	Coffin Cave mold beetle *(Batrisodes texanus),* Helotes mold beetle *(Batrisodes venyivi),* Robber Baron Cave meshweaver *(Cicurina baronia),* Madla Cave meshweaver *(Cicurina madla),* Bracken Bat Cave meshweaver *(Cicurina venii),* Government Canyon Bat Cave meshweaver *(Cicurina vespera),* Government Canyon Bat Cave spider *(Neoleptoneta microps),* Tooth Cave spider *(Neoleptoneta myopica),* Ground beetle *(Rhadine exilis),* Ground beetle *(Rhadine infernalis),* Tooth Cave ground beetle *(Rhadine persephone),* Tooth Cave pseudoscorpion *(Tartarocreagris texana),* Kretschmarr Cave mold beetle *(Texamaurops reddelli),* Cokendolpher cave harvestman *(Texella cokendolpheri),* Bee Creek Cave harvestman *(Texella reddilli),* Bone Cave harvestman *(Texella reyesi),* Diminutive amphipod *(Gammarus hyalleloides),* Pecos amphipod *(Gammarus pecos),* Comal Springs riffle beetle *(Heterelmis comalensis),* Peck's Cave amphipod *(Stygobromus pecki),* Comal Springs dryopid beetle *(Stygoparnus comalensis).*	Texas	Presence/absence surveys, habitat surveys, increase in speciments requested.	Capture, harm, harass, injury, death.	Renew.
TE63904D	Lewis, Chancey D.; Cameron, Texas.	Houston toad (*Bufo houstonensis*), red-cockaded woodpecker (*Picoides borealis*).	Louisiana, Texas	Presence/absence surveys.	Harm, harass	New.
TE51928B	Moczygema, Kevin John; San Antonio, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harm, harass	Renew.
TE195248	Morrison, Michael L.; College Station, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harm, harass	Renew.
TE155413	Itzkowitz, Murray; Bethlehem, Pennsylvania.	Leon Spring pupfish (*Cyprinodon bovinus*).	Texas	Presence/absence surveys; collection.	Harass, harm, capture, injury, death.	Renew.
TE67302D	Edwards, Christine E.; St. Louis, Missouri.	Texas trailing phlox (*Phlox nivalis* spp. *texensis*).	Texas	Presence/absence surveys, sample leaf/stem tissue for genetic analysis.	removal	New.
TE63202B	Chambers, Carol L.; Flagstaff, Arizona.	New Mexico meadow jumping mouse (*Zapus hudsonius luteus*).	Arizona, Colorado, New Mexico.	Presence/absence surveys, PIT tagging.	Capture, injury, death	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE68530D	Dewitt, Thomas J.; Austin, Texas.	Georgetown salamander (*Eurycea naufragia*), Jollyville Plateau salamander (*Eurycea tonkawae*), Salado salamander (*Eurycea chisholmensis*), San Marcos salamander (*Eurycea nana*), Barton Springs salamander (*Eurycea sosorum*), Austin blind salamander (*Eurycea waterlooensis*).	Texas	Presence/absence surveys.	Capture, harm, harass	New.
TE819541	BRIC, LLC.; Albuquerque, New Mexico.	Interior least tern (*Sterna antillarum athalassos*), Black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), Northern aplomado falcon (*Falco femoralis septentrionalis*).	Arizona, New Mexico	Presence/absence surveys.	Harass, harm	Renew.
TE50643B	Weaver, Vaugh D.; Wichita, Kansas.	American burying beetle (*Nicrophorus americanus*), Neosho mucket (*Lampsilis rafinesqueana*), Topeka shiner (*Notropis topeka (=tristis)*).	Arkansas, Kansas, Oklahoma.	Presence/absence surveys.	Capture, harass, harm, injury, death.	Renew.
TE060125	Salt River Project; Phoenix, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), Gila topminnow (*Poeciliopsis occidentalis*).	Arizona	Presence/absence surveys.	Capture, harm, harass	Renew.
TE07059A	Marsh and Associates, LLC.; Tempe, Arizona.	Spikedace (*Mega fulgida*), loach minnow (*Tiaroga cobitis*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*), desert pupfish (*Cyprinodon macularius*).	Arizona	Captive propagation	Capture, harm, harass, injury, death.	Renew.
TE004439	Albuquerque BioPark; Albuquerque, New Mexico.	Interior least tern (*Sterna antillarum athalassos*), Rio Grande silvery minnow (*Hybognathus amarus*), Gila topminnow (*Poeciliopsis occidentalis*), razorback sucker (*Xyrauchen texanus*), Gila trout (*Oncorhynchus gilae*), Soccoro isopod (*Thermosphaeroma thermophilum*), Socorro springnsail (*Pyrgulopsis neomexicana*), Colorado pikeminnow (*Ptychocheilus lucius*), Green sea turtle (*Chelonia mydas*).	New Mexico	Research, education, propagation.	Harass, harm, injury, death.	Renew.
TE65027D	McBride Biotracking, LLC.; Flagstaff, Arizona.	Gierisch mallow (*Sphaeralcea gierischii).*	Arizona	Seed collection	Harm	New.
TE57462D	U.S. Army Corps of Engineers-ABQ District; Albuquerque, New Mexico.	Interior least tern (*Sterna antillarum athalassos*), southwestern willow flycatcher (*Empidonax traillii extimus*), Rio Grande silvery minnow (*Hybognathus amarus*).	Arizona, Colorado, New Mexico.	Presence/absence surveys.	Harm, harass, injury, death.	Renew.
TE67183D	Gido, Keith B.; Manhattan, Kansas.	Spikedace (*Mega fulgida*), loach minnow (*Tiaroga cobitis*).	Arizona, New Mexico	Presence/absence surveys.	Harm, harass, injury, death.	New.
TE69973D	Whitney, James E.; Pittsburg, Kansas.	Razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus lucius*).	Colorado, New Mexico, Utah.	Presence/absence surveys, electroshocking.	Harm, harass, injury, death.	New.
TE091551	U.S. Fish and Wildlife Service, Mexican Wolf Recovery Program, Albuquerque, New Mexico.	Mexican gray wolf (*Canus lupis baileyi*).	Arizona, New Mexico	Presence/absence surveys, management, capture, transport, handling.	Harm, harass, injury, death.	Renew.
TE168185	Cox McLain Environmental Consultants; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*), interior least tern (*Sterna antillarum athalassos*), Houston toad (*Bufo houstonensis*), Atwatter's prairie chicken (*Tympanuchus cupido attwateri*), gray bat (*Myotis griscescens*), red-cockaded woodpecker (*Leuconotopicus borealis*), Ozark big-eared bat (*Corynorhinus* (*=plecotus*) *townsendii ingens*), piping plover (*Charadrius melodus*), northern aplomado falcon (*Falco femoralis septentrionalis*).	New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harm, harass	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE144755	Reagan Smith Energy Solutions; Oklahoma City, Oklahoma.	Interior least tern (*Sterna antillarum athalassos*).	Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harm, harass	Amend.
TE65030D	The Peregrine Fund; Boise, Idaho.	Northern aplomado falcon (*Falco femoralis septentrionalis*).	Texas	Presence/absence surveys.	Harm, harass	New.
TE094365	National Cave and Karst Research Institute; Carlsbad, New Mexico.	Coffin Cave mold beetle *(Batrisodes texanus),* Helotes mold beetle *(Batrisodes venyivi),* Robber Baron Cave meshweaver *(Cicurina baronia),* Madla Cave meshweaver *(Cicurina madla),* Bracken Bat Cave meshweaver *(Cicurina venii),* Government Canyon Bat Cave meshweaver *(Cicurina vespera),* Government Canyon Bat Cave spider *(Neoleptoneta microps),* Tooth Cave spider *(Neoleptoneta myopica),* Ground beetle *(Rhadine exilis),* Ground beetle *(Rhadine infernalis),* Tooth Cave ground beetle *(Rhadine persephone),* Tooth Cave pseudoscorpion *(Tartarocreagris texana),* Kretschmarr Cave mold beetle *(Texamaurops reddelli),* Cokendolpher cave harvestman *(Texella cokendolpheri),* Bee Creek Cave harvestman *(Texella reddilli),* Bone Cave harvestman *(Texella reyesi),* Diminutive amphipod *(Gammarus hyalleloides),* Pecos amphipod *(Gammarus pecos),* Comal Springs riffle beetle *(Heterelmis comalensis),* Peck's Cave amphipod *(Stygobromus pecki),* Comal Springs dryopid beetle *(Stygoparnus comalensis*), Georgetown salamander (*Eurycea naufragia*), Jollyville Plateau salamander (*Eurycea tonkawae*), Salado salamander (*Eurycea chisholmensis*), San Marcos salamander (*Eurycea nana*), Barton Springs salamander (*Eurycea sosorum*), Austin blind salamander (*Eurycea waterlooensis*), Texas hornshell (*Popenaias popeii*), Leon Spring pupfish (*Cyprinodon bovinus*), Pecos pupfish (*Cyprinodon pecosensis*), fountain darter (*Etheostoma fonticola*).	Texas, New Mexico ...	Presence/absence surveys, capture.	Harm, harass, injury, death.	New.
TE815490	New Mexico Department of Game and Fish; Santa Fe, New Mexico.	Black-footed ferret (*Mustela nigripes*).	New Mexico	Presence/absence surveys.	Harm; harass	Renew.
TE08832A	Utah State University; Logan, Utah.	Rio Grande silvery minnow (*Hybognathus amarus*).	New Mexico	Presence/absence surveys, capture.	Harm, harass, injury, death.	Renew.
TE69747D	Sea Life US, LLC; San Antonio, Texas.	Green sea turtle (*Chelonia mydas*)	Texas	Public aquarium	Harm, harass	New.
TE69979D	Mata, Barbi; Houston, Texas.	Houston toad (*Bufo houstonensis*), Barton Springs salamander (*Eurycea sosorum*), Austin blind salamander (*Eurycea waterlooensis*), Texas blind salamander (*Typhlomolge rathbuni*).	Alabama, Georgia, Louisiana, Mississippi, Texas.	Presence/absence surveys; monitoring.	Harm, harass	New.
TE226653	The Arboretum Flagstaff; Flagstaff Arizona.	Peebles Navajo cactus (*Pediocactus peeblesianus* var. p*eeblesianus*).	Arizona	Collection, propagation.	Harm	Amend.
TE35147A	Newstead, David; Corpus Christi, Texas.	Piping plover (*Charadris melodus*) ..	Texas	Capture, band, presence/absence surveys.	Harm, harass	Amend.
TE63522B	Laney, Everett; Muskogee, Oklahoma.	American burying beetle (*Nicrophorus americanus*).	Oklahoma	Presence/absence surveys.	Harm, harass	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE71777D	Lisignoli, Jenny; Albuquerque, New Mexico.	Yuma clapper rail (*Rallus longirostris yumanensis*), interior least tern (*Sterna antillarum athalassos*), southwestern willow flycatcher (*Empidonax traillii extimus*), northern aplomado falcon (*Falco femoralis septentrionalis*).	Arizona, New Mexico, California.	Presence/absence surveys.	Harm, harass	New.
TE71795D	Pittenger, Dan S.; Three Rivers, California.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona, New Mexico, Utah, Nevada.	Presence/absence surveys.	Harm, harass	New.
TE24625A	Weber, Sarah; San Antonio, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harm, harass	Renew.
TE60013D	Owen, Bryce; Wylie, Texas.	American burying beetle (*Nicrophorus americanus*).	Kansas, Oklahoma, Texas.	Presence/absence surveys.	Harm, harass	New.
TE37418B	Brown and Gay Engineers; Frisco, Texas.	American burying beetle (*Nicrophorus americanus*), Golden-cheeked warbler (*Setophaga chrysoparia*), red cockaded woodpecker.	Oklahoma, Texas	Presence/absence surveys.	Harm, harass	Renew.
TE776123	Texas A&M, Galveston, Texas.	Kemp's ridley sea turtle (Lepidochelys kempii), loggerhead sea turtle (*Caretta caretta*), hawksbill sea turtle (*Eretmochelys imbricata*), leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*).	Texas	Nest relocation, rehabilitation.	Harm, harass	Renew.
TE74321D	Weaver, Sara; San Marcos, Texas.	Houston toad (*Bufo houstonensis*)	Texas	Presence/absence surveys.	Harm, harass	New.
TE22254B	Hanington, Michelle	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona, New Mexico, Utah, Colorado.	Presence/absence surveys.	Harm, harass	Renew.
TE835139	Hawks Aloft, Inc.; Albuquerque, NM.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona, New Mexico, Colorado.	Presence/absence surveys.	Harm, harass	Renew.
TE78959A	Weber, Sarah	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harm, harass	Renew.
TE30430B	University of Houston, Clear Lake, Texas.	Rio Grande silvery minnow (*Hybognathus amarus*), Comanche Springs pupfish (*Cyprinodon elegans*), Pecos gambusia (*Gambusia nobilis*), Leon Springs pupfish (*Cyprindodon bovinus*), Big Bend gambusia (*Gambusia gaigei*), Devils River minnow (*Dionda diaboli*), Texas wild-rice (*Zizania texana).*	New Mexico, Texas	Presence/absence surveys.	Harm, harass	Renew.
TE146407	Belaire Environmental, Inc.; Rockport, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harm, harass	Renew.
TE829995	Dallas Zoo; Dallas, Texas.	Houston toad (*Bufo houstonensis*), Barton springs salamander (*Eurycea sosorum*), loggerhead sea turtle (*Caretta caretta*), Texas blind salamander (*Eurycea rathbuni*).	Texas	Captive breeding, rehabilitation.	Harm, harass	Renew.
TE28891A	Tristan, Timothy; Corpus Christi, Texas.	Kemp's ridley sea turtle (Lepidochelys kempii), loggerhead sea turtle (*Caretta caretta*), hawksbill sea turtle (*Eretmochelys imbricata*), leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*).	Texas	Captive breeding, rehabilitation.	Harm, harass	Renew.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Amy Lueders,

Regional Director, Southwest Region. U.S. Fish and Wildlife Service.

[FR Doc. 2020–08570 Filed 4–22–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A51010.999900]

Land Acquisitions; Cahto Tribe of the Laytonville Rancheria

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs has made a final determination to acquire 1.38 acres, more or less, into trust for the Cahto Tribe of the Laytonville Rancheria on March 11, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS 4620–MIB, Washington, DC 20240, telephone (505) 563–3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—

Indian Affairs by part 209 of the Departmental Manual, and is published to comply with the requirement of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly published in the **Federal Register**.

On March 11, 2020, the Assistant Secretary—Indian Affairs issued a decision to accept land in trust for the Cahto Tribe of the Laytonville Rancheria under the authority of the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 5108).

Legal Description

The described real property in the County of Mendocino, State of California, more particularly described as:

Lots 5 and 29, as numbered and designated upon that certain map entitled ''Survey and

Map of Long Valley Manor'' in Section 12, Township North, Range 15 West, Mount Diablo Meridian, now on file in the office of the County Recorder, County of Mendocino, State of California.

Excepting therefrom that portion described in the deed to the State of California recorded September 14, 1987 in Book 1645 of Official Records, Page 197, Mendocino County Records.

Tara Sweeney,

Assistant Secretary, Indian Affairs.

[FR Doc. 2020–08641 Filed 4–22–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD AAKC001030 A0A501010.999 253G; OMB Control Number 1076–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Trust Land Mortgage Lender Checklists

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing a new information collection which is currently in use without approval.

DATES: Interested persons are invited to submit comments on or before May 26, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Sharlene Round Face, 1849 C Street NW, MS 4642–MIB, Washington, DC 20240; or by email to *sharlene.roundface@bia.gov.* Please reference OMB Control Number 1076–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Sharlene Round Face by email at *sharlene.roundface@bia.gov,* or by telephone at 202–208–3615. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 1, 2019 (84 FR 7110). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection is authorized under 25 U.S.C. 5135; 70 Stat. 62, and 25 CFR 152.34 that provides individual Indians owning an individual tract of trust land the ability to mortgage their land for the purpose of home acquisition and construction, home improvements, and economic development. The BIA is required to review the trust mortgage application for conformity to statutes, policies, and regulations. Mortgage documents submitted to BIA from the lending institutions will assist BIA staff in their analysis to approve or disapprove a trust land mortgage application request.

Title of Collection: Trust Land Mortgage Lender Checklists.

OMB Control Number: 1076–NEW.

Form Name: Land Mortgage Lender Loan Checklist and Leasehold Mortgage Lender Checklist.

Type of Review: Existing collection in use without OMB control number.

Respondents/Affected Public: Mortgage lenders.

Total Estimated Number of Annual Respondents: 56.

Total Estimated Number of Annual Responses: 131.

Estimated Completion Time per Response: Varies per application from 20 hours to 40 hours.

Total Estimated Number of Annual Burden Hours: 3,840 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: One time collection, per mortgage application.

Total Estimated Annual Nonhour Burden Cost: $0.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2020–08578 Filed 4–22–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 20X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on May 26, 2020.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service 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 plat incorporating the field notes of the remonumentation of a corner in Township 41 North, Range 1 East, New Mexico Principal Meridian, Colorado, was accepted on February 10, 2020.

The plat incorporating the field notes of the remonumentation of certain corners in Township 31 South, Range 69 West, Sixth Principal Meridian, Colorado, was accepted on February 13, 2020.

The plat and field notes of the dependent resurvey in Township 36 North, Range 12 West, New Mexico Principal Meridian, Colorado, was accepted on March 27, 2020.

The plat, in 3 sheets, incorporating the field notes of the dependent resurvey in Township 15 South, Range 77 West, Sixth Principal Meridian, Colorado, was accepted on April 8, 2020.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chap. 3)

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2020–08663 Filed 4–22–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO922000–L13100000–FI0000–20X]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease COC77272, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement.

SUMMARY: As authorized in the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease COC77272 from Caerus Washco, LLC, for lands in Weld County, Colorado. The lessee filed the petition on time, along with all rentals due since the lease terminated. No leases affecting these lands were issued prior to receiving the petition. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Peter Cowan, Acting Branch Chief, Fluid Minerals, Bureau of Land Management Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, (303) 239–3939, *picowan@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 Mr. Cowan during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or questions. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee requested reinstatement after the lease automatically terminated for untimely payment of rent. The lessee agrees to the new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year, and 16 ⅔ percent, respectively. The lessees paid the required $500 administrative fee for lease reinstatement and the $151 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM considered the impacts of reinstatement of the lease in a Determination of NEPA Adequacy DOI–BLM–CO–F020–2019–0068–DN. The BLM proposes to reinstate the lease effective January 1, 2018, under the original terms and the increased rental and royalty rates described above.

(Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v))

Jamie E. Connell,

BLM Colorado State Director.

[FR Doc. 2020–08572 Filed 4–22–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO922000–L13100000–FI0000–20X]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease COC–77358, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement.

SUMMARY: As authorized in the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease COC–77358 from Okreek Oil and Gas, LLC, for lands in Weld County, Colorado. The lessee filed the petition on time, along with all rentals due since the lease terminated. No leases affecting these lands were issued prior to receiving the petition. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Peter Cowan, Acting Branch Chief, Fluid Minerals, Bureau of Land Management Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, (303) 239–3939, *picowan@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 Mr. Cowan during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or questions. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee requested reinstatement after the lease automatically terminated for untimely payment of rent. The lessee agrees to the new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year, and 16 ⅔ percent, respectively. The lessees paid the required $500 administrative fee for lease reinstatement and the $151 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM considered the impacts of reinstatement of the lease in a Determination of National Environmental Policy Act Adequacy DOI–BLM–CO–F020–2019–0068–DN. The BLM proposes to reinstate the lease effective January 1, 2017, under the original terms and the increased rental and royalty rates described above.

(Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v))

Jamie E. Connell,

BLM Colorado State Director.

[FR Doc. 2020–08569 Filed 4–22–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081X3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce a public meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG).

DATES: The meeting will be held on Wednesday, May 20, 2020, via WebEx/conference call beginning at 9:00 a.m. (MDT) and concluding four (4) hours later.

ADDRESSES: WebEx can be accessed at: *https://bor.webex.com/bor/j.php?MTID=m9591cce1cb6d4253916c127b92a5cc4b.*

FOR FURTHER INFORMATION CONTACT: Ms. Lee Traynham, Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138; telephone (801) 524–3752; email at *ltraynham@usbr.gov;* facsimile (801) 524–5499.

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act.

Agenda: The AMWG will meet to receive updates on: (1) GCDAMP budget and workplan for fiscal year 2020 and beyond; (2) planned or ongoing experiments in 2020; and (3) current basin hydrology and reservoir operations. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Individuals requiring special accommodations to access the public meeting should contact Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least (5) business days prior to the meeting so appropriate arrangements can be made. To participate in the WebEx/conference call, please use the instructions below.

WebEx Information:

1. *Go to: https://bor.webex.com/bor/j.php?MTID=m9591cce1cb6d4253916c127b92a5cc4b.*
2. If requested, enter your name and email address.
3. If a password is required, enter the meeting password: AMWG.
4. Click "Join Now".

Audio Conference Information:

- *Phone Number:* (415) 527–5035.
- *Access code:* 909 402 582.

Public Disclosure of Comments: Time will be allowed for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least five (5) business days prior to the meeting. Any written comments received will be provided to the AMWG members.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Lee Traynham,

Chief, Adaptive Management Work Group Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2020–08557 Filed 4–22–20; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–646 and 731–TA–1502–1516 (Preliminary)]

Prestressed Concrete Steel Wire Strand ("PC strand") From Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–646 and 731–TA–1502–1516 (Preliminary) pursuant to the Tariff Act of 1930 ("the Act") to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates, provided for under subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold

in the United States at less than fair value and alleged to be subsidized by the Government of Turkey. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by June 1, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by June 8, 2020.

DATES: April 16, 2020.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones ((202) 205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on April 16, 2020, by Insteel Wire Products Company, Mount Airy, North Carolina, Sumiden Wire Products Corporation, Dickson, Tennessee, and Wire Mesh Corp., Houston Texas.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—As the Commission proceeds with alternative solutions during the COVID–19 pandemic, the Commission is not holding in-person Title VII (antidumping and countervailing duty) preliminary phase staff conferences at the U.S. International Trade Commission Building. It is providing an opportunity for parties to provide opening remarks, witness testimony, and responses to staff questions through written submissions. Requests to participate in these written proceedings should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before May 1, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 12, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 17, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08576 Filed 4–22–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1159]

Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor; Commission Decision To Review an Initial Determination in Its Entirety; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') (Order No. 34) finding a violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests briefing from the parties on certain issues under review, as set forth in this notice. The Commission also requests briefing from the parties, interested persons, and government agencies on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. 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 *http://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 4, 2019, based on a complaint filed on behalf of LG Chem, Ltd. of South Korea and LG Chem Michigan, Inc. of Holland, Michigan (collectively, ''complainants'' or ''LG''). 84 FR 25858 (June 4, 2019). The complaint, as supplemented, alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation and sale of certain lithium ion batteries, battery cells, battery modules, battery packs, components thereof, and processes therefor by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States, under subsection (a)(1)(A) of Section 337. The complaint, as supplemented, names SK Innovation Co., Ltd. of Seoul, South Korea and SK Battery America, Inc. of Atlanta, Georgia as the respondents (collectively, ''respondents'' or ''SK''). The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation.

On November 5, 2019, LG moved for an order entering default judgment against the respondents due to contempt of Order No. 13, which granted in part complainants' motion to compel forensic examination of respondents' computer system due to spoliation of evidence. Respondents opposed the motion and OUII supported the motion.

On February 14, 2020, the ALJ issued the subject initial determination (''ID'') (Order No. 34) finding that the respondents spoliated evidence, and that the appropriate remedy is to find the respondents in default. The ID noted that complainants do not seek a general exclusion order, and therefore no issues remain to be litigated, and terminated the investigation. ID at 131.

On March 3, 2020, SK filed a petition for Commission review of the ID. On March 11, 2020, LG and OUII filed oppositions thereto. On March 17, 2020, SK moved for leave to file a reply, which LG opposed on March 18, 2020, and OUII opposed on March 24, 2020.

Having reviewed the record of the investigation, including Order No. 13, the subject ID, the parties' submissions to the ALJ, and SK's submission and LG's and OUII's responses thereto, the Commission has determined to review the ID in its entirety. Accordingly, the Commission has determined to deny SK's motion for leave to file a reply as moot.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.[1]

(1) Please discuss what the destroyed evidence was, and whether there are plausible, concrete suggestions as to what the destroyed evidence might have been, in connection with misappropriation of trade secrets (*e.g.,* if SK had not obtained documents and confidences from former LG employees, that SK would not have been able to develop its battery technologies, its battery technologies would not have been as good, or it would have taken longer for SK to develop its battery technologies).

(2) Please discuss what the destroyed evidence was, and whether there are plausible, concrete suggestions as to what the destroyed evidence might have been, in connection with the economic injury requirement of section 337 *or* the ''threat'' of economic injury, *see* 19 U.S.C. 1337(a)(1)(A) & (a)(1)(A)(i) (*e.g.,* SK intended to or projected that it would be able to take market share from LG over the next several years by obtaining documents and confidences from former LG employees,).

(3) It is unclear from the parties' submissions which alleged trade secrets remain within the scope of the investigation at the time of the ID's default finding. The parties are to provide a list of the alleged trade secrets remaining in the investigation at the time of the ID, with citations to the evidentiary record as to when and where in the record each trade secret was asserted by LG and not later withdrawn. SK is not to dispute whether any of the alleged trade secrets that remained within the scope of the investigation are actually trade secrets; SK's existing briefing is adequate as to that issue. To the extent that the parties can provide a joint response to question (3), they should, and it should be presented in LG's opening brief explaining that the other parties do not disagree. Such a list may be appended to the brief without counting against page limitations.

The existing record is adequate as to issues concerning inherent authority; sanctions under Commission rule 210.33 and Federal Rule of Civil Procedure 37; and under *Micron Technology, Inc.* v. *Rambus Inc.,* 645 F.3d 1311 (Fed Cir. 2011).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for

[1] In reviewing the ID, and in seeking briefing on these issues, the Commission has not determined to excuse any party's noncompliance with Commission rules and the ALJ's procedural requirements, including requirements to present issues in a timely manner. *See, e.g.,* Order No. 2 (June 4, 2019) (ground rules). The Commission may, for example, decline to disturb certain findings in the ID upon finding that issue was not presented in a timely manner to the ALJ.

purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions as to the issues under review. The parties' opening submissions should not exceed 30 pages, and their reply submissions should not exceed 25 pages. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. For the parties, the submissions on remedy, the public interest, and bonding, shall be separate from their submissions as to the issues under review, with page limits of 50 pages for opening submissions and 40 pages for response submissions. In their initial submissions, Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. In connection with remedy, the public interest, and bonding, the parties may present whatever responsive briefing they wish, but the briefing must include the following:

Limited Exclusion Order

(1) Whether the Commission should issue a limited exclusion order and how Customs should administer the exclusion order, including how Customs may identify which imported articles ''embody the misappropriated trade secrets,'' Compl. ¶ 158, especially in view of the fact that the complaint itself references future discovery as to such issues, *id.,* and the parties have not yet addressed such discovery in their submissions to the Commission.

(2) The appropriate length for a limited exclusion order, if any.

(3) Whether the statutory public interest factors of 19 U.S.C. 1337(d)(1) should result in a Commission finding that some or all of the accused articles should not be excluded, or warrant tailoring of any limited exclusion order.

Cease and Desist Order

(1) Against which respondent(s) a cease and desist order, if any, should issue.

(2) The appropriate length for one or more cease and desist orders, if any.

(3) Whether the statutory public interest factors of 19 U.S.C. 1337(f)(1) should result in a Commission finding that a cease and desist order not issue, or warrant tailoring of any cease and desist order.

Bond

(1) What the appropriate amount of bond, if any, should be during the Presidential Review period. *See* 19 U.S.C. 1337(j)(3).

Initial written submissions and proposed remedial orders must be filed no later than close of business on Friday, May 1, 2020. Reply submissions must be filed no later than the close of business on Tuesday, May 12, 2019. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1159) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary at (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 on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 17, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08599 Filed 4–22–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on March 24, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written

[2] All contract personnel will sign appropriate nondisclosure agreements.

notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, MegaChips Corporation, Osaka, JAPAN, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 30, 2014 (79 FR 32999).

The last notification was filed with the Department on March 24, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 10, 2020 (85 FR 20302).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–08580 Filed 4–22–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; EBSA Participant Assistance Program Customer Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-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 26, 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 survey will collect customer satisfaction data for a sample of private citizens who call into the participant assistance program to ask about their private sector employer provided benefits such as pensions, retirement savings, and health benefits. Three types of callers will be queried:

- Those who need benefit claim assistance;
- Those who have a valid benefit claim; and
- Those who have an invalid benefit claim.

The results of the survey will be analyzed to provide actionable data that could be used to improve program performance. Examples of improved performance include, but are not limited to:

- Being more attuned to inquirers' needs—Benefits Advisors should be more adept at identifying issues that lead to benefits recoveries and enforcement leads;
- Survey data will enable National and Regional management to identify potential training needs;
- Satisfaction scores will guide EBSA leadership to determine which Regions need assistance improving customer service; and
- Scores on individual BAs will reveal high performers and allow the agency to use those BAs' techniques as best practices for program-wide improvement.

The study will include data from regional offices in Atlanta, Boston, Chicago, Cincinnati, Dallas, Kansas City, Los Angeles, New York, Philadelphia and San Francisco and District offices in Miami, Seattle and Washington. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 29, 2020 (85 FR 5241).

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–EBSA.

Title of Collection: EBSA Participant Assistance Program Customer Survey.

OMB Control Number: 1210–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 11,200.

Total Estimated Number of Responses: 11,200.

Total Estimated Annual Time Burden: 1,493 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 17, 2020.

Anthony May,

Acting Departmental Clearance Officer.

[FR Doc. 2020–08617 Filed 4–22–20; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–20–0011; NARA–2020–038]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We

publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by June 8, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Records of St. Elizabeths Hospital (DAA–0418–2017–0001).
2. Department of Homeland Security, Immigration and Customs Enforcement, ICE National Detention Standards Development and Implementation (DAA–0567–2017–0008).
3. Department of the Treasury, Internal Revenue Service, Criminal Investigation Management Information System (DAA–0058–2019–0003).
4. Administrative Office of the United States Courts, United States Courts, Non-Case File Records (DAA–0021–2019–0003).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–08568 Filed 4–22–20; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 20, 27, May 4, 11, 18, 25, June 1, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: via Teleconference.

Week of April 20, 2020

Thursday, April 23, 2020

11:00 a.m. Affirmation Session (Public Meeting via Teleconference) (Tentative)

a. Direct Final Rule—Social Security Number Fraud Prevention (NRC–2018–0303; RIN 3150–AK27) (Tentative).

b. FirstEnergy Nuclear Operating Co. and FirstEnergy Nuclear Generation, LLC (Beaver Valley Power Station, Units 1 And 2; Davis-Besse Nuclear Power Station, Unit 1; Perry Nuclear Power Plant, Unit 1), Request for Hearing in License Transfer Proceeding (Tentative).

(Contact: Denise McGovern: 301–415–0681).

ADDITIONAL INFORMATION: By a vote of 4–0 on April 20, 2020, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on April 23, 2020, and will be held via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

Week of April 27, 2020—Tentative

There are no meetings scheduled for the week of April 27, 2020.

Week of May 4, 2020—Tentative

There are no meetings scheduled for the week of May 4, 2020.

Week of May 11, 2020—Tentative

There are no meetings scheduled for the week of May 11, 2020.

Week of May 18, 2020—Tentative

There are no meetings scheduled for the week of May 18, 2020.

Week of May 25, 2020—Tentative

There are no meetings scheduled for the week of May 25, 2020.

Week of June 1, 2020—Tentative

There are no meetings scheduled for the week of June 1, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: April 21, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–08802 Filed 4–21–20; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0098]

Information Collection: COVID–19 Work Hour Controls Exemption Request Form

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of NRC submission of an information collection request for emergency review to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on our request for emergency review for and OMB approval of the information collection that is summarized below. The information collection is entitled, ''COVID–19 Work Hour Controls Exemption Request Form.''

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–2020–0098. 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–2020–0098 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–2020–0098. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0098 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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML20107J348. The supporting statement is available in ADAMS under Accession No. ML20107J397.
- *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–2020–0098 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.

I. Background

We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations under section 1320.13 of title 5 of the *Code of Federal Regulations* (CFR). We cannot reasonably comply with the normal clearance procedures because an unanticipated event has occurred, as stated in 5 CFR 1320.13(a)(2)(ii). This information collection only addresses the incremental burden change to an existing clearance and not the total burden for the clearance.

1. *The title of the information collection:* COVID–19 Work Hour Controls Exemption Request Form.

2. *OMB approval number:* 3150–0146.

3. *Type of submission:* Revision.

4. *The form number, if applicable:* There is no form number for the online submission form.

5. *How often the collection is required or requested:* On Occasion.

6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'' who seek exemptions from the work hour controls specified in 10 CFR 26.205(d)(1)–(7) as allowed by 10 CFR 26.9, ''Specific exemptions.''

7. *The estimated number of annual responses:* 40.

8. *The estimated number of annual respondents:* 40.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 80.

10. *Abstract:* The NRC requested an emergency review of this information collection in order to add this form to the previously approved information collection OMB Control Number 3150–0146 for a period of 6 months. The purpose of this information collection is to introduce the online COVID–19 Work Hour Controls Exemption Request Form that simplifies the filing the exemption requests because the existing system may be too burdensome for licensees under current conditions. Under the existing collection under OMB Control No. 3150–0146, licensees are already able to seek exemptions from the requirements of 10 CFR part 26, Fitness-For-Duty Programs. This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

10 CFR 26.205(d)(1)–(7) identifies specific work hour control requirements for individuals subject to the requirements of 10 CFR part 26. Due to the impacts of the COVID–19 Public Health Emergency (PHE), the NRC is prepared to grant, upon request from individual licensees, exemptions from the work hour controls specified in 10 CFR 26.205(d)(1)–(7) as allowed by 10 CFR 26.9, ''Specific exemptions.''

The objective of using the online form to submit exemptions from 10 CFR 26.205(d)(1)–(7) is to ensure that the control of work hours and management of worker fatigue do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe operation of these facilities. Specifically, the licensee can submit an exemption request if (1) a licensee's staffing levels are affected by the COVID–19 PHE, (2) a licensee determines that it can no longer meet the work-hour controls of 10 CFR 26.205(d)(1)–(d)(7), and (3) the licensee can effect site-specific administrative controls for COVID–19 PHE fatigue-management for personnel specified in 10 CFR 26.4(a).

II. 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 17, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–08563 Filed 4–22–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287; NRC–2020–0097]

Duke Energy Carolinas, LLC; Oconee Nuclear Station, Unit Nos. 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption for the Oconee Nuclear Station, Unit Nos. 1, 2 and 3 in response to a request from Duke Energy Carolinas, LLC dated April 14, 2020, as supplemented by letter dated April 16, 2020, for an exemption from specific requirements in the NRC's regulations regarding security officer participation in force-on-force training exercises.

DATES: The exemption was issued on April 17, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0097. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0097. Address questions about NRC dockets 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.
- *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 exemption request dated April 14, 2020, as supplemented by letter dated April 16, 2020, contains security-related information and is accordingly withheld from public disclosure under section 2.390 of title 10 of the *Code of Federal Regulations* (CFR). The NRC staff's approval is available in ADAMS under Accession No. ML20104C070.

FOR FURTHER INFORMATION CONTACT: Michael Mahoney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3867, email: *Michael.Mahoney@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: April 17, 2020.

For the Nuclear Regulatory Commission.

Michael Mahoney,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption 10 CFR 73, Appendix B, Section VI, Subsection C.3.(I)(1)

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–269, 50–270, and 50–287

Duke Energy Carolinas, LLC.

Oconee Nuclear Station, Unit Nos. 1, 2, and 3 Exemption

I. Background

Duke Energy Carolinas, LLC. (Duke Energy, the licensee) is the holder of the Renewed Facility Operating Licenses (FOLs) DPR–38, DPR–47, and DPR–55, for Oconee Nuclear Station, Unit Nos. 1, 2, and 3 (Oconee), which consists of three pressurized-water reactors (PWRs) located in Oconee County, South Carolina. The licenses provide, among other things, that the facilities are subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect.

II. Request/Action

By letter dated April 14, 2020, as supplemented by letter dated April 16, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML20105A105 and ML20107H265, respectively (withheld from public disclosure)), the licensee requested an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, Appendix B, Section VI, ''Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,'' Subsection C.3.(I)(1), in part, pursuant to 10 CFR 73.5, ''Specific exemptions.'' Due to the Coronavirus Disease 2019 (COVID–19) pandemic currently affecting the United States and the state of emergency declared by the State of South Carolina on March 13, 2020, the licensee is requesting an exemption to temporarily suspend the requirement of this subsection that each member of each shift who is assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participate in at least one (1) force-on-force exercise on an annual basis.

III. Discussion

Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The licensee requests to temporarily suspend portions of requirements in Appendix B to Part 73, Section VI, Subsection C.3.(l)(1) related to requalification requirement of security personnel who are assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy. Specifically, 10 CFR part 73, Appendix B, Section VI, Subsection C.3.(l)(1) requires that each member of each shift who is assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participates in at least one (1) tactical response drill on a quarterly basis and one (1) force-on-force exercise on an annual basis. The licensee is requesting an exemption from the requirement in 10 CFR part 73, Appendix B, Section VI, Subsection C.3.(l)(1) that security personnel participate in at least one (1) force-on-force exercise on an annual basis. The underlying purpose of this requirement is to ensure that the individuals can perform their duties in accordance with the licensee's approved security plans.

A. The Exemption is Authorized by Law

The licensee is proposing that security personnel who are assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy be exempt from the requirement of meeting the requalification requirements to participate in at least one (1) force-on-force exercise on an annual basis. The NRC staff examined the licensee's rationale that supports the exemption request.

The licensee states that the exemption is related to training requalification and does not change physical security plans or the defensive strategy. The licensee states that security personnel impacted by the exemption are currently satisfactorily qualified on all required tasks. The licensee states that security personnel are regularly monitored by supervisory personnel. Additionally, to ensure the impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities, the licensee states, ''Oconee will continue to conduct quarterly tactical response drills to ensure the security force maintains response readiness. Annual exercises that are suspended as a result of this temporary exemption will be rescheduled in accordance with the parameters outlined in this exemption request.'' Further, the licensee states, ''Oconee will track and document when requalification periodicities have been exceeded.''

In accordance with 10 CFR 73.5, the Commission may grant exemptions from the regulations in 10 CFR part 73, as authorized by law. The NRC staff finds that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws, and is, thus, authorized by law.

B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security

The licensee asserts the requested exemption will not endanger life or property or the common defense and security. The licensee states the requested exemption is a temporary exemption to allow deferring of the security training requalification requirement for certain members of the security organization to participate in one force-on-force exercise annually. The licensee states ''Oconee had scheduled these requalification activities to comply with the regulation. However, these activities must be rescheduled to allow implementation of the Duke Energy pandemic response plan mitigation strategies.'' The licensee argues these strategies serve the public interest by ensuring adequate staff isolation and maintaining staff health to perform their job function actions during the COVID–19 pandemic. The licensee further asserts the proposed exemption is related to training requalification and does not change physical security plans or the defensive strategy. The licensee further states security personnel impacted by this

exemption are currently satisfactorily qualified on all required tasks. In addition, security personnel are monitored regularly by supervisory personnel and the licensee will continue to conduct quarterly tactical response drills to ensure the security force maintains response readiness. Therefore, the licensee states that granting the requested temporary exemption will not endanger or compromise the common defense or security, or safeguarding Oconee. The licensee requested that this exemption expire 90 days following the lifting of the state of emergency declared by the State of South Carolina on March 13, 2020.

The NRC staff finds that the requested exemption will continue to allow the licensee to maintain the required security posture as the licensee will continue to conduct the required quarterly tactical response drills to ensure the response force maintains its proficiency and readiness. In addition, granting this exemption for no longer than 90 days following the lifting of the state of emergency declared on March 13, 2020, by the state of South Carolina, the jurisdiction in which this facility is located, or December 31, 2020, whichever occurs first, would allow for the licensee to restore normal security staffing in a systematic manner. For example, it may take time after the state of emergency is lifted for COVID–19-affected security personnel to fully recover and return to work. Based on the above, the NRC staff concludes that the proposed exemption would not endanger life or property or the common defense and security.

C. Otherwise in the Public Interest

On March 28, 2020, the Cybersecurity & Infrastructure Security Agency (CISA) within the U.S. Department of Homeland Security (DHS) published Version 2.0 of its ''Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID–19 Response'' (*https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce*). Although that guidance is advisory in nature, it is designed to ensure ''continuity of functions critical to public health and safety, as well as economic and national security.'' DHS and CISA recommend the Energy Sector, including nuclear power reactor facilities, workers and functions, continue to operate during the COVID–19 public health emergency.

The licensee states, in part, that, ''[k]eeping Oconee in operation during the pandemic will help to support the public need for reliable electricity supply to cope with the pandemic. As the U.S. Departments of Homeland Security and Energy have stated in their guidance, the electric grid and nuclear plant operation make up the nation's critical infrastructure similar to the medical, food, communications, and other critical industries. If the Security force is impacted because it cannot comply with the security training requalification requirements while isolation restrictions are in effect for essential crew members, the physical protection of the plant may be affected. This does not serve the public interest in maintaining a safe and reliable supply of electricity.''

Additionally, the licensee states, ''The Duke Energy pandemic response plan is based on NEI 06–03, *Pandemic Threat Planning, Preparation, and Response Reference Guide* (*i.e.,* Reference 4) which recommends isolation strategies such as sequestering, use of super crews or minimum staffing as applicable, as well as social distancing, group size limitations and self-quarantining, in an event of a pandemic, to prevent the spread of the virus to the plant. NEI 06–03 provides other mitigation strategies that serve the public interest during a pandemic by ensuring adequate staff is isolated from the pandemic and remains healthy to perform their job function.'' According to the licensee, holding force-on-force exercises would locate drill participants and drill controllers in close quarters making it impractical to meet the recommendation for social distancing. The licensee explains that maintaining a fully staffed and healthy workforce is in the best interest of public health and safety when considering the health risk of conducting activities which would put people in close contact during the pandemic.

Based on the above and the NRC staff's aforementioned findings, the NRC staff concludes that the exemption is in the public interest because it allows the licensee to maintain the required security posture at Oconee while the facility continues to provide electrical power. The exemption also enables the licensee to minimize the risk of exposing essential security personnel to the coronavirus during the COVID–19 public health emergency.

D. Environmental Considerations

The NRC staff's approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25)(vi)(E), and there are no special circumstances present that would preclude reliance on this exclusion. The NRC staff determined that this action applies to granting of an exemption from requirements relating to education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff has determined that approval of this exemption request involves no significant hazards consideration; no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; no significant increase in individual or cumulative public or occupational radiation exposure; no significant construction impact; and no significant increase in the potential for or consequences from radiological accidents. In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no extraordinary circumstances present that would preclude reliance on this categorical exclusion. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the NRC has determined that pursuant to 10 CFR part 73.5, the exemption is authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption for Oconee from the requirement of 10 CFR 73, Appendix B, Section VI, Subsection C.3.(l)(1), that security personnel who are assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participate in at least one (1) force-on-force exercise on an annual basis. This exemption expires no later than 90 days following the lifting of the state of emergency declared on March 13, 2020, by the State of South Carolina, or December 31, 2020, whichever occurs first.

Dated: April 17, 2020.

For the Nuclear Regulatory Commission.

Craig Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–08596 Filed 4–22–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–121 and CP2020–129; MC2020–122 and CP2020–130]

New Postal Products

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 27, 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:

Table of Contents

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).:* MC2020–121 and CP2020–129; *Filing Title:* USPS Request to Add Priority Mail Contract 609 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 17, 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 27, 2020.

2. *Docket No(s).:* MC2020–122 and CP2020–130; *Filing Title:* USPS Request to Add Priority Mail Contract 610 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 17, 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 27, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–08665 Filed 4–22–20; 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 SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* April 23, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 16, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–120 and CP2020–128.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–08627 Filed 4–22–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33842; 812–15049]

Capitol Series Trust and Cornerstone Capital Inc.

April 17, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

Applicants: Capitol Series Trust (the ''Trust''), a Ohio business trust registered under the Act as an open-end management investment company, and Cornerstone Capital Inc. (the ''Adviser''), a Delaware corporation registered as an investment adviser

under the Investment Advisers Act of 1940 (together with the Trust, the ''Applicants'').

Filing Dates: The application was filed on July 16, 2019 and amended on October 4, 2019 and February 5, 2020.

Hearing or Notification of Hearing: An order granting the application 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 12, 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 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: *fundops@cornerstonecapinc.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 via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Adviser serves or will serve as the investment adviser to the Subadvised Series pursuant to an investment advisory agreement with the Trust (each, an ''Investment Management Agreement'' and, collectively, the ''Investment Management Agreements'').[1] The Adviser provides or will provide the Subadvised Series with continuous and comprehensive investment management services, subject to the supervision of, and policies established by, the Trust's board of trustees (the ''Board''). The Investment Management Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more Sub-Advisers the responsibility to provide the day-to-day portfolio investment management of each Subadvised Series, subject to the supervision and direction of the Adviser.[2] The primary responsibility for managing the Subadvised Series will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to enter into investment sub-advisory agreements with Non-Affiliated Sub-Advisers (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Series.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08582 Filed 4–22–20; 8:45 am]

BILLING CODE 8011–01–P

[1] Applicants request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management company or series thereof that intends to rely on the requested order and that: (a) Is advised by the Adviser, or any person controlling, controlled by or under common control with the Adviser or its successors; (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (each, a ''Subadvised Series''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] A ''Sub-Adviser'' for a Subadvised Series is an investment sub-adviser for that Series that is not an ''affiliated person'' (as such term is defined in Section 2(a)(3) of the Act) of the Subadvised Series or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to one or more Subadvised Series (each a ''Non-Affiliated Sub-Adviser'' and collectively, the ''Non-Affiliated Sub-Advisers'').

[3] The requested relief will not extend to any sub-adviser which is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or of its Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (''Affiliated Sub-Adviser'').

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88676; File No. SR–Phlx–2020–22]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 6, Section 5, Titled Transfer of Positions

April 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 6, Section 5, titled ''Transfer of Positions.'' The Exchange also proposes to update certain citations.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 6, Section 5, titled ''Transfer of Positions.'' The Exchange also proposes to update certain citations. This proposed rule would continue to permit market participants to move positions from one account to another without first exposure of the transaction on the Phlx. The proposed rule change is similar to Cboe Rule 6.7.[3]

Options 6, Section 5 specifies the circumstances under which a member or member organization may effect transfers of positions to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.

Current Phlx Options 6, Section 5 lists the circumstances in which a member or member organization may transfer positions off the floor in any class of options listed on its books. The circumstances currently listed include: (1) The dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of that corporation or partnership assumes the positions; (3) positions transferred as part of a member or member organization's capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; (6) a merger or acquisition resulting in a continuity of ownership or management; or (7) consolidation of accounts within a member or member organization.

The Exchange proposes to amend Options 6, Section 5(a) which currently provides, ''A member or member organization may transfer positions off the floor in any class of options listed on its books if the transfer involves one or more of the following events. . . .'' The Exchange proposes to instead state, ''Existing positions in options listed on the Exchange of a member or member organization or non-member or non-member organization 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 on or more of the following events. . . .'' The proposed rule text intends to clarify that Options 6, Section 5 does not apply to products other than options listed on the Exchange, consistent with the Exchange's other trading rules.[4] This new rule text also clarifies that a member or member organization must be on at least one side of the transfer. The proposed rule change also clarifies that transferred positions must be on, from, or to the books of a Clearing Member. This language is consistent with how transfers are currently effected. The proposed rule change also clarifies that existing positions of a member or member organization or a non-member or non-member organization may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a member or member organization.[5]

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.[6] 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 (g) makes this clear in the rule.

The proposed rule change adds four events where an transfer would be permitted to occur.

- Proposed subparagraph (a)(1) permits an transfer to occur if it, pursuant to Options 9, Section 1 is 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.
- Proposed subparagraph (a)(2) permits an transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (*i.e.,* the accounts are for the same Person),[7] provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. The proposed rule change provides market participants with flexibility to maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not permit transfers among different trading units for which accounts are otherwise required to be maintained separately.[8]
- Proposed subparagraph (a)(3) similarly permits an transfer if it is a consolidation of accounts[9] where no change in ownership is involved.
- Proposed subparagraph (a)(10) permits an transfer if it is a transfer of positions through operation of law from death, bankruptcy, or otherwise. This provision is consistent with applicable

[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] Proposed paragraph (h) also clarifies that the transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Options 6, Section 5.

[5] *See* proposed subparagraphs (a)(5) and (7).

[6] *See* proposed paragraph (h).

[7] The Exchange proposes to define the term ''Person'' within this proposed Rule 1058 as ''For purposes of this rule, the term ''Person'' shall be defined 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.'' This definition is identical to Cboe Rule 1.1.

[8] Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

[9] This refers to the consolidation of entire accounts (*e.g.,* combining two separate accounts (including the positions in each account into a single account)).

laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events have similar purposes as those in current Options 6, Section 5, which is to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.[10] As noted above, the proposed rule change is consistent with current Exchange guidance or rules of other self-regulatory organizations.

The proposed rule change renumbers current subparagraphs (a)(1) through (5) to be proposed subparagraphs (a)(5) through (9) and moves current subparagraph (a)(6) to proposed subparagraph (a)(3), with non-substantive changes.

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.[11] No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[12] 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 or member organization 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 or member organization could not transfer the offsetting series, as they would net against each other and close the positions.[13]

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 or member organization, 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 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

Currently Options 6, Section 5(c) provides, in part, that ''members and member organizations must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring member or member organization, and the transfer must indicate the date when the original trade was made. In the course of transferring positions, no position shall net itself against another position.'' The Exchange instead proposes to state within Options 6, Section 5(c) that 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;[14] or (4) the then-current market price of the positions at the time the transfer is effected.[15] The proposed rule text regarding permissible transfer prices provides market participants with flexibility to determine the transfer price at which the transfer may be effected. The Exchange proposes the four options noted above with respect to the transfer price.

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

Current Phlx Options 6, Section 5(b) provides, ''members and member organizations must notify the Exchange in writing prior to effecting an off the floor transfer. The written notification must indicate the positions to be transferred and the reason for the transfer.'' Proposed Options 6, Section 5(d) requires a member or member organization and its Clearing Member (to the extent that the member or member organization 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 or member organization(s).[16] 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.[17] The proposed notice will continue to ensure the Exchange is

[10] *See* proposed paragraph (g).

[11] *See* Phlx Options 6, Section 5(c).

[12] 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).

[13] *See* Cboe Rule 6.7(b).

[14] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[15] *See* Cboe Rule 6.7(c).

[16] This notice provision applies only to transfers involving a member's or member organization's positions and not to positions of non-member and non-member organization 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).

[17] *See* Cboe Rule 6.7(d).

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. The proposed rule text requires additional information with respect to the prior written notification that is required to effect a transfer.

Additionally, requiring notice from the member or member organization(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, member or member organizations 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

Current Phlx Rule at Options 6, Section 5(c) provides, in part, Each member or member organization that is a party to a transfer of positions must make and retain records stating the nature of the transaction, the name of the counter-party, and any other information required by the Exchange. Proposed Options 6, Section 5(e) requires each member or member organization 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 member organization or Clearing Member provide.[18] The records requirement is enhanced to require additional information that must be maintained by members, member organizations and each Clearing Member that is a party to a transfer.

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 or member organization (with respect to the member's or member organization'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 an 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.[19]

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.[20] 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.[21]

Updating Citations

The Exchange recently relocated its rules into a new Rulebook Shell.[22] Certain rule citations within General 2, Section 4; Options 2, Section 6; Options 7, Section 4; Options 8, Section 28; Section 39, B–6 and C–2 were inadvertently not updated. The Exchange proposes to update those citations and also remove an unnecessary header within General 9, Section 58.[23]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] in particular, 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)[26] 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)[27] 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 the transfers in very limited circumstances, such as where there is no change in beneficial ownership, a transfer by operation of law or an adjustment or transfer in connection with the correction of a bona fide error, is reasonable to allow a member or member organization to accomplish certain goals efficiently. The Exchange currently permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations or mergers. For example, a member or member organization that is undergoing a structural change and a one-time movement of positions may require a

[18] *See* Cboe Rule 6.7(e).

[19] *See* Cboe Rule 6.7(f).

[20] *See* Cboe Rule 6.7(g).

[21] *See* Cboe Rule 6.7(h).

[22] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (''Phlx Rulebook Relocation Rule Change'').

[23] The header ''SUPPLEMENTARY INFORMATION REGARDING RULE 605'' is unnecessary as the language which follows explains the text.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

transfer of positions or a member or member organization that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a member or member organization 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 Exchange believes the proposed rule change benefits investors, as it adds transparency to the Rules. The purpose of the additional circumstances in which market participants may conduct transfers is consistent with the purpose of the circumstances currently permitted in the proposed rule. Therefore, 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),[28] 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.

Updating Citations

Updating rule citations and removing unnecessary text will bring greater clarity to the Rulebook.

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 or member organization and the rule will apply uniformly to all members or member organizations. Use of the transfer procedure is voluntary, and all members or member organizations may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a member or member organization 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

[28] *See* Cboe Rule 6.7(f).

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.

Updating Citations

The updates to the rule citations and removal of unnecessary rule text are non-substantive rule changes.

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 [29] and subparagraph (f)(6) of Rule 19b–4 thereunder.[30]

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) [31] 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.[32] 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.[33]

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–Phlx–2020–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2020–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2020–22 and should be submitted on or before May 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08591 Filed 4–22–20; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A)(iii).

[30] 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.

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] *See* CBOE Rule 6.7.

[33] 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).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88677; File No. SR–NYSE–2019–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Permit the Exchange To List and Trade Exchange Traded Products

April 17, 2020.

On October 3, 2019, New York Stock Exchange LLC (''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 list and trade Exchange Traded Products that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. The proposed rule change was published for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comment in the **Federal Register** on October 23, 2019.[3]

On December 5, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On January 17, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was October 23, 2019. April 20, 2020, is 180 days from that date, and June 19, 2020, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates June 19, 2020, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2019–54).

[3] *See* Securities Exchange Act Release No. 87329 (Oct. 17, 2019), 84 FR 56864 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87671, 84 FR 67763 (Dec. 11, 2019).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 88003, 85 FR 4051 (Jan. 23, 2020). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 4053 (citing 15 U.S.C. 78f(b)(5)).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08593 Filed 4–22–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88683; File No. SR–ISE–2020–18]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot on the Nasdaq 100 Reduced Value Index

April 17, 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 16, 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 a proposed rule to extend the pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq-100 Index (''Nasdaq-100'') currently set to expire on May 4, 2020.

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

ISE filed a proposed rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index (''NQX'') on a twelve month pilot basis.[3]

NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on ⅕ of the value of the Nasdaq-100, and are P.M.-settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6) to extend the current NQX pilot period to November 2, 2020. This pilot was previously extended with the last extension through May 4, 2020.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the proposed listing and trading of NQX options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the pilot.

Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the Pilot Program and will continue to make public any data or analysis it

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (Approval Order).

[4] *See* Securities Exchange Act Release Nos.86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR–ISE–2019–18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR–ISE–2019–27).

submits under the Pilot Program in the future. If in the future the Exchange proposes an additional extension of the Pilot Program or proposes to make the Pilot Program permanent, the Exchange will submit an annual report to the Commission consistent with the order approving the establishment of the Pilot Program at least two months prior to the expiration date of the Pilot Program. Conditional on the findings in the Pilot Report, the Exchange will file with the Commission a proposal to extend the pilot program, adopt the pilot program on a permanent basis or terminate the pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] 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. By extending the pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for NQX options, including on the underlying component stocks.

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. NQX options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of a new option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The continued listing of NQX will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100. Furthermore, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with the Nasdaq-100 and seek Commission approval to list and trade options on such an index.

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 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[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] 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 investors may continue to trade NQX options listed by the Exchange as part of the pilot program on an uninterrupted basis. 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.[11]

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–ISE–2020–18 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–2020–18. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 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).

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–2020–18, and should be submitted on or before May 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08590 Filed 4–22–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88678; File No. SR–CBOE–2020–033]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Its Fees Schedule

April 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its fees schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Footnote 12 of the Fees Schedule, which governs pricing changes in the event the Exchange trading floor becomes inoperable. In the event the trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange's trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable. Particularly, the Exchange proposes to amend Footnote 12 to waive fees incurred from certain transactions executed in electronic compression forums.

By way of background, the Exchange recently adopted Rule 5.24(e)(1)(E), which provides that in the event the trading floor is inoperable, the Exchange will make available an electronic ''compression forum'' in the same manner as an open outcry ''compression forum'' as set forth in Rule 5.88, subject to certain exceptions.[3] When the trading floor is open, the Exchange facilitates compression forums on the trading floor at the end of each calendar week, month, and quarter in which Trading Permit Holders (''TPHs'') may reduce open positions in series of SPX options in order to mitigate the effects of capital constraints on market participants, which may contribute to continued depth of liquidity in the SPX options market.[4] The Exchange adopted Rule 5.24(e)(1)(E) to provide for an electronic forum that replicates the compression forum that is available when the Exchange is operating with an open outcry environment. Particularly, an electronic compression forum would continue to provide TPHs an opportunity to efficiently reduce their open SPX positions and free up capital in the event the Exchange must operate in an all-electronic environment (as it currently is), which is particularly important in volatile market conditions.

The Exchange currently waives transaction fees (and surcharges) incurred as a result of transactions that compress or reduce certain open positions.[5] One such waiver in particular is for transactions involving SPX and SPXW compression-list positions executed in a floor compression forum (pursuant to Rule 5.88).[6] Particularly, the Exchange waives SPX/SPXW transaction fees, including surcharges, in order to encourage TPHs to submit compression-list positions in advance of monthly compression forums and compress these positions during compression forums.[7] The Exchange wishes to similarly waive all transaction fees, including any applicable surcharges (*e.g.,* Index License Surcharge and SPX/SPXW Execution Surcharges), for closing transactions involving SPX and SPXW compression-list positions executed in an electronic compression forum (pursuant to Rule 5.24).

The Exchange believes compression of these positions may improve market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020) (SR–CBOE–2020–026).

[4] In general, under the floor Compression Forum process, each month, TPHs may submit to the Exchange lists of open SPX positions (these positions are referred to in Rule 5.88 as ''compression-list positions'') they wish to close against opposing (long/short) positions of other TPHs. The Exchange would then aggregate these positions into a single list to allow TPHs to more easily identify those positions with counterparty interest on the Exchange. The Exchange then provides a forum on the Exchange's trading floor during which TPHs could conduct closing-only transactions in series of SPX options. The Exchange holds compression forums on the last three trading days of each calendar month.

[5] *See* CBOE Fees Schedule, Footnote 41.

[6] *See* Cboe Options Fees Schedule, Footnote 41. The Exchange notes it inadvertently failed to update the rule references in Footnote 41, including Rule 5.88, when it relocated the rules upon migration. *See* Securities and Exchange Act Release No. 86772 (August 27, 2019), 84 FR 46069 (September 3, 2019) (SR–CBOE–2019–042). The Exchange proposes to update those rule references now.

[7] *See* Cboe Options Fees Schedule, Footnote 41. A rebate of transaction fees would include the transaction fee assessed along with any other surcharges assessed per contract (*e.g.,* the Index License Surcharge).

liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. The Exchange further believes advanced submission of compression-list positions to the Exchange allows TPHs to more easily identify counterparty interest and efficiently conduct closing transactions of these positions during compression forums. The Exchange notes the submission of compression-list positions is completely voluntary, open to all TPHs with open positions in SPX, and does not require a TPH to trade any compression-list position or participate in a compression forum. As such, the Exchange believes it's appropriate to waive fees incurred for transaction executed in an electronic compression forum. The Exchange proposes to make clear that in order to receive a fee waiver of all transaction fees and applicable surcharges for these transactions, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the compression fee waiver. Orders identified as eligible for a fee waiver will yield fee code ''SC''. The Exchange proposes to similarly clarify in Footnote 41, that in order for a TPH to receive a rebate for compression trades that occur on floor, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the compression rebates.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to waive transaction fees, including the Index License Surcharge and SPX/SPXW Execution Surcharges, for closing transactions involving SPX and SPXW compression-list positions executed in an electronic compression forum (pursuant to Rule 5.24) while the trading floor is inoperable is reasonable because market participants will not be subject to transaction fees or surcharges for these executions. While the trading floor is inoperable, the Exchange still wishes to incentivize TPHs to submit to the Exchange compression-list positions executed in a compression forum, albeit for an electronic compression forum, and as such, does not wish to assess any transaction fees or surcharges on such volume that would otherwise be executed on the trading floor and not be charged. The Exchange believes compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. All TPHs may submit compression-list positions and may participate in compression forums. Moreover, as noted above, the Exchange already waives transaction fees, including surcharges, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum on the trading floor (pursuant to Rule 5.88).[12] The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all market participants that identify eligible orders in the form and manner determined by the Exchange.

Lastly, the Exchange believes the proposed clarification and updates to rule references in Footnote 41 maintains transparency in the Fees Schedule and alleviates potential confusion, thereby removing impediments to, and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed changes are not intended to address any competitive issue, but rather to address a fee change it believes is reasonable in the event the trading floor becomes inoperable, thereby only permitting electronic participation on the Exchange. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all similarly situated market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on the Exchange in limited circumstances.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f) of Rule 19b–4[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] *See* Securities and Exchange Act Release No. 87338 (October 17, 2019), 84 FR 56873 (October 23, 2019) (SR–CBOE–2019–094).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] *See* Cboe Options Fees Schedule, Footnote 41.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

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–2020–033 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–2020–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–033, and should be submitted on or before May 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08594 Filed 4–22–20; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88682; File No. SR–NYSEAMER–2020–31]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule

April 17, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 16, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') to modify the Strategy Execution Fee Cap to allow the inclusion of certain Qualified Contingent Cross transactions for the month of April 2020. The Exchange proposes to implement the fee change effective April 16 2020.[4] The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the Strategy Execution Fee Cap (''Strategy Cap'') to allow the inclusion of certain Qualified Contingent Cross (''QCC'') transactions for the month of April 2020, as set forth below. The Exchange proposes to implement the rule change on April 16 2020.

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility that has resulted from the ongoing spread of the novel COVID–19 virus. In addition, beginning March 16, 2020, to slow the spread of COVID–19 through social-distancing measures, significant limitations have been placed on large gatherings throughout the country.[5] Shortly thereafter, U.S. options exchanges that operate physical trading floors, such as Cboe, Inc. and NASDAQ PHLX, announced the temporary closure of such floors as a precautionary measure to prevent the potential spread of COVID–19. The Exchange likewise announced the temporary closure of the Trading Floor, effective March 23, 2020, which meant that Exchange Floor Brokers could not engage in open outcry trading.

Section I.J. of the Fee Schedule currently provides a Strategy Cap that limits to $1,000 the daily fees for certain options strategies execution on the same trading day.[6] Strategy executions that qualify for the Strategy Cap are (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls, which are described in detail in the Fee Schedule.[7] However, the Strategy Cap specifically excludes from the Cap ''[a]ny qualifying Strategy Execution executed as a QCC.''[8] A QCC is defined as an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on April 1, 2020 (SR–NYSEAMER–2020–27) and withdrew such filing on April 9, 2020. The Exchange then filed to amend the Fee Schedule on April 9, 2020 (SR–NYSEAMER–2020–30) and withdrew such filing on April 16, 2020.

[5] For example, in New York City, which is where the NYSE Trading Floor is located, public and private schools, universities, churches, restaurants, bars, movie theaters, and other commercial establishments where large crowds can gather have been closed.

[6] *See* Fee Schedule, Section I.J., Strategy Execution Fee Cap, *available here: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[7] *See id.*

[8] *See id.*

trade, coupled with a contraside order or orders totaling an equal number of contracts.[9] Since reversal and conversions (''RevCons'') have a stock component, it is possible for a RevCon to also qualify as a QCC (''RevCon QCCs'').[10]

Currently, RevCon QCCs are not eligible for the Strategy Cap (but instead are subject to QCC Fees & Credits).[11] With the temporary closure of the Trading Floor, Floor Brokers are unable to execute RevCons in open outcry. However, Floor Brokers are able to execute RevCon QCCs electronically via the Exchange systems. The Exchange believes that RevCon QCC volumes would increase on the Exchange if they qualified for the Strategy Cap. Accordingly, the Exchange proposes to amend the Fee Schedule to permit the inclusion of RevCon QCC volumes in the Strategy Cap for the month of April 2020.[12] Although this proposed change was prompted by the (temporary) inability of Floor Brokers to execute RevCon strategies in open outcry, the benefit of this proposed change would inure to any ATP Holders that opted to execute a RevCon as a QCC.[13]

Because RevCon QCC volumes would be eligible for the Strategy Cap, the Exchange proposes to modify the Fee Schedule to make clear that, for April 2020, the RevCon QCC trades that would be included in the revised Strategy Cap would not be eligible for the QCC Floor Broker credit during April 2020, which credit is available only to ATP Holders acting as Floor Brokers.[14]

To illustrate the difference in costs under the current and proposed Fee Schedule, consider the following example where a Floor Broker executes a RevCon QCC strategy on behalf of a non-Customer that is not a Specialist or e-Specialist as a QCC Order on the same day:

- A RevCon QCC in DEF comprised of 3,000 call options against 3,000 put options and 300,000 shares of stock would pay $1,200 in options fees.
- A RevCon QCC in ABC comprised of 1,000 call options against 1,000 put options and 100,000 shares of stock would pay $400 in options fees.

Under the current Fee Schedule, the total fees for these RevCon QCCs would be $1,600, whereas the proposed change to include these transactions in the Strategy Cap would limit these total RevCon QCC to $1,000.

The Exchange believes the proposed inclusion of RevCon QCCs in the Strategy Cap, which is available to all ATP Holders, would encourage ATP Holders (including those acting as Floor Brokers) to execute their RevCon QCC volume on the Exchange, particularly during the period when open outcry is unavailable and to continue to increase the number of such RevCon QCC transactions during the month of April.

Further, the Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those with similar Strategy Caps.[15] Thus, ATP Holders have a choice of where they direct their order flow. This proposed change—which allows RevCon QCCs executed by an ATP Holder to be included in the $1,000 daily Strategy Cap for the month of April 2020—is designed to incent ATP Holders to increase their RevCon QCC volumes on the Exchange. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[19] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, the Exchange had less than 10% market share of executed volume

[9] *See* Rule 900.3NY(y) (defining QCC order type).

[10] A RevCon refers to two sides of the same trade. Specifically, the Reversal portion ''is established by combining a short security position with a short put and a long call position that shares the same strike and expiration,'' while contra-side conversion portion ''is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.'' *See* Fee Schedule, Section I.J.a., *supra* note 6.

[11] *See* Fee Schedule, Section I.F., QCC Fees & Credits, *supra* note 6.

[12] *See* proposed Fee Schedule, Section I.J., Strategy Execution Fee Cap. The Exchange will re-evaluate the time limitations on this change (*i.e.,* whether it will need to apply to May) depending upon how long the Trading Floor remains temporarily closed and would file a separate proposed rule change if an extension is warranted.

[13] The Exchange notes that while all Floor Brokers must be ATP Holders, not all ATP Holders act as Floor Brokers.

[14] *See* proposed Fee Schedule, Section I.F., QCC Fees & Credits, n. 1 (providing that ''[the Floor Broker credit will not apply to any QCC trades that qualify for the Strategy Cap during the month of April 2020 (per Section I.J.)'').

[15] *See e.g.,* BOX Options Market LLC (''BOX'') fee schedule, Section II.D (Strategy QOO Order Fee Cap and Rebate). BOX caps fees for each participant at $1,000 per day for the following strategies executed on the same trading day: Short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies. BOX also caps participant fees at $1,000 for all dividend strategies executed on the same trading day in the same options class. BOX also offers a $500 rebate to floor brokers for presenting certain Strategy QOO Orders on the BOX trading floor, which is applied ''once the $1,000 fee cap for all dividend, short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met.'' *See id.* The Exchange does not include dividend strategies in the Strategy Cap, nor does the Exchange offer a similar rebate.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[19] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

of multiply-listed equity & ETF options trades in January 2020.[20]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and credits can have a direct effect on the ability of an exchange to compete for order flow. The proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as ATP Holders (including those acting as Floor Brokers) may direct their order flow to any of the 16 options exchanges, including those with similar Strategy Caps.[21]

The Exchange believes the proposed change to include RevCon QCCs executed by an ATP Holder in the $1,000 daily Strategy Cap for the month of April 2020 would encourage ATP Holders to execute their RevCon QCC volume on the Exchange, particularly during the period when open outcry is unavailable and to continue to increase the number of such RevCon QCC transactions during the month of April. Further, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions—including RevCon QCCs—at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

Similarly, given the inclusion of RevCon QCC trades in the Strategy Cap in April 2020, the Exchange proposes that these trades not be charged the rates for QCC executions. And, because RevCon QCCs would not be subject to QCC fees, the Exchange believes it is reasonable that such trades should not receive the corresponding QCC credits, including the QCC Floor Broker Rebate. This proposed change would also add transparency and internal consistency making the Fee Schedule easier to navigate and comprehend.

The Exchange cannot predict with certainty whether any ATP Holders would benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the modified Strategy Cap (*i.e.,* by executing more RevCon QCC transactions) or not. In addition, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions—including RevCon QCCs—at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the Strategy Cap because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve the Strategy Cap, nor are they obligated to execute RevCon trades as a QCC order. Rather, the proposal is designed to encourage ATP Holders to utilize the Exchange as a primary trading venue for Strategy Executions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more Strategy Executions to the Exchange, particularly RevCon QCCs, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [22]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly RevCon QCC transactions) to the Exchange. The Exchange believes that the proposed modification to the Strategy Cap would incent market participants to direct their Strategy Execution volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Strategy Executions would

[20] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January 2020.

[21] *See supra* note 15 (regarding BOX's Strategy QOO Order Fee Cap and Rebate).

[22] *See* Reg NMS Adopting Release, *supra* note 18, at 37499.

increase opportunities for execution of other trading interest. The proposed expanded Strategy Cap would be available to all similarly-situated market participants that incur transaction fees on Strategy Executions, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Moreover, the proposal to modify the Fee Schedule to make clear that RevCon QCC trades would neither be charged QCC rates nor receive QCC credits during April 2020, given the inclusion of such trades in the Strategy Cap, would not pose an undue burden on competition but would instead add clarity, transparency and internal consistency to the Fee Schedule regarding the treatment of RevCon QCCs for April 2020.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[23] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[24]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage ATP Holders to direct trading interest (particularly RevCon QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar Strategy Caps, by encouraging additional orders to be sent to the Exchange for execution.[25]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[26] of the Act and subparagraph (f)(2) of Rule 19b–4[27] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[28] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–31, and should be submitted on or before May 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08589 Filed 4–22–20; 8:45 am]

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[23] *See supra* note 19.

[24] Based on OCC data, *supra* note 20, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January, 2020.

[25] *See supra* note 15 (regarding BOX's Strategy QOO Order Fee Cap and Rebate).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(2).

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88681; File No. SR–ISE–2020–17]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Nonstandard Expirations Pilot Program

April 17, 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, 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 extend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on May 4, 2020.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[3]

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

ISE filed a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[4] The pilot program permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. This pilot was extended various times with the last extension through May 4, 2020.[5]

Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to Options 4A, Section 12 the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Supplementary Material .07(c) to Options 4A, Section 12 so that the duration of the pilot program for these nonstandard expirations will be through November 2, 2020. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the pilot program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. By extending the pilot program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

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. Options with nonstandard expirations would be available for trading to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

[4] *See* Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR–ISE–2017–111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[5] *See* Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR–ISE–2019–01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR–ISE–2019–11); and 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR–ISE–2019–28).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] 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 investors may continue to trade nonstandard expiration options listed by the Exchange as part of the pilot program on an uninterrupted basis. 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.[12]

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–ISE–2020–17 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–2020–17. 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–2020–17, and should be submitted on or before May 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08595 Filed 4–22–20; 8:45 am]

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[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88685; File No. SR–NASDAQ–2020–021]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit a Longer Period of Time for Companies To Regain Compliance With the Bid Price and Market Value of Publicly Held Shares Continued Listing Requirements by Tolling the Compliance Periods Through and Including June 30, 2020

April 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit a longer period of time for companies to regain compliance with the bid price and market value of publicly held shares continued listing requirements by tolling the compliance periods through and including June 30, 2020. Nasdaq has filed this proposal under Exchange Act Rule 19b–4(f)(6)[3] and requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[4]

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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

Given current market conditions, Nasdaq proposes to provide issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, subscription receipts, and their equivalents temporary relief from the continued listing bid price [5] and market value of publicly held shares [6] requirements (collectively, the ''Price-based Requirements''). The proposed relief will allow companies that are out of compliance with the Price-based Requirements additional time to regain compliance.

In December 2019, COVID–19 began to spread and disrupt company operations and supply chains and impact consumers and investors, resulting in a dramatic slowdown in production and spending. By March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic.[7] To slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

One unavoidable consequence of the actions being taken to reduce the spread of COVID–19 is a reduction, or complete interruption, in revenue for many companies. For example, many communities have mandated that all restaurants and entertainment facilities close for a period of time. Similarly, companies in the travel sector have seen significant declines in bookings, even where they are allowed to continue to operate. Thus, these businesses will have little or no revenue to offset normal operating expenses and any increased costs associated with the crisis, which can depress their stock prices until more certainty around the end of these protective measures is available.

These necessary measures also have affected equity markets, which have seen significant declines.[8] In response, governments around the world have acted swiftly and decisively to provide relief to regulated entities and are undertaking efforts to stabilize the economy and assist affected companies and their employees.[9] The Commission, in particular, has recognized the importance of functioning markets in this environment [10] and has granted issuers and broker-dealers relief and extensions from existing deadlines, in order to allow these entities, as well as the Commission itself, to focus on fighting the deadly virus and preserving functioning capital markets.[11]

Nasdaq is seeing an increase in the number of companies whose securities are becoming non-compliant with the Price-based Requirements amidst the current market uncertainty [12] and believes that relief is appropriate for the same reasons that the Commission has granted relief to its requirements. The decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. Similarly, Nasdaq believes that it is difficult for companies that are already non-compliant with these requirements to take action to regain compliance. For example, large daily market moves [13] make it difficult for a company to predict what ratio may be required for a reverse stock split that will enable the company to achieve and maintain

[5] Nasdaq's continued listing requirements relating to bid price are set forth in Rules 5450(a)(1), 5460(a)(3), 5550(a)(2), and 5555(a)(1) and the related compliance periods are set forth in Rule 5810(c)(3)(A).

[6] Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 5450(b)(1)(C), 5450(b)(2)(C), 5450(b)(3)(C), 5460(a)(2), 5550(a)(5), and 5555(a)(4), and the related compliance period is set forth in Rule 5810(c)(3)(D).

[7] *See WHO Director-General's Opening Remarks at the Media Briefing on COVID–19* (March 11, 2020) available at *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19-11-march-2020.*

[8] In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March 16, and March 18, 2020. *See also* Phil Mackintosh, *Putting the Recent Volatility in Perspective,* available at *https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective-2020-03-05* (''Analysts showed that we saw the fastest 'correction' in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of $3.6 trillion.'')

[9] *See, e.g.,* the list of actions undertaken by the Board of Governors of the Federal Reserve System at *https://www.federalreserve.gov/covid-19.htm. See also* Families First Coronavirus Response Act, Public Law 116–127 and Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136.

[10] *See, e.g.,* Chairman Jay Clayton, *The Deep and Essential Connections Among Markets, Businesses, and Workers and the Importance of Maintaining those Connections in our Fight Against COVID–19* (March 24, 2020) available at *https://www.sec.gov/news/public-statement/statement-clayton-covid-19-2020-03-24* (''The Securities and Exchange Commission and other financial regulators are focused on two overriding and interrelated issues. First, we are facing an unprecedented national challenge—a health and safety crisis that requires all Americans, for the sake of all Americans, to significantly change their daily behavior and, for many, to make difficult personal sacrifices. Second, the recognition that the continuing, orderly operation of our markets is an essential component of our national response to, and recovery from, COVID–19. The interrelationship between these issues cannot be overstated. Our health care, pharmaceutical, manufacturing, transportation, telecommunications and many other private-sector industries are critical to our collective response to COVID–19. The thousands of firms and entrepreneurs in these industries—and the millions of employees and contractors—that are working around the clock to fight COVID–19 depend on continued access to payments and credit.'').

[11] *See SEC Coronavirus (COVID–19) Response* available at *https://www.sec.gov/sec-coronavirus-covid-19-response,* which is being updated regularly with additional actions taken by the Commission. As of April 14, 2020, the Commission response includes (but is not limited to): Providing conditional relief for certain publicly traded company filing and proxy delivery obligations (March 4 and 25, 2020); granting relief to reporting deadlines and in-person meeting requirements for investment companies (March 13, 2020); extending the industry compliance period for Consolidated Audit Trail reporting due to the fact that ''disruptions as a result of COVID–19 have placed new stresses and competing priorities on the infrastructure and staff required to implement the Consolidated Audit Trail'' (March 16, 2020); extending filing deadlines for certain reports required under Regulation A and Regulation Crowdfunding (March 26, 2020); and providing temporary relief for Business Development Companies investing in small and medium-sized businesses (April 8, 2020). *See also* Chairman Jay Clayton, *Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure* (Jan. 30, 2020) available at *https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30* (''Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers.'').

[12] For example, as of April 13, 2020, there were 154 securities that were already deficient with the $1 price requirement. However, an additional 262 securities had closing bid prices below $1 for less than 30 days, and another 117 securities had closing bid prices between $1 and $1.50. On March 1, 2019, there were 119 securities that were deficient with the bid price requirement. Similarly, as of April 13, 2020, there were seven securities that were deficient with the applicable market value of publicly held shares requirement, but another 22 securities below the applicable requirement for less than 30 days. Only two securities were cited for non-compliance with this requirement during the period from January 1 through April 13, 2019.

[13] From March 13 to March 27, the S&P 500 index had four days with gains in excess of 6%, including two days with gains of more than 9% each, and also had five days with losses in excess of 2.9%, including daily losses of 5.2% and 12%. *See https://www.cnbc.com/2020/03/28/crazy-volatility-forces-wall-street-strategists-to-suspend-sp-500-targets.html.*

compliance with the bid price requirement. Similarly, it could be harmful to existing shareholders for a company to sell securities at an artificially low price, solely to regain compliance with the market value of publicly held shares requirement. Moreover, the need to develop and implement actions to address potential or actual non-compliance can draw management and board attention away from the more immediate needs of their employees and customers, as well as the communities where they operate.

Accordingly, Nasdaq proposes to give companies that are out of compliance with the Price-based Requirements additional time to regain compliance by tolling the compliance periods through and including June 30, 2020. Under this proposal, companies would be given additional time to regain compliance because the compliance periods for the Price-based Requirements would be tolled through and including June 30, 2020. However, throughout the tolling period, Nasdaq would continue to monitor these requirements and companies would continue to be notified about new instances of non-compliance with the Price-based Requirements in accordance with existing Nasdaq rules.[14] Companies that are notified about non-compliance are required by Nasdaq rules to make a public announcement disclosing receipt of the notification by filing a Form 8–K, where required by SEC rules, or by issuing a press release.[15] Starting on July 1, 2020, companies would receive the balance of any pending compliance period in effect at the start of the tolling period to come back into compliance with the applicable requirement.[16] Similarly, companies that were in the Hearings process would return to that process at the same stage they were in when the tolling period began. If the company had received a temporary exception from the Hearings Panel before the tolling began, the company would receive the balance of the exception period beginning on July 1, 2020. A company in the Hearings process would nonetheless be delisted and not get the benefit of the tolling period if the company has had an oral or written hearing before a Hearings Panel and the Panel has reached a determination to delist, even if the Hearings Panel has not issued the written decision required by Rule 5815(d)(1) and Rule 5840(c) prior to the proposed rule change taking effect. Companies that are newly identified as non-compliant during the tolling period would have 180 days to regain compliance, beginning on July 1, 2020.[17] Nasdaq will continue to monitor securities to determine if they regain compliance with the Price-based Requirements during the tolling period.

Nasdaq believes that this temporary tolling of the compliance periods for the Price-based Requirements will permit companies to focus on running their businesses and the immediate health crisis caused by the COVID–19 pandemic, including its impact on their employees, customers, and communities, rather than satisfying Nasdaq's listing requirements. Moreover, this temporary tolling of the compliance periods would allow investments in these lower-priced securities without fear that the company will be delisted in the very near term.

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. As a result of uncertainty related to the ongoing spread of the COVID–19 virus, the prices of securities listed on U.S. exchanges are experiencing large daily market moves, including rapid and significant declines. The proposed rule change is designed to reduce uncertainty by providing additional time for companies deficient in the Price-based Requirements to regain compliance with these standards during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market. Notwithstanding the tolling of the compliance periods, important investor protections will remain and investors will be able to identify companies that are non-compliant with the requirements on Nasdaq's website. In addition, companies that become newly non-compliant with the Price-based Requirements will have to notify investors by issuing a Form 8–K, where required by SEC rules, or a press release. The proposed relief would apply in a non-discriminatory manner and all companies listed on the Exchange that are or fall below the Price-based Requirements would be eligible to take advantage of it.

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. All companies listed on the Exchange that are or fall below the Price-based requirements while the compliance periods are tolled would benefit from the proposed rule change. In addition, the proposed rule change is not designed to have any effect on intermarket competition but instead seeks to address concerns Nasdaq has observed surrounding the application of the Price-based Requirements to companies listed on Nasdaq. Other exchanges can craft relief based on their own rules and observations.

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

[14] *See* Rule 5810 (providing that the Nasdaq Listing Qualifications Department will immediately notify a company when it determines that the company does not meet a listing standard set forth in the Rule 5000 Series, and describing the types of notifications).

[15] *See* Rule 5810(b). Nasdaq also identifies companies in a compliance period or in the Hearings process as not satisfying the continued listing standards at *https://listingcenter.nasdaq.com/NonCompliantCompanyList.aspx.* During the tolling period, Nasdaq will continue to maintain that list of non-complaint companies and will add to the list companies that become non-compliant (including with the Price-based Requirements).

[16] For example, if a company is 120 days into its first 180-day compliance period for a bid price deficiency when the tolling period starts and the company does not regain compliance before June 30, 2020, the company would have an additional 60 days, starting on July 1, 2020, to regain compliance. The company may be eligible for a second 180-day compliance period if it satisfies the conditions for eligibility at the conclusion of the first compliance period.

[17] *See* Rules 5810(c)(3)(A) and 5810(c)(3)(D) describing the compliance periods available to a company that fails to meet the continued listing requirements for bid price and market value of publicly held shares, respectively.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange stated that the proposed rule change is designed to respond to the unprecedented uncertainty and resulting market declines related to the global spread of the COVID–19 virus. Specifically, the Exchange stated that the proposed rule change is designed to reduce uncertainty for certain companies and their shareholders by providing additional time for companies deficient in the Price-based Requirements to regain compliance with these standards during the current highly unusual market conditions. Nasdaq also stated that investors will still be able to identify companies that are non-compliant with the requirements on Nasdaq's website. In addition, Nasdaq noted that it will continue to notify companies about new instances of non-compliance and any newly non-compliant companies will have to notify investors by issuing a Form 8–K, where required by SEC rules, or a press release.

The Commission notes that while the proposal provides additional time for companies to comply with the Price-based Requirements, new companies that are deficient with these standards during the tolling period will still continue to be notified by Nasdaq of the deficiency as they currently would be under normal circumstances with no tolling period, and would continue to be required to comply with the requirements of Nasdaq Rule 5810(b) to make a public announcement of the notification by filing a Form 8–K, where required by SEC rules, or by issuing a press release. In addition to requiring public announcement of a notification of a deficiency, companies so notified under Nasdaq Rule 5810(b) would also be required to disclose the rule upon which the deficiency is based and to describe each specific basis and concern identified by Nasdaq by which the company does not meet the listing standard. In addition, Nasdaq will continue to maintain and update the list of companies that are non-compliant with the Price-based Requirements (as well as other deficiencies), including companies newly identified during the tolling period, so that shareholders and the public will have access to such information as they normally would without the tolling period. The Commission notes that the additional time to comply with the standards is meant to address the current unusual market conditions while continuing to ensure that shareholders and the public have relevant and accurate information concerning a company's deficiency with the Price-based Requirements. The Commission also notes that the proposal is a temporary measure designed to respond to current, unusual market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–021 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–2020–021. 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–2020–021 and should be submitted on or before May 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08592 Filed 4–22–20; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 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.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88684; File No. SR–Phlx–2020–24]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Non-Standard Pilot Program

April 17, 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, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on May 4, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 15, 2017, the Commission approved a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[3] The pilot program permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. This pilot was extended various times and is currently extended through May 4, 2020.[4]

Pursuant to Phlx Options 4A, Section 12(b)(5)(A) the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled. The Exchange now proposes to amend Options 4A, Section 12(b)(5)(C) so that the duration of the pilot program for these nonstandard expirations will be through November 2, 2020. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the pilot program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. By extending the pilot program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

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. Options with nonstandard expirations would be available for trading to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[7] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[4] *See* Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (SR–Phlx–2018–80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR–Phlx–2019–13); and 87381 (October 22, 2019), 84 FR 57788 (October 28, 2019) (SR–Phlx–2019–43).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] 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 investors may continue to trade nonstandard expiration options listed by the Exchange as part of the pilot program on an uninterrupted basis. 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.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2020–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2020–24, and should be submitted on or before May 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08588 Filed 4–22–20; 8:45 am]

BILLING CODE 8011–01–P

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 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).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16253 and #16254; PUERTO RICO Disaster Number PR–00034]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated 01/16/2020.

Incident: Earthquakes.

Incident Period: 12/28/2019 through 02/04/2020.

DATES: Issued on 04/18/2020.

Physical Loan Application Deadline Date: 05/31/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 10/16/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Puerto Rico, dated 01/16/2020, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 05/31/2020.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–08648 Filed 4–22–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #6421 and #16422; Mississippi Disaster Number MS–00124]

Presidential Declaration of a Major Disaster for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4536–DR), dated 04/16/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/12/2020.

DATES: Issued on 04/16/2020.

Physical Loan Application Deadline Date: 06/15/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 01/19/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/16/2020, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Covington, Jefferson Davis, Jones.

Contiguous Counties (Economic Injury Loans Only): Mississippi.

Forrest, Jasper, Lamar, Lawrence, Marion, Perry, Simpson, Smith, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.125
Homeowners without Credit Available Elsewhere	1.563
Businesses with Credit Available Elsewhere	7.500
Businesses without Credit Available Elsewhere	3.750
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.750
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16421C and for economic injury is 164220.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–08653 Filed 4–22–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11100]

Extension of Waiver of Section 907 of the Freedom Support Act With Respect to Assistance to the Government of Azerbaijan

Pursuant to the authority contained in title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002 (Pub. L. 107–115), E.O. 12163, as amended by E.O. 13346, and Department of State Delegation 245–2, I hereby determine and certify that extending the waiver of Section 907 of the FREEDOM Support Act of 1992 (22 U.S.C. 5812 note) with respect to Azerbaijan:

- Is necessary to support United States efforts to counter international terrorism; or
- Is necessary to support the operational readiness of United States Armed Forces or coalition partners to counter international terrorism; or
- Is important to Azerbaijan's border security; and
- Will not undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.

Accordingly, I hereby extend the waiver of Section 907 of the FREEDOM Support Act. This determination shall be published in the **Federal Register**, and the determination and memorandum of justification shall be provided to the appropriate committees in Congress.

Dated: March 26, 2020.

Stephen E. Biegun,

Deputy Secretary of State.

[FR Doc. 2020–08658 Filed 4–22–20; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0416]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Dealer's Aircraft Registration Certificate Application

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 Office of Management and Budget (OMB) approval to renew an information collection. The collection involves submission of an AC Form 8050–5, Dealer's Aircraft Registration Certificate Application, by companies or individuals to obtain a Dealer's Aircraft Registration Certificate, which allows operation of an aircraft instead of obtaining a permanent aircraft registration certificate. The information collection is necessary for a dealer to operate an aircraft without a permanent aircraft registration certificate and to comply with statutory and regulatory requirements.

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: Kenneth W. Thompson, Manager, Aircraft Registration Branch, AFB–710, P.O. Box 25504, Oklahoma City, OK 73125.

By fax: 405–954–8068.

FOR FURTHER INFORMATION CONTACT: Bonnie Lefko by email at: *bonnie.lefko@faa.gov*; phone: 405–954–7461.

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: 2120–0024.

Title: Dealer's Aircraft Registration Certificate Application.

Form Numbers: AC Form 8050–5.

Type of Review: Renewal.

Background: Public Law 103–272 states that all aircraft must be registered before being flown. Federal Aviation Regulation 14 CFR part 47, subpart C, outlines the requirements for dealers to obtain a dealer's registration certificate to operate aircraft in lieu of obtaining a permanent aircraft registration certificate. Any individual or company engaged in manufacturing, distributing, or selling aircraft who wants to operate aircraft with a dealer's certificate may apply. Applicants complete the AC Form 8050–5, Dealer's Aircraft Registration Certificate Application. A dealer's certificate is valid for one year from the issuance date. A dealer must re-apply annually to maintain their certificate.

Respondents: Companies or Individuals engaged in manufacturing, distributing, or selling aircraft.

Frequency: Annually to maintain a certificate.

Estimated Average Burden per Response: 45 minutes.

Estimated Total Annual Burden: During FY 2019, the FAA received 3,670 applications for dealer's certificates for a total annual burden of 2,753 hours.

Issued in Oklahoma City, OK, on April 17, 2020.

Bonnie Lefko,

Program Analyst, Civil Aviation Registry, Aircraft Registration Branch, AFB–711.

[FR Doc. 2020–08567 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2020–0047]

Deadlines for Notice of Intent and Submission of Final Grant Application for Airport Improvement Program Primary, Cargo, and Nonprimary Entitlement Funds Available to Date for Fiscal Year 2020

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This action announces the extension to May 4, 2020, and to Monday, June 15, 2020, respectively, of the deadlines for an airport sponsor to give notice of intent to use Fiscal Year (FY) 2020 Airport Improvement Program (AIP) entitlement funds and to submit a final grant application.

FOR FURTHER INFORMATION CONTACT: Dave Cushing, Manager, Airports Financial Assistance Division, APP–500, at (202) 267–8827.

SUPPLEMENTARY INFORMATION: On January 28, 2020, the FAA announced April 1, 2020, as the deadline for an airport sponsor to notify the FAA if it would use its FY 2020 AIP entitlement funds, and May 18, 2020, as the deadline for an airport sponsor to submit a final FY 2020 grant application (85 FR 5065). That notice applied only to those airports that have entitlement funds apportioned to them, except those nonprimary airports located in designated Block Grant States. Since that time, the COVID–19 public health emergency has impacted airport sponsors' operations and ability to meet these deadlines.

49 U.S.C. 47105(f) provides that the sponsor of an airport for which entitlement funds are apportioned shall notify the Secretary of Transportation, by such time and in a form as prescribed by the Secretary, of the airport sponsor's intent to submit a grant application for its available entitlement funds. This notification ensures that the FAA has sufficient time to carry over and convert remaining entitlement funds.

Although the April 1 deadline has passed, the FAA will continue to accept notification of an airport sponsor's intent to submit a grant application until 12:00 p.m. prevailing local time on Monday, May 4, 2020.

This notification must be in writing and address all entitlement funds available to date for FY 2020, including those entitlement funds not obligated from prior years. These notifications are critical to ensure efficient planning and administration of the AIP.

The FAA also is extending the final grant application deadline until Monday, June 15, 2020. The final grant application funding requests are to be based on bids, not estimates.

An airport sponsor must provide its notification and grant applications to its designated FAA Airports District Office (or Regional Office in regions without Airports District Offices). Absent notification of the intent to submit a grant application, or submission of a grant application by the relevant deadlines noted above, the FAA will carry over the remainder of available entitlement funds on Monday, June 29, 2020. These funds will not be available again until at least the beginning of FY 2021. Dates are subject to possible adjustment based on future legislation. As of the publication of this notice, appropriations for the FAA expire on September 30, 2020, and statutory authorization for the FAA expires on September 30, 2023.

The FAA has determined these deadlines address the unanticipated impacts of the COVID–19 public health emergency while still facilitating the FY 2020 grant-making process.

Issued in Washington, DC, on April 17, 2020.

Robert J. Craven,

Director, Office of Airport Planning and Programming.

[FR Doc. 2020–08587 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0414]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Recording of Aircraft Conveyances and Security Documents

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 Office of Management and Budget (OMB) approval to renew an information collection. The collection involves a lienholder returning an AC Form 8050–41, Notice of Recordation—Aircraft Security Conveyance with Part II—Release completed to the Civil Aviation Registry, Aircraft Registration Branch (Registry), to release a recorded lien. This information is necessary to show satisfaction of a recorded lien and to comply with statutory and regulatory requirements.

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: Kenneth W. Thompson, Manager, Aircraft Registration Branch, AFB–710, P.O. Box 25504, Oklahoma City, OK 73125.

By fax: 405–954–8068.

FOR FURTHER INFORMATION CONTACT: Bonnie Lefko by email at: *bonnie.lefko@faa.gov;* phone: 405–954–7461.

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: 2120–0043.

Title: Recording of Aircraft Conveyances and Security Documents.

Form Numbers: AC Form 8050–41, Notice of Recordation.

Type of Review: Renewal.

Background: Title 49 U.S.C. 44108 provides for establishing and maintaining a system for the recording of security conveyances affecting title to, or interest in U.S. civil aircraft and qualified engines, propellers, and/or spare part locations, and for recording of releases relating to those conveyances. Federal Aviation Regulation 14 CFR part 49 establishes procedures for implementation of 49 U.S.C. 44108. Part 49 describes what information must be contained in a security conveyance and a release of that conveyance in order for the FAA to record and/or release a lien.

A lienholder submits a lien against aircraft and/or qualified engines, propellers, and/or spare part locations to the Registry for recording. The Registry records the lien and sends an AC Form 8050–41, Notice of Recordation—Aircraft Security Conveyance, to the lienholder. When the lien is ready for release, the lienholder completes Part II—Release at the bottom of the form and returns it to the Registry as official notification that the lien has been satisfied.

Respondents: Any aircraft, propeller, engine or spare parts location lienholder, who has received the Notice of Recordation from the Registry, and is releasing the subject lien.

Frequency: On occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: During FY 2019 the FAA received 22,370 release notifications for a total time burden of 22,370 hours.

Issued in Oklahoma City, OK on April 17, 2020.

Bonnie Lefko,

Program Analyst, Civil Aviation Registry, Aircraft Registration Branch, AFB–711.

[FR Doc. 2020–08566 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0370]

Hours of Service (HOS) of Drivers; U.S. Department of Energy (DOE); Application for Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for renewal of exemption; request for comments.

SUMMARY: FMCSA has received an application from the U.S. Department of Energy (DOE) for a renewal of its exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. DOE currently holds an exemption for the period June 30, 2015, through June 29, 2020, which enables DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exemption allows the drivers to use 30 minutes or more of ''attendance time'' to meet the HOS rest break requirements provided the drivers do not perform any other work during the break. FMCSA requests public comment on the renewal of the exemption.

DATES: Comments must be received on or before May 26, 2020. The requested exemption renewal would be effective from June 30, 2020 through June 29, 2025.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2012–0370 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Send comments to Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Deliver comments to Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2012–0370), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2012–0370'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your

comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may continue this exemption or not based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

From 2013 to 2015, DOE held a limited exemption from the mandatory 30-minute rest break requirement of 49 CFR 395.3(a)(3)(ii) that allowed DOE contract carriers and their drivers transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives pursuant to § 395.1(q). As that exemption neared expiration, DOE applied for its renewal. FMCSA reviewed DOE's request and the public comments and reaffirmed its previous conclusion that allowing these drivers to count on-duty time ''attending'' their CMVs toward the required 30-minute break, would provide a level of safety equivalent to what would be achieved by the break. The notice renewing the DOE exemption was published on June 22, 2015 (80 FR 35703).

On July 25, 2016 (81 FR 48495), FMCSA announced the extension of the DOE exemption notice that was published on June 22, 2015. The Agency extended the expiration date of the exemption to June 29, 2020 in response to section 5206(b)(2)(A) of the ''Fixing America's Surface Transportation Act'' (FAST Act). That section extends the expiration date of all HOS exemptions in effect on the date of enactment to five years from the date of issuance of the exemptions.

DOE has now requested a renewal of the exemption that would be effective from June 30, 2020 through June 29, 2025. A copy of DOE's request is in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on DOE's request for a renewal of its exemption from the 30-minute rest break rule. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–08579 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0362]

Meetings: Medical Review Board; Revision of Notice

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of partially closed meeting, revision.

SUMMARY: This notice announces that the Medical Review Board Advisory Committee (MRB) meeting announced on March 17, 2020, will take place via WebEx videoconference rather than in-person.

DATES: The meeting will be held on Monday and Tuesday, April 27–28, 2020, from 9:15 a.m. to 4:30 p.m. The meeting will be closed to the public on Monday, April 27 but open to the public on Tuesday, April 28. The second day of the meeting will be open to the public for its entirety. No advance registration is required for public participation on the second day.

ADDRESSES: The meeting will be held via WebEx videoconference. Those members of the public who would like to participate should go to *https://www.fmcsa.dot.gov/advisory-committees/mrb/meeting-fmcsas-medical-review-board-advisory-committee-mrb* to access the meeting. No advance registration is required. There will be an opportunity for participants to seek recognition to ask questions or comment during the meeting, subject to recognition by the chair. Copies of the task statement and an agenda for the entire meeting will be made available at *www.fmcsa.dot.gov/mrb* at least one week in advance of the meeting. Copies of the meeting minutes will be available at the website following the meeting. You may visit the MRB website at *www.fmcsa.dot.gov/mrb* for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–5221, *mrb@dot.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The MRB was created under the Federal Advisory Committee Act (FACA) in accordance with section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, SAFETEA–LU, Public Law 109–59 (2005) (codified as amended at 49 U.S.C. 31149) to establish, review, and revise ''medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate

to enable them to operate the vehicles safely.'' The MRB operates in accordance with FACA under the terms of the MRB charter, filed November 25, 2019.

On March 17, 2020 (85 FR 15250), the Agency published a notice announcing the April 27–28, 2020, meeting in accordance with the FACA requirements. The notice announced that the meeting would be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC. Subsequently, the Agency has decided to hold the entire meeting via WebEx videoconference.

II. Agenda

The agenda will cover the following topics:

- Monday, April 27 (Closed Session): Review test questions used to determine eligibility of healthcare professionals for inclusion in the National Registry of Certified Medical Examiners (CMEs).
- Tuesday, April 28 (Public Session):

1. Finalize recommendations from the MRB's June 2019 meeting on updates to the Medical Examiner's Handbook;

2. Consider changes to the seizure standard for CMV drivers.

III. Public Participation

The first day of the meeting will be closed to the public due to the discussion of specific test questions, which are not available for release to the public. Premature disclosure of secure test information would compromise the integrity of the examination and therefore exemption 9(B) of section 552b(c) of Title 5 of the United States Code justifies closing this portion of the meeting pursuant to 41 CFR 102–3.155(a). The second day of the meeting will be open to the public via WebEx videoconference. Those members of the public who would like to participate should go to *https://www.fmcsa.dot.gov/advisory-committees/mrb/meeting-fmcsas-medical-review-board-advisory-committee-mrb* to access the meeting. There will be an opportunity for participants to seek recognition to ask questions or comment during the meeting, subject to recognition by the chair. There is no need for advance registration.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–08600 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0049]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 15, 2020, BNSF Railway (BNSF) petitioned the Federal Railroad Administration (FRA) for an expansion of its waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232.15, 232.213, and 232.103(f). On April 12, 2019, FRA granted BNSF a test waiver to conduct a pilot program on a segment of their system to ''demonstrate that the use of wheel temperature detectors to prove brake health effectiveness (BHE) will improve safety, reduce risks to employees, and provide cost savings to the industry.'' FRA assigned the petition Docket Number FRA–2018–0049.

BNSF states the test waiver committee for BHE has been actively reviewing the data generated by BNSF over the past 6 months, and during that time BNSF has tested more than 600 trains. In building on the test success of the Southern Transcon trains between Chicago, IL, and California, BNSF requests FRA approval of two expansion initiatives which were each reviewed and approved by the test waiver committee: (1) The addition of additional origin/destination Southern Transcon locations; and (2) expansion to the BNSF Northern Intermodal route through Havre, MT.

BNSF requests adding the following locations to its test waiver on the Southern Transcon to increase the braking improvements on the intermodal equipment, increase the number of waiver trains, and enable more locations to complete the automatic single car tests (ASCT). These locations may be an origination or destination point for an intermodal train that qualifies under conditions of the waiver and will pass through the existing test detector sites on either side of Belen, NM: Phoenix, AZ; Alliance, TX; Houston, TX; Logistics Park, Kansas City, KS; Memphis, TN; Atlanta, GA; St. Louis, MO; Omaha, NE; Amarillo, TX; Lubbock, TX; and Albuquerque, NM. These locations would be subject to the same requirements for the training completion of all related work groups and would not be ''turned on'' until the training records are provided to the test waiver committee.

BNSF has installed and is currently testing new detectors with its proven technology on BNSF's Northern Intermodal route. These detectors were installed to continue the BHE testing in a cold weather climate. BNSF proposes that the processes and parameters would follow all conditions of the Southern Transcon BHE Program.

BNSF states the expansion of the test waiver for both the Southern and Northern proposals would accomplish all the following:

1. Validation of braking performance of trains on BNSF's Northern Transcon Route;

2. Improve the braking performance of individual cars identified with cold or hot wheels;

3. Increase the testing of car brake systems with ASCT devices;

4. Increase the removal of poor performing brake valves identified by the ASCT;

5. Generate important data on air brake valve performance in a cold weather environment which cannot be done on the Southern Transcon Intermodal testing; and

6. Begin the process of associating brake valve age with BHE data performance from both the test site and the point/location when the ASCT is completed.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 26, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2020–08577 Filed 4–22–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Relating to Guidance on Discharge of Property From the Effect of the Tax Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the guidance on the discharge of property from the effect of the tax lien. More specifically, the burden associated with filing Form 14134, *Application for Certificate of Subordination of Federal Tax Lien,* and Form 14135, *Application for Certificate of Discharge of Property from Federal Tax Lien.*

DATES: Written comments should be received on or before June 22, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Ronald J. Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Discharge of Property from the Effect of the Tax Lien.

OMB Number: 1545–2174.

Form Number(s): 14134 and 14135.

Abstract: The collection of information is required by 26 CFR 301.6325–1(b)(5) for consideration of the United States discharging property from the federal tax lien and is required by 26 CFR 301.6325–1(d)(4) for consideration that the United States subordinate its interest in property. The information is investigated by Collection personnel in order that the appropriate official may ascertain the accuracy of the application and decide whether to issue a discharge or subordination.

Current Actions: There is no change to the burden previously approved by OMB. This request is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Gov't.

Estimated Number of Respondents: 10,362.

Estimated Time per Respondent: 2 hours, 11 min.

Estimated Total Annual Burden Hours: 22,665.

The following paragraph applies to all the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: April 17, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020–08614 Filed 4–22–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Office of Information of Technology, Department of Veterans Affairs (VA).

ACTION: Notice of Modified System of Records.

SUMMARY: Individuals Submitting Invoices-Vouchers for Payment and Accounting Transactional Data-VA is a compilation of records received, controlled, managed, and employed for payment processing; general accounting; benefit payment distribution to veterans and their families; commercial vendor invoices for contract and reimbursement expenditures; and payroll payments.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or

unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *www.Regulation.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll free number). Comments should indicate that they are submitted in response to 13–VA047 Individuals Submitting Invoices-Vouchers for Payment and Accounting Transactional Data-VA. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461 4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Manzano, *Jaime.Manazano@va.gov,* (512) 460–5307.

SUPPLEMENTARY INFORMATION: Individuals Submitting Invoices-Vouchers for Payment and Accounting Transactional Data-VA is a VA-wide financial management system of records utilized in VA's IT accounting systems for payment of benefits, vendor proposals payments and quotes, invoice payment processing, and payroll purposes. Information is collected from recipients, vendors, VA administrations, medical centers, and other Federal entities for rendering payment.

Updated authorities by which the data is collected are 31 U.S.C. 3512—Executive Agency Accounting and other Financial Management Reports and Plans; Federal Managers' Financial Integrity Act Section 2 of 1982; Federal Financial Management Improvement Act of 1996; E-Government Act of 2002 Title III., Federal Information Security Management Act (FISMA); Clinger Cohen Act of 1996; 38 CFR part 17 §§ 17.120–17.132; OMB Circular A–123, *Management's Responsibility for Internal Control; and* OMB Circular A–127, Financial Management Systems.

Additional Routine Uses were added based on revised guidelines to A–108 and updated standards for agency breach notification. Moreover, VA must be able to provide its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7). VA will administer financial and transactional information through benefit disbursement consuming HIPPA related data thus amending the routine uses to include: 14.Federal Agencies, Hospitals, for Referral by VA.; 15.Non-VA Doc, for Referral to VA; 18.Researchers, for Research; 25.Claims Representatives; and 26.Third Party, for Benefit or Discharge. Location of the system of records is a notable change to being stored, managed, and secured within a momentum cloud application.

Numerical order of routine uses from original SORN listing to revised version is amended to the below agency standardized format including the first ten routine uses:

1. Congress.
2. Data breach response and remedial efforts.
3. Data breach response and remedial efforts with another Federal agency.
4. Law Enforcement.
5. Litigation.
6. Contractors.
7. EEOC.
8. FLRA.
9. MSPB.
10. NARA & GSA.

Congress. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance. Justification—VA established standardized Routine Use. Disclosures may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains. The disclosure must be within the scope of the individual's request and release of individually identifiable treatment records relating to alcohol, drug abuse, sickle cell anemia, or human immunodeficiency virus/AIDS must be specifically addressed in the individual's request to the congressional office for assistance. In those cases, however, where the congressional inquiry indicates that the request is being made on behalf of a person other than the individual whose record is to be disclosed, the congressional office should be advised that the written consent of the subject of the record is required. The Privacy Act limitation on disclosure of personal information contained in any VA system of records shall not apply to any Chairman/Head of a committee in the House of Representatives or the United States Senate Veterans' Affairs or Appropriations Committees (including the Subcommittees on VA, HUD, and Independent Agencies) if an official request for the disclosure has been made for an oversight purpose on a matter within the jurisdiction of the Committee or Subcommittee. Use case—Use of information is necessary and proper to ensure the veteran and whom they entrust and deem necessary have access to advocate on their behalf.

Data breach response and remedial efforts. To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with [the agency's] efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm. Justification—VA established standardized Routine Use. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724 and, in accordance with Veterans Benefits, Health Care, and Information Technology Act of 2006 §§ 5723—5724. VA may notify officials other than officials within the Department of data breaches when required. In the instance of 20 or more individuals affected, VA may provide notice to Director of Office of Management and Budget and other such Federal entities as determined relevant through quantitative and qualitative risk analyses whether independent or internal on a confirmed data breach. Specifically, VA may authorize an independent risk analysis by a non-VA entity and/or Office of Inspector General in cases involving PII and/or PHI.

Findings of such risk analysis may endorse and invoke provisioning of credit monitoring for all those affected. Use Case—Use of information is necessary and proper to mitigate the effect of a confirmed data breach through provisioning credit monitoring. Notification of non-federal entities in compliance and risk assessment capacity to perform prevention strategies.

Data breach response and remedial efforts with another Federal agency. To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach. Justification—VA established standardized Routine Use: In accordance with U.S.C 38§ 5723, (7) VA will ensure that the Assistant Secretary for Information and Technology, in coordination with the Under Secretaries, Assistant Secretaries, and other key officials of the Department report to Congress, the Office of Management and Budget, and other entities as required by law and this section of the regulation to cooperate with notify and cooperate with officials other than officials of the Department of data breaches when required. Use Case—Use of information is necessary and proper to initiate investigations into confirmed data breaches involving other executive branch agencies.

Law Enforcement. VA may disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. Justification—VA established standardized Routine Use: VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. Use Case—Use of information is necessary and proper to cooperate with other federal agencies while prosecuting civil, criminal or regulatory violations of law.

Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when

(a) VA, or any component thereof; or

(b) any employee of VA in his or her official capacity; or

(c) any employee of VA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) the United States, where VA determines that litigation is likely to affect VA or any of its components is a party to litigation or has an interest in such litigation and the use of such records by the Department of Justice is deemed by VA to be relevant and necessary to the litigation.

Use Case—Use of information is necessary and proper to disclose records in this system of records in legal proceedings before a court or administrative body.

Contractors. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations. Justification—VA established standardized Routine Use: VA may disclose information from this system of records to individuals, organizations private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services on behalf of VA acting in such capacity as an agent of VA on a need to know basis. Use Case—Use of information is necessary and proper to disclose records from this system of records for entities contracted, entered into an agreement, and performing duties on behalf of VA.

EEOC. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. Justification—VA established standardized Routine Use: VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation. Use Case—Use of information is necessary and proper to disclose records from this system of records to protect VA employee rights.

FLRA. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. Justification—VA established standardized Routine Use: VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates. Use Case—Use of information is necessary and proper to cooperate with labor relation investigations.

MSPB. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. Disclosure may be made to a congressional office from the record of an individual in response to

an inquiry from the congressional office made at the request of that individual.

Disclosure may be made to NARA (National Archives and Records Administration) GSA (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. *(In present SORN and will not Change)*

Transfer payment information necessary to complete payment of claims and to furnish income data Form 1099 to the Treasury Department in order to effect payment of claims to vendors and to furnish income information. *(In present SORN and will not Change)*

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. (Deleted and replaced with more up-to-date)

A record from this system of records may be disclosed as a 'routine use' to a Federal, State or local agency or to a non-governmental organization maintaining civil, criminal or other relevant information, such as current licenses, registration or certification, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the use of an individual as a consultant, attending or to provide fee basis health care, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefits. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes. (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

A record from this system of records may be disclosed to a Federal, State or local agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

Relevant information from this system of records, including the nature and amount of financial obligation, may be disclosed as a routine use, in order to assist the Veterans Administration in the collection of unpaid financial obligations owed the VA, to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469). (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

Relevant information from this system of records, including available identifying data regarding the debtor, such as name of debtor, last known address of debtor, name of debtor's spouse, social security account number of debtor, VA insurance number, VA loan number, VA claim number, place of birth and date of birth of debtor, name and address of debtor's employer or firm and dates of employment, may be disclosed to other Federal agencies, State probate courts, State drivers license bureaus, and State automobile title and license bureaus as a routine use in order to obtain current address, locator and credit report assistance in the collection of unpaid financial obligations owed the U.S. This purpose is consistent with the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 31 U.S.C. 951–953) and 4 CFR parts 101–105. (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

Records from this system of records may be disclosed to a Federal Agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform a Federal Agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes. (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to the Department of Health and Human Services (HHS) for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA authorized and was responsible for payment for medical services obtained at non-VA health care facilities. The purpose of the review is for HHS to identify duplicate payments and initiate recovery of identified overpayments and, where warranted, initiate fraud investigations, or, to seek reimbursement from VA for those services which were authorized by VA and for which no payment, or partial payment, was made by VA. HHS will provide information to identify the patient to include the patient name, address, Social Security number, date of birth, and information related to the period of medical treatment for which payment was made by Medicare to include the name and address of the hospital, the admission and discharge dates, the services for which payment was made, and the dates and amounts of payment. Information disclosed from this system of records will be limited to that information that is necessary to confirm or disprove an inappropriate payment by Medicare. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes. (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee. (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes. (Deleted and updated by—In Original SORN—Deleted or Replaced by updated Routine Use detailed below)

Federal Agencies, for Computer Matches. VA may disclose identifying information, including social security number, concerning veterans, spouses of veterans, and the beneficiaries of veterans to other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA medical care under Title 38, U.S.C. Office Enterprise Integration (OEI) may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for OPP to use for the purposes stated for this system of records. Justification—VA established standardized Routine Use: VA must be able to provide limited personally identifiable information to other federal agencies for computer matching activities for the purpose of benefit payments to veterans and beneficiaries. Use Case—Use of information is necessary and proper to conduct computer matching activities with regards to payments and verification of VA payment if VA is considered a Source Agency. (New Routine Use)

Federal Agencies, for Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when

(a) VA, or any component thereof; or

(b) any employee of VA in his or her official capacity; or

(c) any employee of VA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) the United States, where VA determines that litigation is likely to affect VA or any of its components is a party to litigation or has an interest in such litigation and the use of such records by the Department of Justice is deemed by VA to be relevant and necessary to the litigation. Justification—VA established standardized Routine Use: VA may disclose records in this system of records in legal proceedings another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency if VA is a party to the proceeding and needs to disclose the information to protect its interests. Use Case—Use of information is necessary and proper to disclose records in this system of records in legal proceedings before a court or administrative body. (New Routine Use)

Federal Agencies, Hospitals, for Referral by VA. VA may disclose relevant health care information to: (1) A federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the federal agency or non-VA institution on provider to perform the services; or (2) a federal agency or to a non-VA hospital (federal, state, and local public or private) or other medical installation having hospital facilities, organ banks, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or for VA to effect recovery of the costs of the medical care. Justification—VA established standardized Routine Use: VA must be able to provide patient referral information for authorized hospital and/or nursing home care to a non-VA medical services provider for recovery of the costs of the medical care. Use Case—Use of information is necessary and proper as data within this system does not exclusively include financial, transactional, and benefit payout data it also includes VHA PHI information that is funneled in by VISTA. (New Routine Use)

Federal Agencies, for Recovery of Medical Care Costs. VA may disclose patient identifying information to federal agencies and VA and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish this purpose. Justification—Use of information is necessary and proper as data within this system does not exclusively include financial, transactional, and benefit payout data it also includes VHA PHI information that is funneled in by VISTA. (New Routine Use) Use Case—Use of information is necessary and proper as data within this system does not exclusively include financial, transactional, and benefit payout data it also includes VHA PHI information that is funneled in by VISTA. (New Routine Use)

Researchers, for Research. VA may disclose information from this system, except the names and home addresses of veterans and their dependents (unless name and address is furnished by the requester), for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health. Justification—The data within this system does not just include financial, transactional, and benefit payout data it also includes VHA PHI information that is funneled in by VISTA. Use Case—Use of information is necessary and proper as data within this system does not exclusively include financial, transactional, and benefit payout data it also includes VHA PHI information that is funneled in by VISTA. (New Routine Use)

Treasury, IRS. VA may disclose the name of a veteran or beneficiary, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Department of the Treasury, Internal Revenue Service, for the collection of Title 38 benefit overpayments, overdue indebtedness, and/or costs of services provided to an

individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund. The purpose of this disclosure is to collect a debt owed the VA by an individual by offset of his or her Federal income tax refund. Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. (New Routine Use)

Treasury, to Report Waived Debt as Income. VA may disclose an individual's name, address, social security number, and the amount (excluding interest) of any indebtedness which is waived under 38 U.S.C. 3102, compromised under 4 CFR part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, to the Department of the Treasury, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12). Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. (New Routine Use)

Treasury, for Payment or Reimbursement. VA may disclose information to the Department of the Treasury to facilitate payments to physicians, clinics, and pharmacies for reimbursement of services rendered, and to veterans for reimbursements of authorized expenses, or to collect, by set off or otherwise, debts owed the United States. Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. (New Routine Use)

Guardians Ad Litem, for Representation.VA may disclose information to a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding, but only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem. This disclosure permits VA to provide individual information to an appointed VA Federal fiduciary or to the individual's guardian ad litem that is needed to fulfill appointed duties. Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. (New Routine Use)

Guardians, for Incompetent Veterans. VA may disclose relevant information from this system of records in the course of presenting evidence to a court, magistrate, or administrative tribunal; in matters of guardianship, inquests, and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties. Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. (New Routine Use)

Claims Representatives. VA may disclose information from this system of records relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, at the request of the claimant to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service organization, claims agent or an attorney. VA must be able to disclose this information to accredited service organizations, VA-approved claim agents, and attorneys representing veterans so they can assist veterans by preparing, presenting, and prosecuting claims under the laws administered by VA. Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. (New Routine Use)

Third Party, for Benefit or Discharge. Health care information concerning a non-judicially declared incompetent patient may be disclosed to a third party upon the written authorization of the patient's next of kin in order for the patient, or, consistent with the best interest of the patient, a member of the patient's family, to receive a benefit to which the patient or family member is entitled, or, to arrange for the patient's discharge from a VA medical facility. Sufficient data to make an informed determination will be made available to such next of kin. If the patient's next of kin are not reasonably accessible, the Chief of Staff, Director, or designee of the custodial VA medical facility may disclose health information for these purposes. Justification—VA established standardized Routine Use: VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. Use Case—Use of information is necessary and proper to cooperate with Merit Systems Protection Board and/or Office of Special Counsel concerning allegations of prohibited personnel practices. (New Routine Use)

Signing Authority

The Senior Agency Official Privacy, or designee, 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. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on May 30, 2019 for publication.

Dated: April 20, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME:

Individuals Submitting Invoices-Vouchers for Payment and Accounting Transactional Data-VA 13VA047.

SECURITY CLASSIFICATION:

The information in this system is unclassified.

SYSTEM LOCATION:

VA Data Processing Center, Austin, Texas and fiscal offices of Central Office; field stations where fiscal transactions are processed; and application server located in the VA managed enterprise service cloud enclave.

SYSTEM MANAGER(S):

Tammy Watson, System Owner, VA Financial Services Center (FSC), Austin, TX 78741.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512—Executive Agency Accounting and other Financial Management Reports and Plans; Federal Managers' Financial Integrity Act Section 2 of 1982; Federal Financial Management Improvement Act of 1996; E-Government Act of 2002 Title III., Federal Information Security Modernization Act (FISMA) of 2014; Clinger Cohen Act of 1996; 38 CFR part 17 §§ 17.120–17.132; OMB Circular A–123, *Management's Responsibility for Internal Control; and* OMB Circular A–127, Financial Management Systems.

PURPOSE(S) OF THE SYSTEM:

Individuals Submitting Invoices-Vouchers for Payment and Accounting Transactional Data-VA is a VA-wide financial management system of records utilized in VA's IT accounting systems for payment of benefits, vendor payments, invoice payment processing, and payroll purposes. Information is collected from recipients, vendors, VA administrations, medical centers, and other Federal entities for rendering payment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractors, vendors, salaried employees, non-salaried employees, consultants, physicians and dentists, and patients and veterans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commercial Vendor identification listings, invoiced payment records, claimant information, and banking and financial accounting information.

RECORD SOURCE CATEGORIES:

Commercial vendors; individual or legal representative as part of an application for a benefit, contract or reimbursement; Data could potentially be obtained from a VA administration, facility and/or medical center; Department of Treasury; Internal Revenue Service; and other Federal entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Congress. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. Data breach response and remedial efforts. To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. Data breach response and remedial efforts with another Federal agency. To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement. VA may disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when

(e) VA, or any component thereof; or

(f) any employee of VA in his or her official capacity; or

(g) any employee of VA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(h) the United States, where VA determines that litigation is likely to affect VA or any of its components is a party to litigation or has an interest in such litigation and the use of such records by the Department of Justice is deemed by VA to be relevant and necessary to the litigation.

6. Contractors. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations.

7. EEOC. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or

other functions of the Commission as authorized by law or regulation. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

8. FLRA. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

9. MSPB. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

10. NARA. VA may disclose information from this system to the National Archives and Records Administration (NARA) in records management inspections conducted under Title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

11. Federal Agencies, for Computer Matches. VA may disclose identifying information, including social security number, concerning veterans, spouses of veterans, and the beneficiaries of veterans to other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA medical care under Title 38, U.S.C. Office Enterprise Integration (OEI) may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for OPP to use for the purposes stated for this system of records.

12. Federal Agencies, for Litigation. VA may disclose information to another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests

13. Federal Agencies, Hospitals, for Referral by VA. VA may disclose relevant health care information to: (1) A federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the federal agency or non-VA institution on provider to perform the services; or (2) a federal agency or to a non-VA hospital (federal, state, and local public or private) or other medical installation having hospital facilities, organ banks, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or for VA to effect recovery of the costs of the medical care.

14. Federal Agencies, for Recovery of Medical Care Costs. VA may disclose patient identifying information to federal agencies and VA and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish this purpose.

15. Researchers, for Research. VA may disclose information from this system, except the names and home addresses of veterans and their dependents (unless name and address is furnished by the requester), for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

16. Treasury, IRS. VA may disclose the name of a veteran or beneficiary, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Department of the Treasury, Internal Revenue Service, for the collection of Title 38 benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund. The purpose of this disclosure is to collect a debt owed the VA by an individual by offset of his or her Federal income tax refund.

17. Treasury, to Report Waived Debt as Income. VA may disclose an individual's name, address, social security number, and the amount (excluding interest) of any indebtedness which is waived under 38 U.S.C. 3102, compromised under 4 CFR part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, to the Department of the Treasury, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

18. Treasury, for Payment or Reimbursement. VA may disclose information to the Department of the Treasury to facilitate payments to physicians, clinics, and pharmacies for reimbursement of services rendered, and to veterans for reimbursements of authorized expenses, or to collect, by set off or otherwise, debts owed the United States.

19. Guardians Ad Litem, for Representation.VA may disclose information to a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding, but only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem. This disclosure permits VA to provide individual information to an appointed VA Federal fiduciary or to the individual's guardian ad litem that is needed to fulfill appointed duties.

20. Guardians, for Incompetent Veterans. VA may disclose relevant information from this system of records in the course of presenting evidence to a court, magistrate, or administrative tribunal; in matters of guardianship, inquests, and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties.

21. Claims Representatives. VA may disclose information from this system of records relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military

service and active duty separation information, at the request of the claimant to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service organization, claims agent or an attorney. VA must be able to disclose this information to accredited service organizations, VA-approved claim agents, and attorneys representing veterans so they can assist veterans by preparing, presenting, and prosecuting claims under the laws administered by VA.

22. Third Party, for Benefit or Discharge. Health care information concerning a non-judicially declared incompetent patient may be disclosed to a third party upon the written authorization of the patient's next of kin in order for the patient, or, consistent with the best interest of the patient, a member of the patient's family, to receive a benefit to which the patient or family member is entitled, or, to arrange for the patient's discharge from a VA medical facility. Sufficient data to make an informed determination will be made available to such next of kin. If the patient's next of kin are not reasonably accessible, the Chief of Staff, Director, or designee of the custodial VA medical facility may disclose health information for these purposes.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically on a VA server, in paper folders, magnetic discs, magnetic tape, and in a momentum cloud application. Paper documents may be scanned/digitized and stored for viewing electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

VA Directive 6300, Records and Information Management; VA Directive 6502, VA Enterprise Privacy Program; and VA Handbook 6300.4, Procedures for Processing Requests for Records Subject to the Privacy Act.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Individuals Submitting Invoices-Vouchers for Payment and Accounting Transactional Data-VA system of records is retained as defined by its NARA approved Records Control Schedule, MP–4, Part X and within rules of the General Records Schedule (GRS). Unscheduled records within this System of Records are indefinitely retained within the rules GRS, ERA Number DAA–GRS–2013–005–002 (Permanent Retention). Per NARA practice, documentation for permanent electronic records must be transferred with the related records using the disposition authority of the related electronic records rather than the GRS disposition authority.

Agency policy and responsibility for media and electronic sanitization is explicated in VA Handbook 6500.1, Electronic Media Sanitization. This Handbook sets forth policies and responsibilities for the proper sanitization of electronic media prior to repair, disposal, reuse, or recycling. These guidelines are in accordance with Federal Information Processing Standard (FIPS) 200, Minimum Security Requirements for Federal Information and Information Systems; and NIST Special Publication 800–88 Revision 1, Guidelines for Media Sanitization.

VA Directive 6371, Destruction of Temporary Paper Records, is Agency policy for the destruction of temporary paper records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

VA will store records produced within this system of records in an area that is physically and technologically secure from access by unauthorized persons at all times. Only authorized personnel will transport records within this system of records. VA will process records produced within this system of records under immediate supervision and control of authorized personnel in a manner that will protect the confidentiality of the records, so that unauthorized persons cannot retrieve any records by computer, remote terminal, or other means. VA will store records using FIPS 140–2 compliant encryption. Systems personnel must enter personal identification numbers when accessing records on the agencies' systems. VA will strictly limit authorization to those electronic records areas necessary for the authorized analyst to perform his or her official duties.

RECORD ACCESS PROCEDURES:

An individual wanting notification or access, including contesting the record, should mail or deliver a request to the office identified in the SORN. If an individual does not know the ''office concerned,'' the request may be addressed to the following with below requirements: PO or FOIA/PO of any VA field station or the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW, Washington, DC 20420. The receiving office must promptly forward the mail request received to the office of jurisdiction clearly identifying it as ''Privacy Act Request'', and notify the requester of the referral. Approved VA authorization forms, may be provided to individuals for use.

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to him or her contained in a specific VA system of records by mailing or delivering the request to the office concerned. The request must be in writing and must conform to the following requirements: It must state the nature of the information in the record the individual believes to be inaccurate, irrelevant, untimely, or incomplete; why the record should be changed; and the amendment desired. The requester must be advised of the title and address of the VA official who can assist in preparing the request to amend the record if assistance is desired. Not later than business 10 days after the date of a request to amend a record, the VA official concerned will acknowledge in writing such receipt. If a determination for correction or amendment has not been made, the acknowledgement will inform the individual of when to expect information regarding the action taken on the request. VA will complete a review of the request to amend or correct a record within 30 business days of the date of receipt. Where VA agrees with the individual's request to amend his or her record(s), the requirements of 5 U.S.C. 552a(d) will be followed. The record(s) will be corrected promptly, and the individual will be advised promptly of the correction.

If the record has previously been disclosed to any person or agency, and an accounting of the disclosure was made, prior recipients of the record will be informed of the correction. An approved VA notification of amendment form letter may be used for this purpose. An individual wanting notification or access, including contesting the record, should mail or deliver a request to the Privacy Office or FOIA/Privacy Office of any VA field station or the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

NOTIFICATION PROCEDURES:

Notification for correcting the information will be accomplished by informing the individual to whom the record pertains by mail. The individual making the amendment must be advised

in writing that the record has been amended and provided with a copy of the amended record. System Manager for the concerned VA system of records, Privacy Officer, or their designee, will notify the relevant persons or organizations whom had previously received the record about the amendment. If 38 U.S.C. 7332-protected information was amended, the individual must provide written authorization to allow the sharing of the amendment with relevant persons or organizations request to amend a record must be acknowledged in writing within 10 workdays of receipt. If a determination has not been made within this time period, the System Manager for the concerned VA system of records or designee, and/or the facility Privacy Officer, or designee, must advise the individual when the facility expects to notify the individual of the action taken on the request. The review must be completed as soon as possible, in most cases within 30 workdays from receipt of the request. If the anticipated completion date indicated in the acknowledgment cannot be met, the individual must be advised, in writing, of the reasons for the delay and the date action is expected to be completed. The delay may not exceed 90 calendar days from receipt of the request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

N/A.

HISTORY:

VA 13VA047, Individuals Submitting Invoices-Vouchers for Payment -VA—published prior to 1995.

[FR Doc. 2020–08611 Filed 4–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Agency Information Collection Activity: Financial Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–047.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 89–754, Section 1013; 8 U.S.C. 3702(b)(2), 38 U.S.C. 3714.

Title: Financial Statement (VA form 26–6807).

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6807 is used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted, guaranteed, insured, or portfolio loan. In addition, the form is used in determining the financial feasibility of a veteran or service member to obtain a home with the assistance of a Specially Adapted Housing Grant under 38 U.S.C., Chapter 21. Also, VA Form 26–6807 may be used to establish eligibility of homeowners for aid under the Homeowners Assistance Program, Public Law 89–754, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed in whole or in part. Finally, the form is used in release of liability and substitution of entitlement cases. Under the provisions of 38 U.S.C. 3714, the Department of Veterans Affairs (VA) may release original veteran obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided purchasers/assumers meet the necessary requirements, among which is qualifying from a credit standpoint. Substitution of entitlement is authorized by 38 U.S.C. 3702(b)(2) and prospective veteran-assumers must also meet the creditworthiness requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on February 3, 2020, volume 85, number 22, pages 6019–6020.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,250 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–08571 Filed 4–22–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA) that the Veterans and Community Oversight and Engagement Board will meet virtually on May 21, 2020. The meeting sessions will begin and end as follows:

Date	Time
May 21, 2020	3:00 p.m. to 6:00 p.m. EST.

The meetings are open to the public. Members of the public can attend the meeting via teleconference (800) 767–1750 access code 21115#.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on: identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On May 21, the agenda will include opening remarks from the Committee Chair and the Chief Veterans Experience Officer. There will be a status update on VAGLAHS Homeless Programs response to COVID–19: CTRS Program, a presentation from the West Los Angeles Collective, on infrastructure assessment, and topics related to the Overall Community Plan; and an updated accounting of the Lease Revenue Fund. The Board's subcommittees on Outreach and Community Engagement with

Services and Outcomes, and Master Plan with Services and Outcomes will report on activities since the last meeting, followed by an out brief to the full Board on any draft recommendations considered for forwarding to the SECVA.

Individuals wishing to share information with the Committee should contact Mr. Chihung Szeto (Alternate Designated Federal Official) at *VEOFACA@va.gov* to submit a 1–2 page summary of their comments for inclusion in the official meeting record.

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631–7645 or at *Eugene.Skinner@va.gov.*

Dated: April 20, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–08628 Filed 4–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0846]

Agency Information Collection Activity Under OMB Review: VA Financial Services Center (VA–FSC) Vendor File Request Form

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0846.''

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0846'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Financial Services Center (VA–FSC) Vendor File Request Form (VA Form 10091).

OMB Control Number: 2900–0846.

Type of Review: Extension of a currently approved collection.

Abstract: The authorizing statute for this data collection falls under 31 U.S.C. 3701 and Public Law 104–134, Section 31001, Debt Collection Improvement Act of 1996. The mission of the Nationwide Vendor File Division of the Department of Veterans Affairs—Financial Services Center (VA–FSC) is to add, modify, or delete vendor records in the Financial Management Services (FMS) vendor file. The VA–FSC FMS vendor file controls aspects of when, where, and how vendors are paid. There are currently more than 2.4 million active vendor records in FMS.

The VA–FSC Vendor File Request Form, VA Form 10091, was previously created to streamline the data required to establish a vendor record from multiple sources into a single form. The VA now seeks a routine three-year extension of the previous OMB PRA clearance for this form. VA Form 10091 will be used throughout the VA to gather essential payment data from vendors (commercial, individuals, Veterans, employees, etc.) to establish or update vendor records in order to process electronic payments through the ACH network to the vendor's financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 194 on October 7, 2019, page 53571.

Affected Public: Individuals or Households.

Estimated Annual Burden: 37,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 150,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–08606 Filed 4–22–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Office of Small & Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA).

ACTION: Notice of a new system of records.

SUMMARY: The purpose of this new system of record is to gather and maintain information on small businesses owned and controlled by Veterans, including service-disabled Veterans, to enable them to effectively compete for Federal contracts, as well as working with the Small Business Administration in its provision of services to Veteran-owned businesses under the Veterans Entrepreneurship and Small Business Development Act of 1999.

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to 181VAOSDBU, Center for Verification and Evaluation (CVE) VA VetBiz Vendor Information Pages (VIP). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for

an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions about the system contact Ray Dockery at the Office of Small & Disadvantaged Business Utilization at 1–866–584–2344 or *osdbu@va.gov*.

SUPPLEMENTARY INFORMATION: The Office of Small and Disadvantaged Business Utilization (OSDBU), Center for Verification and Evaluation (CVE) operates and maintains the Department of Veterans Affairs (VA), CVE VetBiz Vendor Information Pages (VIP) solution using a combination of commercial off-the-shelf software (COTS) and cloud-based applications. These COTS and Cloud products leverage market-tested products that are currently listed as enterprise solutions in the VA environment and are in compliance with the VA's technology standards for enterprise-class software.

The VetBiz VIP solution provides an internet-facing portal for submitting data and tracking the progress of the verification team as well as an integrated customer relationship management (CRM) system with strong document management, collaboration, notification, and reporting functionality in alignment with the security requirements dictated by the collection, capture, and distribution of sensitive material.

This SORN has been revised based on the feedback from Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB).

Revisions made:

- Removed statement advising renaming of SORN, this is a new SORN and the name is not being changed in Supplementary Information Section.
- Removed the ''on its own initiative'' language in Routine Use 4, 5, and 13.
- Added ''Federal'' to list of agencies for hiring purposes in Routine Use 15.
- Removed Department of Health and Human Services (HHS) from Routine Use 17.
- Updated the **SUPPLEMENTARY INFORMATION** section with revisions made based on feedback from OIRA/OMB.

Signing Authority

The Senior Agency Official for Privacy, or designee, 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. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on November 25, 2019.

Dated: April 20, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Center for Verification and Evaluation (CVE) VA VetBiz Vendor Information Pages (VIP) (181VAOSDBU)

SECURITY CLASSIFICATION:

Information in this SORN is not classified information.

SYSTEM LOCATION:

The system is hosted on the Veterans Affairs (VA) Enterprise Cloud (EC), Microsoft Azure Government (MAG). The VA EC MAG is located in Azure Government Region 1 (USGOV VIRGINIA) and 2 (USGOV IOWA) and is designed to allow U.S. government agencies, contractors and customers to move sensitive workloads into the cloud for addressing specific regulatory and compliance requirements.

SYSTEM MANAGER(S):

Ray Dockery, Information Technology Systems Integration, Department of Veterans Affairs (VA), Office of Small & Disadvantaged Business Utilization (OSDBU), 810 Vermont Ave. NW, Room 1064, Washington, DC 20420. 1–866–584–2344

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 8127 and Public Law 106–50, as amended.

PURPOSE(S) OF THE SYSTEM:

To gather and maintain information on small businesses owned and controlled by Veterans, including service-disabled Veterans, to enable them to effectively compete for Federal contracts, as well as working with the Small Business Administration in its provision of services to Veteran-owned businesses under the Veterans Entrepreneurship and Small Business Development Act of 1999, as amended, Public Law 106–50, 113 Stat. 233.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans who have applied to have their small businesses included in the VIP database, and, if deceased, their surviving spouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records will contain data on Veteran-owned companies who have contacted the Center for Veterans Enterprise or have been extracted from e-government databases to which the companies have voluntarily submitted the data as a part of the marketing efforts to the federal government. The records may include business addresses and other contact information, information concerning products/services offered, information pertaining to the business, including Federal contracts, certifications, and security clearances held.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from the following sources:

a. Information voluntarily submitted by the business;

b. Information gathered from VA contracting activities;

c. Information extracted from other business databases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. *Data breach response and remedial efforts:* VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), and (3) the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remedial efforts with another Federal agency:* VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information

systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* VA may disclose information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. *Litigation:* VA may disclose information from this system of records to the Department of Justice (DoJ) in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. *Contractors:* VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

7. *Equal Employment Opportunity Commission (EEOC):* VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

8. *Federal Labor Relations Authority (FLRA):* VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Service Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

9. *Merit Systems Protection Board (MSPB):* VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

10. *National Archives and Records Administration (NARA) and General Services Administration (GSA):* VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C.

11. *Federal Agencies, for Research:* VA may disclose information from this system to a Federal agency to conduct research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and VA has determined prior to the disclosure that the VA data handling requirements are satisfied.

12. *Federal Agencies, for Computer Matches:* VA may disclose identifying information, including social security number, concerning Veterans, spouses of Veterans, and the beneficiaries of Veterans to other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of Veterans receiving VA medical care under Title 38, U.S.C.

13. *Federal Agencies, for Litigation:* VA may disclose information to another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

14. *Federal, State, Local Agencies, Organizations, for Claimants' Benefits:* VA may disclose health care information as deemed necessary and proper to federal, state, and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

15. *Federal, State, or Local Agency, for Hiring:* Any information in this system may be disclosed to a Federal, State, or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by the agency; provided, that if the information pertains to a Veteran, the name and address of the Veteran will not be disclosed unless the name and address is provided first by the requesting Federal, State, or local agency.

16. *OMB:* VA may disclose information from this system of records to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

17. *SSA, for SSN Validation:* VA may disclose names and social security numbers of Veterans, spouses of Veterans, and the beneficiaries of Veterans, and other identifying information as is reasonably necessary may be disclosed to the Social Security Administration to conduct computer matches to obtain information to validate the social security numbers maintained in VA records.

18. *Treasury, IRS:* VA may disclose the name of a Veteran or beneficiary, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Department of the Treasury, Internal Revenue Service, for the collection of Title 38 benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

19. *Outreach:* VA may disclose information from this system of records,

upon request, to any state, tribe, country, or municipal agency for the purposes of outreach to a benefit under Title 38, Code of Federal Regulations.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The VetBiz VIP will be stored in a computerized database. The system will operate on servers, located on the VA EC MAG, Region 1 (Virginia) and 2 (Iowa). Data backups will reside on appropriate media, according to normal system backup plans for VA Enterprise Operations. The system will be managed by VA OSDBU, in VA Headquarters, Washington, DC.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Automated records may be retrieved by the names of the Veteran business owners and/or their social security numbers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be maintained and disposed of, in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Read access to the system is via internet access, while VA staff, and contractor personnel will have access to the system, via VA Intranet and local connections, for operations, management and maintenance purposes and tasks. Access to the Intranet portion of the system is via VA PIV authentication and role-based access control, at officially approved access points. Veteran-owned small businesses will establish and maintain user-ids and passwords for accessing their corporate information under system control using VA's DS Logon or ID.me through Access VA. Policy regarding issuance of user-ids and passwords is formulated in VA by the Office of Information and Technology, Washington, DC. Security for data in the VetBiz database complies with applicable statutes, regulations and government-wide and VA policies. The system is configured so that access to the public data elements in the database does not lead to access to the non-public data elements, such as Veteran social security number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves, contained in this system of records, may access the records via the internet, or submit a written request to the system manager.

CONTESTING RECORD PROCEDURES:

The agency procedures whereby an individual can be notified at his or her request how he or she can contest the content of any record pertaining to him or her in the system.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire, whether this system of records contains information about themselves, should contact the Deputy Director, IT Systems Integration (00SB), 810 Vermont Ave. NW, Washington, DC 20420.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

There are no exemptions for the system.

HISTORY:

Not applicable, this is a new SORN.

[FR Doc. 2020–08610 Filed 4–22–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Federal Communications Commission

47 CFR Parts 1, 2, 25, et al.

Expanding Flexible Use of the 3.7 to 4.2 GHz Band; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 25, 27, and 101

[GN Docket No. 18–122; FCC 20–22; FRS 16548]

Expanding Flexible Use of the 3.7 to 4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules to reform the use of the 3.7–4.2 GHz band, also known as the C-Band. By repacking existing satellite operations into the upper 200 megahertz of the band (and reserving a 20 megahertz guard band), the Commission makes 280 megahertz of spectrum available for flexible use throughout the contiguous United States, and does so in a manner that ensures the continuous and uninterrupted delivery of services currently offered in the band. The Commission will hold a public auction to ensure that the public recovers a substantial portion of the value of this resource. And the Commission schedules that auction for later this year, with a robust transition schedule to ensure that a significant amount of spectrum is made available quickly for upcoming 5G deployments. This action is the next critical step in advancing American leadership in 5G and implementing the Commission's comprehensive 5G FAST Plan. The Commission modified the Report and Order released on March 3, 2020 with an erratum released on March 27, 2020 and a second erratum released on April 16, 2020. The changes from the first and second errata are included in this document.

DATES:

Effective date: June 22, 2020.

Compliance date: Compliance will not be required for §§ 25.138(a) and (b); 25.147(a) through (c); 27.14(w)(1) through (4); 27.1412(b)(3)(i), (c) introductory text, (c)(2), (d)(1) and (2), and (f) through (h); 27.1413(a)(2) and (3), (b), and (c)(3) and (7); 27.1414(b)(3), (b)(4)(i) and (iii), and (c)(1) through (3) and (6) and (7); 27.1415; 27.1416(a); 27.1417; 27.1419; 27.1421; 27.1422(c); 27.1424; and 101.101, Note (2) until the Commission publishes a document in the **Federal Register** announcing that compliance date.

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

FOR FURTHER INFORMATION CONTACT: Anna Gentry of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418–7769 or *Anna.Gentry@fcc.gov*. For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order and Order of Proposed Modification* in GN Docket No. 18–122, FCC 20–22 adopted February 28, 2020 and released March 3, 2020. The full text of the *Report and Order and Order of Proposed Modification,* including all Appendices, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554, or by downloading the text from the Commission's website at *http://docs.fcc.gov/public/attachments/FCC-20-22A1.pdf*. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

The Commission will send a copy of this *Report and Order and Order of Proposed Modification* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* released in July 2018 in this proceeding (83 FR 44128, August 29, 2018). The Commission sought written public comment on the proposals in the *NPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Paperwork Reduction Act

The requirements in §§ 25.138(a) and (b); 25.147(a) through (c); 27.14(w)(1) through (4); 27.1412(b)(3)(i), (c) introductory text, (c)(2), (d)(1) through (2), and (f) through (h); 27.1413(a)(2) and (3), (b), and (c)(3) and (7); 27.1414(b)(3), (b)(4)(i) and (iii), and (c)(1) through (3) and (6) and (7); 27.1415; 27.1416(a); 27.1417; 27.1419; 27.1421; 27.1422(c); 27.1424; and 101.101, Note (2) constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. They will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

Congressional Review Act

The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order and Order of Proposed Modification,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order and Order of Proposed Modification,* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Synopsis

I. Introduction

1. In this *Report and Order,* the Commission expands on its efforts to close the digital divide and promote U.S. leadership in the next generation of wireless services, including 5G wireless and other advanced spectrum-based services, by reforming the use of the 3.7–4.2 GHz band, also known as the C-Band. By repacking existing satellite operations into the upper 200 megahertz

of the band (and reserving a 20 megahertz guard band), the Commission makes a significant amount of spectrum—280 megahertz or more than half of the band—available for flexible use throughout the contiguous United States, and does so in a manner that ensures the continuous and uninterrupted delivery of services currently offered in the band. The Commission will hold a public auction to ensure that the public recovers a substantial portion of the value of this resource. And it schedules that auction for later this year, with a robust transition schedule to ensure that a significant amount of spectrum is made available quickly for upcoming 5G deployments. This action is the next critical step in advancing American leadership in 5G and implementing the Commission's comprehensive strategy to Facilitate America's Superiority in 5G Technology (the 5G FAST Plan).

II. Background

2. Mid-band spectrum is well-suited for next generation wireless broadband services given the combination of favorable propagation characteristics (as compared to high bands) and the opportunity for additional channel re-use (as compared to low bands). With the ever-increasing demand for more data on mobile networks, wireless network operators increasingly have focused on adding data capacity. One technique for adding capacity is to use smaller cell sizes—*i.e.,* have each base station provide coverage over a smaller area. Using mid-band frequencies can be advantageous for deploying a higher density of base stations. The decreased propagation distances at these frequencies reduce the interference between base stations using the same frequency, thereby allowing base stations to be more densely packed and increasing the overall system capacity. Mid-band spectrum thus presents wireless providers with the opportunity to deploy base stations using smaller cells to achieve higher spectrum reuse than the lower frequency bands while still providing indoor coverage. In addition, mid-band spectrum offers more favorable propagation characteristics relative to higher bands for fixed wireless broadband services in less densely populated areas. Given these characteristics, the Commission expects mid-band spectrum to play a prime role in next-generation wireless services, including 5G.

3. For these same reasons, mid-band spectrum was a key focus of Congress in the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act), when it considered how to address the pressing need for more spectrum for wireless broadband. Specifically, Section 605(b) of the MOBILE NOW Act requires the Commission to evaluate ''the feasibility of allowing commercial wireless services, licensed or unlicensed, to use or share use of the frequencies between 3700 megahertz and 4200 megahertz.'' The MOBILE NOW Act also requires that, no later than December 31, 2022, the Secretary of Commerce and the Commission ''identify a total of at least 255 megahertz of Federal and non-Federal spectrum for mobile and fixed wireless broadband use.'' In making 255 megahertz available, the MOBILE NOW Act provides that 100 megahertz below 8 GHz shall be identified for unlicensed use, 100 megahertz below 6 GHz shall be identified for use on an exclusive, flexible-use, licensed basis for commercial mobile use, and 55 megahertz below 8 GHz shall be identified for licensed, unlicensed, or a combination of uses.

4. The United States is not alone in recognizing the potential of mid-band spectrum for 5G. International governing bodies and several other countries likewise are reviewing the suitability of a number of frequency bands for next generation 5G wireless services, including the 3.7–4.2 GHz bands. For example, the Radio Spectrum Policy Group of the European Commission issued a mandate to the European Conference of Postal and Telecommunications Administrations (CEPT) that the 3.4–3.8 GHz band be the first primary band for 5G, and CEPT currently is developing a report that will provide recommendations for updating the European regulatory framework for this band. A number of European governments are taking actions to make parts of the band available for 5G. Germany intends to make the 3.4–3.8 GHz band available by the end of 2021. In December 2019, France announced the procedures for awarding licenses in the 3.4–3.8 GHz band, which it allocated as a ''core'' 5G band, consistent with the European Commission's guidance. And the Austrian government held its first auction of 5G licenses in the 3.4–3.8 GHz band in the spring of 2019. There is also significant interest in parts of the band in Asia and in Australia. For example, the Ministry of Internal Affairs and Communications in Japan awarded licenses in the 3.6–4.1 GHz band for 5G in 2019. In August 2019, Australia initiated an initial investigation of possible arrangements for fixed and mobile broadband use in the 3.7–4.2 GHz band. And in November 2018, the United Arab Emirates issued licenses in the 3.3–3.8 GHz band for the establishment of 5G networks.

A. Current Use of the 3.7–4.2 GHz Band and Adjacent Bands

5. The 3.7–4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. For FSS, the 3.7–4.2 GHz band (space-to-Earth or downlink) is paired with the 5.925–6.425 GHz band (Earth-to-space or uplink), and collectively these bands are known as the ''conventional C-band.'' Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. FSS operators use this band to deliver programming to television and radio broadcasters throughout the country and to provide telephone and data services to consumers. The 3.7–4.2 GHz band is also used for reception of telemetry signals transmitted from satellites to earth stations, typically near the edges of the band, *i.e.,* at 3.7 GHz or 4.2 GHz.

6. Satellites operating in the C-band typically have 24 transponders, each with a bandwidth of 36 megahertz. Thus, the 24 transponders on a satellite use 864 megahertz of spectrum, or 364 megahertz more than the 500 megahertz available. This is the result of spectrum reuse—adjacent transponders overlap, and self-interference is avoided by using opposite polarizations. Under existing rules, space station operators in the 3.7–4.2 GHz band are authorized to use all 500 megahertz exclusively at any orbital slot, but non-exclusively in terms of geographic coverage. Therefore, multiple FSS incumbents using satellites deployed at different locations in the geostationary orbit can transmit within overlapping geographic boundaries. Space stations that serve or transmit signals into the U.S. market may also be providing service to other countries.

7. For the Fixed Service in the 3.7–4.2 GHz band, 20 megahertz paired channels are assigned for point-to-point common carrier or private operational fixed microwave links. There are fewer than 100 fixed service licensees operating in the band.

8. Last year, in response to a Bureau-level public notice, space station operators and earth station owners filed certifications and information regarding their 3.7–4.2 GHz usage. Intelsat License

LCC (Intelsat), SES Americom, Inc. (SES), Eutelsat S.A. (Eutelsat) and Telesat Canada, ABS Global (ABS), Hispamar S.A. (Hispasat), and Star One S.A. (Star One) provided specific information on the existing C-band downlink capacity and contracted use for 66 satellites authorized to provide service in the 3.7–4.2 GHz band to the United States. In March 2019, the most recent month of data collected, the combined FSS downlink capacity and usage of those 66 satellites was, respectively, 59,427 megahertz and 33,138 megahertz in total with 19,961 megahertz of usage providing service to the United States (*i.e.,* 33.59% of the total capacity of the 66 satellites). Intelsat, SES, Eutelsat, Telesat Canada, and Star One have publicly disclosed the provision of service to registered earth stations in the United States in the 3.7–4.2 GHz band.

9. The spectrum band immediately below the 3.7–4.2 GHz band is already authorized for commercial wireless operations. In 2015, the Commission established the Citizens Broadband Radio Service in the 3.55–3.7 GHz band for shared use between commercial wireless operations and incumbent operations—including military radar systems, non-federal FSS earth stations, and, for a limited time, grandfathered wireless broadband licensees in the 3.65–3.7 GHz band. Under the Commission's rules, existing terrestrial wireless operations in the 3.65–3.7 GHz band are grandfathered for up to five years or until the end of their license term, whichever is longer. The Citizens Broadband Radio Service is available for flexible wireless use and will support next generation wireless services, including 5G. Spectrum at or below the 3.7 GHz band is also used for reception of telemetry signals transmitted by satellites. The band just above the 3.7–4.2 GHz band—4.2–4.4 GHz—is allocated for aeronautical radionavigation using radio altimeters in the United States. In 2015, the World Radio Conference added a global co-primary allocation for wireless avionics intra-communications systems. Radio altimeters are critical aeronautical safety-of-life systems primarily used at altitudes under 2500 feet and must operate without harmful interference. Wireless Avionics Intra-Communications systems provide communications over short distances between points on a single aircraft and are not intended to provide air-to-ground communications or communications between two or more aircraft.

B. Procedural History

10. *Mid-Band Notice of Inquiry.*—In the *NOI,* the Commission began an evaluation of whether spectrum between 3.7 GHz and 24 GHz could be made available for flexible wireless use. The *NOI* sought comment in particular on three mid-range bands that stakeholders had identified for expanded flexible use (3.7–4.2 GHz, 5.925–6.425 GHz, and 6.425–7.125 GHz), and it asked commenters to identify other mid-range frequencies that may be suitable for expanded flexible use. The Commission asked questions specific to the challenges and opportunities presented by each band. For example, the Commission asked commenters to identify options for more intensive fixed and mobile use in the 3.7–4.2 GHz band, including whether the band is desirable or suitable for mobile use, whether the existing Fixed Service rules should be modified to support more flexible and intensive fixed use, such as point-to-multipoint services.

11. *Freeze and Filing Window Public Notices.*—In April 2018, the Wireless Telecommunications, International, and Public Safety and Homeland Security Bureaus announced a temporary freeze on the filing of new or modified applications for earth station licenses, receive-only earth station registrations, and fixed microwave licenses in the 3.7–4.2 GHz band, in order to preserve the current landscape of authorized operations in the band pending the Commission's consideration of the issues raised in response to the *NOI.* In June 2018, the International Bureau established a window ending October 17, 2018 (later extended to October 31, 2018), for filing applications to license or register existing earth stations in the 3.7–4.2 GHz frequency band as a limited exception to the earth station application freeze. Further, the International Bureau announced a temporary freeze on the filing of certain space station applications, effective June 21, 2018.

12. *Order and Notice of Proposed Rulemaking.*—In July 2018, the Commission adopted an *Order and Notice of Proposed Rulemaking* (83 FR 44128, Aug. 28, 2018) (*Order and NPRM*) in this proceeding. To enable the Commission to make an informed decision about the proposals discussed in the *NPRM,* the *Order* required certain parties to file information about their operations—including information on the scope of current FSS use of the band—and it noted that several of the potential transition methods outlined in the *NPRM* might require additional earth station or space station information.

13. In the *NPRM,* the Commission sought comment generally on the future of incumbent use of the 3.7–4.2 GHz band and specifically on how to define the classes of incumbents, including earth stations, space stations, and point-to-point FS. The Commission sought comment on revising its part 25 rules to limit eligibility to file applications for earth station licenses or registrations to incumbent earth stations, proposed to update International Bureau Filing System (IBFS) to remove 3.7–4.2 GHz band earth station licenses or registrations for which the licensee or registrant did not file the certifications required in the *Order* (to the extent they were licensed or registered before April 19, 2018), and sought comment on how to maintain the accuracy of IBFS data. Regarding space stations, the Commission proposed to revise its rules to bar new applications for space station licenses and new petitions for market access concerning space-to-Earth operations in the 3.7–4.2 GHz band. Given the limited number of point-to-point Fixed Service licensees in the band, the Commission proposed to sunset point-to-point Fixed Service use in the band, and it sought comment on whether existing fixed links should be grandfathered or transitioned out of the band over some time period, after which all licenses would either be cancelled or modified to operate on a secondary, non-interference basis.

14. The Commission also sought comment on the current and future economic value of FSS in the band, on approaches for expanding flexible and more intensive fixed use of the band without causing harmful interference to incumbent operations, and on proposals to clear all or part of the band for flexible use. More specifically, the Commission sought comment on a variety of approaches for expanding flexible use in the 3.7–4.2 GHz band, including market-based, auction-based, hybrid, and other approaches to repurpose some or all of the band. The Commission also sought comment on the appropriate band plan, as well as the licensing, operating, and technical rules for any new flexible use licenses in the band. In response to the *NPRM,* comments and reply comments were due on October 29, 2018 and December 11, 2018, respectively.

15. *May Public Notice.*—On May 3, 2019, the International and Wireless Telecommunications Bureaus issued a public notice (84 FR 25514, June 3, 2019) (*May 3 Public Notice*) seeking comment on positions taken by the C-Band Alliance, the Small Satellite

Operators, and T-Mobile. The *May 3 Public Notice* sought comment on the enforceable interference protection rights, if any, granted to space station operators against co-primary terrestrial operations and whether those rights depend on the extent to which incumbent earth stations receive their transmissions within the United States. The *May 3 Public Notice* also sought comment on the enforceable interference protection rights granted to licensed or registered receive-only earth station operators against co-primary terrestrial operations and whether registered receive-only earth station operators are eligible as ''licensee[s]'' under Section 309(j)(8)(G), to voluntarily relinquish their rights to protection from harmful interference in the reverse phase of an incentive auction. The *May 3 Public Notice* also asked whether the Commission had authority to offer payments to such earth stations to induce them to modify or relocate their facilities. The *May 3 Public Notice* also sought comment on the limits, if any, that Section 316 of the Act places on the proposals raised by the Commission in the *NPRM* or by the commenters in this docket and on obligations, if any, that Section 316 of the Act places on the Commission vis-à-vis licensed or registered receive-only earth station operators.

16. *July Public Notice.*—On July 19, 2019, the Wireless Telecommunications Bureau, International Bureau, Office of Engineering and Technology, and Office of Economics and Analytics issued a public notice (84 FR 35365, July 23, 2019) (*July 19 Public Notice*) seeking comment on filings by: (1) ACA Connects—America's Communications Association, the Competitive Carriers Association, Charter Communications, Inc. (ACA Connects Coalition); (2) AT&T; and (3) the Wireless internet Service Providers Association, Google, and Microsoft (WISPA plan). In particular, the *July 19 Public Notice* sought comment on ways to increase the efficient shared use of the C-band through the submitted plans, the viability of ACA Connects Coalition's plan to move all video programming to fiber, and the viability of fiber generally.

III. Report and Order

17. The Commission believes C-band spectrum for terrestrial wireless uses will play a significant role in bringing next-generation services like 5G to the American public and assuring American leadership in the 5G ecosystem. The Commission takes action to make this valuable spectrum resource available for new terrestrial wireless uses as quickly as possible, while also preserving the continued operation of existing FSS services during and after the transition. The record in this proceeding makes clear that licensing mid-band spectrum for flexible use will lead to substantial economic gains, with some economists estimating billions of dollars in increases on spending, new jobs, and America's economy. At the same time, the Commission also recognizes the significant benefit to consumers provided by incumbent FSS services throughout the United States. Because the Commission finds that incumbent space station operators will be able to maintain the same services in the upper 200 megahertz as they are currently providing across the full 500 megahertz of C-band spectrum, the rules adopted in this *Report and Order* will benefit the American public by simultaneously preserving existing FSS services and making way for the provision of next-generation wireless services throughout the contiguous United States.

18. In this *Report and Order,* the Commission concludes that a public auction of the lower 280 megahertz of the C-band will best carry out the Commission's goals, and it adds a mobile allocation to the 3.7–4.0 GHz band so that next-generation services like 5G can use the band. Relying on the *Emerging Technologies* framework, the Commission adopts a process to relocate FSS operations into the upper 200 megahertz of the band, while fully reimbursing existing operators for the costs of this relocation and offering accelerated relocation payments to encourage a speedy transition. The Commission also adopts service and technical rules for overlay licensees in the 280 megahertz of spectrum designated for transition to flexible use.

A. Public Auction of 280 Megahertz of C-Band Spectrum for Flexible Use

19. After review of the extensive record in this proceeding, the Commission adopts a traditional Commission-administered public auction of overlay licenses in the 280 megahertz of C-band spectrum made available for flexible use. The Commission adopts this approach because it will rapidly and effectively repurpose this band for new wireless terrestrial uses, rely on established mechanisms for putting this valuable spectrum to its highest valued use pursuant to statutory criteria designed to promote competition and other important public interest goals, and provide reasonable accommodations to eligible space station operators and incumbent earth stations. The advantages of the public auction include making a significant amount of 3.7–4.2 GHz band spectrum available quickly for flexible-use licenses and adopting a transition period that aligns stakeholders' incentives, particularly those of incumbent FSS operators, so as to achieve an expeditious transition, while ensuring effective accommodation of relocated incumbent users.

20. In the *NPRM,* the Commission sought comment on a variety of market-based mechanisms for expanding flexible use in the 3.7–4.2 GHz band, including a private sale approach, auction mechanisms, and other hybrid approaches that combined elements of various mechanisms. For the private sale approach, the *NPRM* sought comment on a process whereby the satellite industry voluntarily would negotiate with any interested terrestrial operators for the sale of the space station operators' rights in the band and then would clear the negotiated-for spectrum and make it available for flexible use while ensuring uninterrupted incumbent earth station operations through a variety of potential means. With respect to more traditional, Commission-led transition mechanisms, the *NPRM* sought comment on various auction approaches, such as an overlay, incentive, and capacity auctions, including transition mechanisms used in prior proceedings. The *May 3 Public Notice* sought additional comment on the Commission's authority under the Act as well as approaches raised by the C-Band Alliance and T-Mobile. And the *July 19 Public Notice* sought additional comment on a public auction approach advocated by ACA Connects (the ACA Plan), among other issues. Under each of these approaches, the Commission sought comment on how to ensure that incumbent C-band users are effectively transitioned out of the spectrum made available for flexible-use and on whether to provide reimbursement to incumbent space station operators for the costs of transitioning their services.

21. The Commission adopts a traditional Commission-administered public auction of overlay licenses to make the C-band spectrum available expeditiously for next-generation terrestrial wireless use. With overlay licenses, the licensees obtain the rights to geographic area licenses ''overlaid'' on top of the incumbent licensees, meaning that they may operate anywhere within its geographic area, subject to protecting the operations of incumbent licensees. The Commission has offered two basic forms of overlay licenses: One that grandfathers legacy incumbents and allows their voluntary relocation, and another that makes relocation of incumbents to comparable facilities mandatory. The Commission

adopts the latter approach—assigning overlay licenses via public auction with rules for clearing the band for flexible use and holding incumbents harmless—for several reasons.

22. *First,* the Commission finds that a public auction of flexible-use licenses—conditioned upon relocation of incumbent operations—will best ensure fairness and competition in the allocation of these new flexible-use licenses. The Commission has a long and successful history conducting public auctions of spectrum and has well-established oversight processes designed to promote transparency and ensure that valuable public spectrum resources are put to their highest and best use, while also promoting other public interest goals articulated in Section 309(j) of the Act. In more recent years, public auctions of new flexible-use rights have played a pivotal role in transitioning existing bands and making spectrum available for new uses. Importantly, the Commission carefully designs each auction to include transparent procedures that promote fair-market pricing and robust participation from a diverse group of bidders. Commission control and oversight of the auction of new flexible-use licenses in the 3.7–3.98 GHz band will ensure that a wide range of interested parties have fair and equal access to new spectrum rights that will be vital to the introduction of next-generation wireless services.

23. *Second,* a public auction will maintain the Commission's ability to ensure that incumbent space station operators and earth station owners are able to provide and receive the services and content that they currently provide and receive both during and after mandatory relocation. The safeguards the Commission adopts in conjunction with a public auction ensure that the clearing process is both equitable and transparent and that it provides customers of these incumbent C-band providers assurance that they will continue to be able to receive C-band services during and after the transition. In addition to licensing and technical rules designed to promote harmony between existing C-band services and new flexible uses in the band, the Commission adopts rules for the transition process to ensure that all relevant stakeholders have access to information regarding the necessary steps, costs, respective obligations of each party, and overall timeline for transitioning existing C-band services to the upper 200 megahertz of the band. The Commission's experience in overseeing other complicated, multi-stakeholder transitions of diverse incumbents demonstrates the need for Commission rules and oversight of the transition process to mitigate disputes among stakeholders, expedite the clearing process, and ensure all affected parties receive what they are entitled to in a timely manner.

24. *Third,* the Commission finds that its authority to hold such an auction is firmly established. Section 309 governs the Commission's process for granting licenses under Title III, and it expressly grants the Commission authority to hold an auction where mutually exclusive applications are accepted for initial spectrum licenses. The Commission has used an auction of overlay licenses on a number of occasions to repurpose spectrum for a new service, by requiring incoming licensees to clear the band (typically by funding the relocation of incumbent licensees) in order to fully deploy the new service in a manner that meets the goals and requirements that the Commission had established under Section 303 for providing that service. Since 1992, the Commission has also adopted a series of rules to enable new licensees to enter into voluntary or mandatory negotiations with incumbent operators to clear a spectrum band after which, failing an agreement, the new entrant could involuntarily clear incumbent operations by expressing its intent to commence operations in that band and paying for all reasonable relocation costs. Courts repeatedly have approved the Commission's use of this authority as a means of introducing new services and ensuring that displaced incumbents are placed in positions comparable to those that they had occupied prior to displacement. In light of this well-established precedent and the Commission's repeated success in conducting such auctions in a manner that promotes the public interest, convenience, and necessity, the Commission finds that it has ample legal authority to employ an auction of overlay licenses as a means of introducing new flexible uses in the C-band.

25. *Fourth,* the Commission finds that holding a public auction will ensure this spectrum gets put to its highest, best use quickly. In formulating the transition process and rules adopted in this *Report and Order,* stakeholders have repeatedly emphasized the need to make C-band spectrum available for flexible use as quickly as possible, with the goal of conducting an auction of overlay licenses in the 3.7–3.98 GHz band by the end of 2020. Indeed, by seeking comment, in a separate public notice, on procedures for an auction of 3.7 GHz Service licenses concurrently with this *Report and Order,* the Commission immediately initiates the necessary Commission processes to prepare for an auction. Notably, while satisfying the administrative procedures and requirements associated with a Commission-administered auction, the timelines adopted in this *Report and Order* result in spectrum being made available for flexible use at least as quickly as any of the other transition mechanisms proposed in this proceeding.

26. The Commission's decision to hold a public auction has overwhelming support in the record. A range of commenters with diverse interests support Commission-led auction approaches—including those involving spectrum clearing and geographic clearing—and they emphasize the importance, regardless of the chosen transition approach, that the Commission maintain oversight throughout the transition process. Several commenters support a traditional forward auction, using a standard clock auction format such as that used in Auction 102 for the 24 GHz band. Many commenters that support a public auction of flexible-use licenses in a portion of the 3.7–4.2 GHz band emphasize that the approach must also include a condition on the licenses requiring new flexible-use licensees to reimburse incumbent C-band users for their relocation costs. Certain parties that originally advocated for alternate transition mechanisms in this proceeding have come to support a public auction of overlay licenses as an effective approach to repurposing C-band spectrum for flexible use.

27. Next, the Commission designates 280 megahertz of C-band spectrum (3.7–3.98 GHz) throughout the contiguous United States to be cleared for auction plus another 20 megahertz (3.98–4.0 GHz) to be cleared to serve as a guard band. Given the high demand for mid-band spectrum, the Commission in the *NPRM* sought comment on whether to set a ''socially efficient amount of [C-band] spectrum'' for repurposing in order to ensure this valuable spectrum is put to its highest and best use.

28. The Commission finds that clearing the lower 280 megahertz (plus a 20 megahertz guard band) of the C-band strikes the appropriate balance between making available as much spectrum as possible for terrestrial use in a short timeframe and ensuring sufficient spectrum remains to support and protect incumbent uses. In particular, the Commission finds that making 280 megahertz available for flexible use is sufficiently large to spur necessary investment in equipment and network deployment resources for next-

generation wireless services in this band. Numerous commenters support clearing 280 megahertz or more to support terrestrial 5G use.

29. The Commission's approach will permit all incumbents to maintain comparable service for existing customers and to obtain future customers in the upper part of the band, while making more efficient use of the band as a whole. C-band space station operators that currently are serving U.S. customers are in a unique position to quickly clear a significant portion of this band spectrally by transitioning their services to the upper portion of the band. Through a process of ''satellite grooming,'' each satellite company can use their internal fleet management resources to determine the most efficient way to migrate customers to the upper portion of the band, including in some instances by migrating customers to transponders on a different space station operator's fleet. The record adequately demonstrates the satellite industry's ability to clear 280 megahertz for public auction, along with a 20 megahertz guard band, while also ensuring that its customers and incumbent earth station operators are adequately transitioned and able to continue operations without interruption. Furthermore, the rules adopted in this *Report and Order* will ensure that incumbent operations are adequately accommodated and can continue to make use of existing satellite services, while incurring no significant transition costs. The Commission therefore finds that an auction of the lower 280 megahertz of C-band spectrum across the contiguous United States will best advance the Commission's goal of ensuring the United States' leadership in 5G deployment and service offerings without compromising the continued operation of existing C-band services.

30. The Commission's decision to hold a public auction of overlay licenses to operate in the 3.7–3.98 GHz band is the result of careful review of the extensive record in this proceeding, which included transition mechanism proposals submitted by a variety interested parties across stakeholder groups.

31. *C-Band Alliance.*—The Commission declines to adopt the C-Band Alliance proposal for a private sale approach led by incumbent C-band space station operators. The Commission finds that, relative to the C-Band Alliance proposal, the use of a public auction will provide a greater benefit to potential bidders, ensure Commission oversight and protect the interests of displaced incumbent C-band users, promote a rapid transition, and be more firmly grounded in established legal authority. *First,* the C-Band Alliance proposal would place the licensee selection process for an entire band of newly configured spectrum into private hands by vesting private entities with the exclusive ability to allocate new terrestrial rights to valuable C-band spectrum through privately negotiated sales that would not be subject to any of the procedural protections or public interest requirements that Commission-led auctions are designed to promote. Such an approach lacks the transparency and procompetitive features of a public auction and would provide bidders with less certainty about fair and equal access to new flexible-use licenses. In contrast to a private sale conducted by private entities whose primary incentive would be to maximize profits, a Commission-led auction will be driven by broader public interests, including robust participation by a diverse group of bidders, competitive pricing, and transparent allocation of this valuable public resource.

32. *Second,* Commission oversight of the public auction and issuance of flexible-use licenses conditioned upon relocation of incumbent operations will more effectively ensure that all incumbent C-band users are made whole upon completion of the transition. The C-Band Alliance's proposal would give certain incumbent space station operators substantial discretion to decide whether and to what extent all affected C-band users should be accommodated in the transition and compensated for their relocation costs. This responsibility is directly at odds with space station operators' fiduciary duties to their shareholders to maximize the retained profits from the private sale. In contrast, Commission oversight of a public auction and the transition process will be specifically designed to ensure that incumbent C-band users are able to maintain their existing services and are reimbursed for all reasonable costs associated with the transition.

33. *Third,* the Commission believes that a public auction of overlay licenses will make spectrum available for flexible-use just as fast as a private sale approach. Indeed, the Commission plans to hold the public auction this year—just as the C-Band Alliance had proposed for its private sale—and the Commission incorporates aspects of their proposed transition process and deadlines into this *Report and Order.* The Commission disagrees with the C-Band Alliance argument that any Commission-led auction mechanism would fail to overcome the holdout problem due to non-exclusive incumbent rights in the band and would require significant Commission intervention that would delay the auction approach relative to a market-based approach. Despite its initial claim that its private sale proposal would solve the holdout problem by incentivizing incumbent space station operators to cooperate in the transition and collectively sell their shared spectrum rights to new flexible-use licensees, only three incumbent C-band space station operators are members of the C-Band Alliance and have fully supported the C-Band Alliance's proposal. Unless the Commission were to adopt rules granting the C-Band Alliance exclusive authority to lead the transition and compelling non-member space station operators to cooperate with the C-Band Alliance's approach, there would be a potential, and indeed likely, holdout problem that could undermine the success of such a transition. The Commission believes such exclusive authority would raise significant competitive concerns in the absence of unanimity among incumbent space station operators. In other words, due to the existing licensing regime in this band, the potential holdout problem needs to be addressed regardless of whether the Commission adopts a public auction or private sale approach. The rules adopted in this *Report and Order* are specifically designed to reduce the risk of potential holdouts by aligning the incentives of all relevant C-band space station operators with the Commission's goals of rapid introduction of C-band spectrum into the marketplace, and the Commission finds that its public auction approach will provide for rapid clearing upon final action in this proceeding.

34. *Finally,* the Commission finds that a public auction is more consistent with the Commission's long-standing legal authority to manage spectrum in the public interest than a private sale conducted by incumbent space station operators. In contrast to the Commission's well-established authority to conduct auctions of overlay licenses conditioned upon the relocation of incumbent users, the C-Band Alliance proposal would require an unprecedented grant of authority to private entities to negotiate with new entrants for the conveyance of spectrum-use rights that FSS licensees do not currently have. While the Commission has previously modified the existing licenses of incumbents to assign new license rights without creating a mechanism to allow for the

filing of mutually exclusive applications, such modifications were adopted in order to authorize the incumbent licensees to provide new or additional services. Under the C-Band Alliance proposal, the Commission would be granting incumbent space station operators new flexible-use rights *solely* for the purpose of allowing the incumbents to sell those rights on the secondary market, without actually requiring them to meet any buildout requirements or initiate terrestrial service. Indeed, given the full band, full arc nature of FSS licenses, incumbent space station operators could not provide terrestrial mobile services without causing interference to existing C-band satellite services.

35. *T-Mobile Proposal.*—The Commission declines to adopt T-Mobile's proposal of an incentive auction and modified proposal of a more traditional forward auction of flexible-use licenses. *First,* T-Mobile's proposal exceeds our incentive auction authority. Section 309(j)(8)(G) restricts our use of incentive auctions so that only ''licensees'' may voluntarily relinquish licensed ''spectrum usage rights'' in exchange for accelerated relocation payments. Unlike the incumbent space station operators, earth station registrants are not licensees. The Communications Act defines the term ''license'' narrowly as ''that instrument of authorization *required by* [the Act] or the rules and regulations of the Commission made pursuant to [the Act], for the use or operation of apparatus for *transmission* of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.'' Since 1979 the Commission has found that licensing receive-only earth stations was not required by the Communications Act because, by definition, such earth stations do not transmit energy, communications, or signals by radio, and since 1991 receive-only earth stations have not been eligible to apply for a Commission license. While some receive-only earth stations in the C-band are licensed to transmit in another band (*i.e.,* licensed transmit-receive earth stations), that license to transmit does not provide the earth station operator with the right to transmit in the C-band, where they hold no ''licensed spectrum usage rights.'' Because receive-only earth stations are (and must be) unlicensed and have no ''transmission'' authority, earth station registrants may not participate in the supply-side of an incentive auction.

36. *Second,* because FSS licensees in the C-band share the same non-exclusive rights to transmit nationwide, across the full 500 megahertz, their license rights are not substitutes such that they could compete against one another in a reverse auction to forfeit those rights; all incumbent space station operators would need to clear their existing services from a portion of the band in order to make that spectrum available for flexible use. Section 309(j)(8)(G) specifically requires that, in order for the Commission to hold an incentive auction, ''at least two *competing* licensees participate in the reverse auction.'' Because incumbent C-band space station operators are not competing licensees that could bid against one another in a reverse auction, T-Mobile's proposal would be an unlawful exercise of the Commission's incentive auction authority.

37. *Third,* the incentive auction would result in a patchwork of spectrum and geographic areas being made available for flexible use, rather than a uniform block of spectrum being cleared throughout the contiguous United States. T-Mobile's proposal would allow incumbent earth station owners to agree to clear geographically, for example by switching existing C-band services to fiber. This would likely result in a disproportionate amount of C-band spectrum being made available in urban areas, where the demand for C-band spectrum is higher and the costs of transitioning to alternative transition mechanisms is lower than in rural areas. The Commission therefore finds that T-Mobile's proposal would undermine the Commission's stated goals for this proceeding to close the digital divide and promote the introduction of next-generation wireless services in all communities, both rural and urban, throughout the contiguous United States.

38. Because our public auction of overlay licenses provides a Commission-led auction mechanism to make 280 megahertz available for flexible use throughout the contiguous United States and compensate incumbent C-band users for their relocation costs, the Commission finds that it captures all the benefits of T-Mobile's proposal while avoiding the legal and practical complications of an incentive auction in this band. Indeed, T-Mobile now agrees that a traditional forward auction of overlay licenses will be a more straight-forward approach to implement than the incentive auction it originally proposed.

39. *ACA Connects Coalition Proposal.*—The Commission declines to adopt the ACA Connects Coalition proposal to transition MVPD earth stations to fiber and repack remaining earth station users into the upper portion of the band. *First,* while the ACA Connects Coalition proposes a public auction to award new terrestrial flexible-use licenses and assign obligations for transition costs, it does not provide potential bidders with the same certainty as the public auction of overlay licenses adopted here. Importantly, the ACA Connects Coalition suggests that programmers, MVPDs, and C-band service providers would negotiate contracts and develop plans for the transition ''in the period between an FCC decision and the completion of an auction.'' However, such private contract negotiations would involve decisions—such as how much spectrum will be made available, in which geographic areas, and on what timeline—that would be crucial for potential bidders to understand in advance of the auction. It is unclear from the ACA Connects Coalition proposal when these decisions would be made and how that information would be conveyed to potential bidders such that they could make informed decisions about the spectrum band and geographic areas they would compete for at auction. The Commission finds that its public auction of overlay licenses will provide bidders with more certainty by designating a uniform block of 280 megahertz that will be made available for flexible use throughout the contiguous United States.

40. *Second,* the Commission finds that its approach will more effectively ensure that all incumbent C-band users are adequately transitioned and able to continue receiving C-band services after the introduction of new terrestrial wireless operations in the 3.7 GHz Service. The Commission agrees with those commenters who point out that the ACA Connects Coalition proposal lacks important implementation details, such as how to manage the transition of a wide variety of stakeholders, including the design, testing, construction, and integration of nationwide fiber networks and the necessary provisions for maintaining fiber operations in the future. In contrast to the ACA Connects Coalition proposal, the approach the Commission adopts here ensures that incumbent earth station owners will be effectively transitioned and will be able to receive the same C-band services after the transition as they do today.

41. *Third,* the Commission finds that the ACA Connects Coalition proposal is likely to underestimate the complexities and costs of transitioning from C-band satellite spectrum to fiber and would be unlikely to facilitate more rapid and extensive deployment of terrestrial wireless services than the approach the

Commission adopts in this *Report and Order.* The ACA Connects Coalition proposes that clearing would be conducted on a market-by-market basis, which would have ''some urban markets'' available for flexible-use in approximately 30 months, the ''majority of remaining markets'' in three years, and the last, ''hard-to-build areas'' in five years. The Commission shares the concerns of many commenters who doubt that the ACA Connects Coalition proposal could be completed by those timelines. The Commission finds that its approach minimizes the costs, complexities, and risks of delay inherent in the ACA Connects Coalition proposal and is therefore more likely to clear a substantial amount of C-band spectrum in a faster timeframe via a more efficient mechanism.

42. *Fourth,* the Commission finds that the approach adopted in this *Report and Order* is more consistent with the Commission's legal authority to manage spectrum and conduct auctions in the public interest than the ACA Connects Coalition proposal. Section 309(j) of the Act requires that all proceeds from the use of a competitive bidding system must be deposited in the U.S. Treasury. The ACA Connects Coalition proposal that the Commission retain a portion of the revenues from a traditional forward auction to cover the C-band incumbents' relocation costs would therefore violate the provisions of Section 309(j). There is an exception to this rule where the Commission exercises its incentive auction authority to incentivize incumbent licensees to relinquish their spectrum usage rights in exchange for a share of the auctions proceeds. However, because space station operators have non-exclusive rights the full C-band nationwide, an incentive auction in this band would fail to satisfy the Section 309(j)(8)(G) requirement that at least two competing licensees must participate in the reverse auction. The Commission therefore finds that the ACA Connects Coalition proposal would be an unlawful exercise of the Commission's incentive auction authority.

1. Allocation of the 3.7–4.2 GHz Band

43. The Commission adopts rules to add a primary non-Federal mobile, except aeronautical mobile, allocation to the 3.7–4.0 GHz band nationwide. In the United States, that band currently has exclusive non-Federal allocations for FSS and Fixed Service. In addition, the International Table of Frequency Allocations also has a mobile allocation worldwide in the band, with the limitation that in the Americas, Southeast Asia, Australia, and New Zealand, the mobile allocation excludes aeronautical mobile.

44. As the Commission noted in the *NPRM,* Section 303(y) provides the Commission with authority to provide for flexibility of use if: ''(1) Such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and opportunity for public comment, that (A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users.'' Adopting a primary non-Federal mobile, except aeronautical mobile, allocation to the 3.7–4.0 GHz band and revising the FSS allocation within the contiguous United States will foster more efficient and intensive use of mid-band spectrum to facilitate and incentivize investment in next generation wireless services. Mid-band spectrum is important for next generation wireless broadband service due to its favorable propagation and capacity characteristics. Allocating the 3.7–4.0 GHz band nationwide for mobile services also meets the Commission's mandate under the MOBILE NOW Act to identify spectrum for mobile and fixed wireless broadband use. In addition, adopting this allocation will harmonize the Commission's allocations for the 3.7–4.0 GHz band with international allocations. Adding a primary mobile service allocation will provide the ability to make as much mid-band spectrum available as possible, which will help to ensure the nation's success in deploying the next generation of wireless services. Finally, because we adopt rules designating 3.98–4.0 GHz as a guard band and requiring FSS and Fixed Service licensees to transition their services to the upper portion of the band and to other bands, respectively, the introduction of mobile use will not result in harmful interference among users of the 3.7–4.2 GHz band.

45. The Commission also removes the FSS allocation within the contiguous United States in the 3.7–4.0 GHz band. To allow for flexible use of the 3.7–3.98 GHz band within the contiguous United States and for fixed use outside of the contiguous United States, the Commission leaves in place the existing Fixed Service allocation to the 3.7–4.2 GHz band while sunsetting the existing licenses for point-to-point operations within the contiguous United States. Authorizations for FSS and Fixed Service operations outside of the contiguous United States may continue to operate in the entire 3.7–4.2 GHz band. The Commission excludes locations outside of the contiguous United States from the public auction and relocation. Locations outside of the contiguous United States have a greater need for C-band services, particularly for the provision of services necessary for the protection of life and property—including telehealth, E911, and education services. The Commission agrees that Alaska, Hawaii, and the U.S. territories should be excluded from any reallocation and repurposing to terrestrial use because C-band service is often the only option available to reach remote villages to provide basic telephone service, E911, and broadband service used to support applications such as telehealth and distance learning. As a result, we believe it is appropriate to retain the FSS allocation across the 3.7–4.2 GHz band outside the contiguous United States.

46. The Commission also modifies footnote NG457A which describes the status of earth stations on vessels in 3.7–4.2 GHz to be consistent with its new band plan. NG457A will now provide that incumbent licensees may continue to provide service to earth stations on vessels on an unprotected basis vis-à-vis both fixed service operations and the new mobile services. In addition, NG457A will now limit the band where ESVs may be coordinated for up to 180 days to 4.0–4.2 GHz rather than 3.7–4.2 GHz as in the existing footnote because FSS will no longer have primary status below 4 GHz. These changes are necessary because of the addition of mobile services and the deletion of FSS in the 3.7–4.0 GHz band. While these changes to NG457A were not specifically proposed in the *NRPM,* they logically follow from the allocation changes that were proposed because earth stations on vessels are an application of the FSS and we proposed to remove FSS from some or all of the band in the *NPRM.*

47. The Commission's plan will ensure that content that FSS now delivers to incumbent earth stations will continue uninterrupted as an essential element of the transition mechanism. Although the Commission allocates the 3.98–4.0 GHz band to mobile services, except aeronautical, for flexible use, the Commission declines at this time to establish service rules for that band. Instead, it will function as a guard band to protect earth station registrants from harmful interference both during and after the transition. The Commission also declines to add a mobile allocation to the 4.0–4.2 GHz band reserved for primary FSS use at this time, as doing so could undermine investment in content distribution. Figures 1 and 2

below demonstrate the post-transition allocation and uses of the band in the contiguous United States and in the rest of the United States, respectively.

Figure 1: Post-Transition 3.7-4.2 GHz Band Allocations in the Contiguous United States

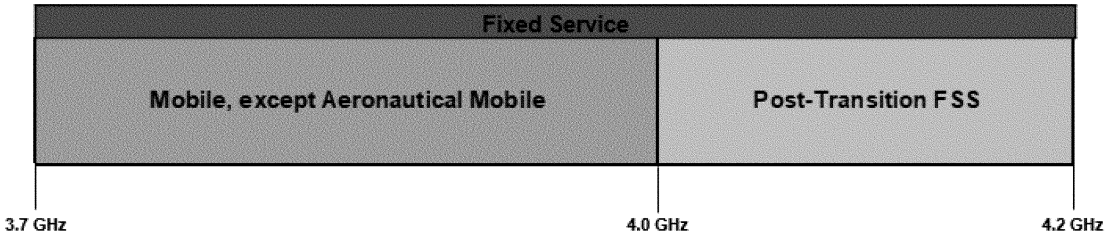
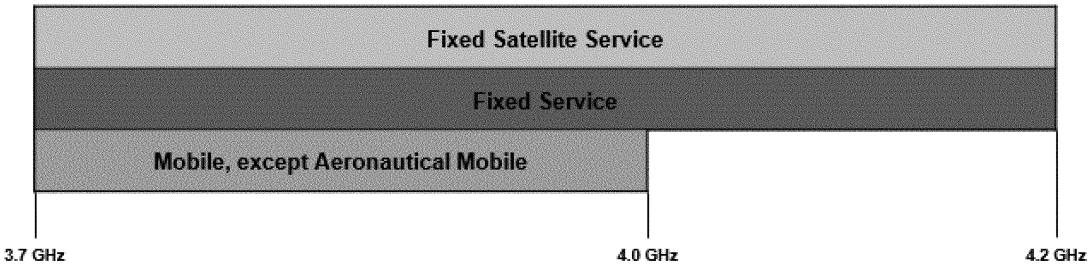


Figure 2: Post-Transition 3.7-4.2 GHz Band Allocations Outside the Contiguous United States



2. Competitive Bidding Rules

48. The Communications Act requires that the Commission resolve any mutually exclusive applications for new flexible-use licenses in this band through a system of competitive bidding. In the *NPRM,* the Commission sought comment on our proposal to conduct any auction for licenses in this band in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules. The Commission specifically proposed to employ part 1 rules governing competitive bidding design, application and certification procedures, reporting requirements, the prohibition on certain communications regarding the auction, and designated entity preferences and unjust enrichment. These competitive bidding rules provide a framework for the auction process. More detailed, auction-specific procedures will be addressed in the separate pre-auction process.

49. Given the record and the Commission's experience in successfully conducting auctions pursuant to the part 1 rules, the Commission adopts its proposal to employ those rules when developing the auction for new licenses in this band. Should the Commission subsequently modify its general competitive bidding rules, the modifications would apply as well.

50. We note that Section 647 of the Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act) prohibits the Commission from assigning by competitive bidding either orbital locations or spectrum used for the provision of international or global satellite communications services. In the *NPRM,* the Commission tentatively concluded that the ORBIT Act prohibition would not apply here, since any auctioned spectrum would be used for a new domestic terrestrial service, and the auction mechanisms would not be used to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services.

51. The Commission affirms its tentative conclusion. Based on the record and consistent with precedent on this issue, the Commission finds that Section 647 of the ORBIT Act does not prohibit it from assigning terrestrial licenses in this band through a system of competitive bidding.

a. Designated Entity Provisions

52. In the *NPRM,* the Commission sought comment on a proposal for bidding credits to be offered to designated entities when conducting an auction of new licenses in this band. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' Based on the its prior experience with the use of bidding credits in spectrum auctions, the Commission finds that using bidding credits is an effective tool to achieve the statutory objective of promoting participation of designated entities in the provision of spectrum-based service.

53. *Small Businesses.*—One way the Commission fulfills this mandate is through the award of bidding credits to small businesses. In the *Competitive Bidding Second Memorandum Opinion and Order,* the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. Further, in the *Part 1 Third Report and Order* and the more recent *Competitive Bidding Update Report and Order (81 FR 43523, July 5, 2016),* the Commission, while standardizing many auction rules, determined that it would continue a service-by-service approach to defining small businesses. In the *NPRM,* the Commission sought comment on whether to adopt bidding credits for the two larger designated entity business sizes provided in the part 1 rules.

54. In adopting competitive bidding rules for other spectrum bands that will

be used as part of 5G services, the Commission included provisions for designated entities to promote opportunities for small businesses, rural telephone companies, and businesses owned by members of minority groups and women to participate in the provision of spectrum-based services. For example, the Commission adopted two small business definitions for the auction of licenses in the Upper Microwave Flexible Use Service (39 GHz band). These two small business definitions are the highest two of three thresholds in the Commission's standardized schedule of bidding credits.

55. The Commission adopts its proposal to apply the two small business definitions with higher gross revenues thresholds to auctions of overlay licenses in the 3.7–3.98 GHz band. Accordingly, an entity with average annual gross revenues for the relevant preceding period not exceeding $55 million will qualify as a ''small business,'' while an entity with average annual gross revenues for the relevant preceding period not exceeding $20 million will qualify as a ''very small business.'' Since their adoption in 2015, the Commission has used these gross revenue thresholds in auctions for licenses likely to be used to provide 5G services in a variety of bands. The results in these auctions indicate that these gross revenue thresholds have provided an opportunity for bidders claiming eligibility as small businesses to win licenses to provide spectrum-based services at auction. These thresholds do not appear to be overly inclusive as a substantial number of qualified bidders in these auctions do not come within the thresholds. This helps preclude designated entity benefits from flowing to entities for which such credits are not necessary.

56. The Commission also adopts its proposal to provide qualifying ''small businesses'' with a bidding credit of 15% and qualifying ''very small businesses'' with a bidding credit of 25%, consistent with the standardized schedule in part 1 of the Commission's rules. This proposal was modeled on the small business size standards and associated bidding credits that the Commission adopted for a range of other services. The Commission believes that this two-tiered approach has been successful in the past, and it will employ it once again. The Commission believes that use of the small business tiers and associated bidding credits set forth in the part 1 bidding credit schedule will provide consistency and predictability for small businesses. No commenter provides any alternative or reason why the bidding credit thresholds or small business definitions that the Commission adopts would not work in this service.

57. *Rural Service Providers.*—In the *NPRM,* the Commission also sought comment on a proposal to offer a bidding credit for rural service providers. The rural service provider bidding credit awards a 15% bidding credit to those that service predominantly rural areas and that have fewer than 250,000 combined wireless, wireline, broadband and cable subscribers. As a general matter, the Commission ''has made closing the digital divide between Americans with, and without, access to modern broadband networks its top priority . . . [and is] committed to ensuring that all Americans, including those in rural areas, Tribal lands, and disaster-affected areas, have the benefits of a high-speed broadband connection.''

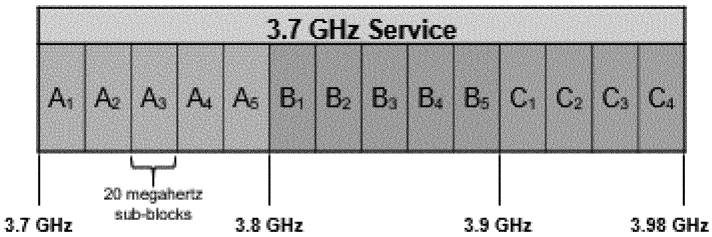
58. The Commission finds that a targeted bidding credit will better enable entities already providing rural service to compete for spectrum licenses at auction and in doing so, will increase the availability of 5G service in rural areas. Accordingly, the Commission will apply the rural service provider bidding credit to auctioning new licenses in this band.

3. Licensing and Operating Rules

59. Building on its previous experience introducing mobile service in bands shared with fixed terrestrial and FSS users, the Commission adopts rules to license new mobile operations under its part 27 rules, with modifications to tailor certain rules to the specific characteristics of C-band spectrum. The Commission adopts licensing and operating rules that afford licensees the flexibility to align licenses in the 3.7–3.98 GHz band with licenses in other spectrum bands governed by part 27 of the Commission's rules and other flexible-use services. Specifically, finding no opposition in the record, the Commission adopts rules requiring 3.7 GHz Service licensees in the 3.7–3.98 GHz band to comply with licensing and operating rules that are applicable to all part 27 services, including flexible use, regulatory status, foreign ownership reporting, compliance with construction requirements, renewal criteria, permanent discontinuance of operations, partitioning and disaggregation, and spectrum leasing. In addition, the Commission adopts service-specific rules for the 3.7–3.98 GHz band, including eligibility, mobile spectrum holdings policies, license term, performance requirements, renewal term construction obligations, and other licensing and operating rules to be included in part 27.

a. Band Plan

60. *Block Size.*—The Commission will designate the lower 280 megahertz of C-band spectrum in 100 megahertz increments as the A and B Blocks and in an 80-megahertz increment as C Block. The Commission will issue licenses in the A, B, and C Blocks in 20 megahertz ''sub-blocks.'' Specifically, the A Block (3.7–3.8 GHz), B Block: (3.8–3.9 GHz), and C Block (3.9–3.98 GHz) will be licensed according to the following channel plan:



61. In the *NPRM,* the Commission sought comment on whether 20 megahertz blocks would be appropriate for the wireless technologies that are likely to be deployed in this band. The Commission sought comment on the appropriate block size that would accommodate a wide range of terrestrial wireless services, while also providing sufficient bandwidth to support 5G services. Commenters support relatively smaller sized sub-blocks with the

potential to aggregate to larger sizes of 60 to 160 megahertz.

62. The Commission finds that 100 megahertz blocks, with 20 megahertz sub-blocks, will provide sufficient flexibility for interested bidders to tailor their decisions based on the anticipated clearing costs and accelerated relocation payment obligations associated with a particular amount of spectrum or geographic license area. For carrier frequencies below 6 GHz, 3GPP has specified thirteen possible channel bandwidths for 5G deployments as follows: 5, 10, 15, 20, 25, 30, 40, 50, 60, 70, 80, 90, and 100 megahertz. To facilitate operation of 100 megahertz bandwidth 5G channels, the Commission implements and defines the uniform block size of 100 megahertz that would run across the entire band from 3.7–4.0 GHz. By allowing new flexible-use licensees to acquire full 100-megahertz blocks, the Commission will ensure that C-band spectrum is licensed in sufficiently wide bandwidths to enable 5G deployments. The inclusion of 20 megahertz sub-blocks provides sufficient flexibility for manufacturers and licensees to tailor application of the band to suit future needs, especially when considering that LTE can be made to coexist within or adjacent to 5G operations. A number of commenters support a Commission auction of this spectrum in 20 megahertz blocks. Because it finds that 20 megahertz sub-blocks provide sufficient flexibility, the Commission finds it unnecessary to divide the blocks even smaller into 10 megahertz sub-blocks, as some commenters have proposed.

63. *Spectrum Block Configuration.*—The Commission adopts rules to license the A, B, and C 20 megahertz sub-blocks of C-band spectrum in an unpaired spectrum block configuration because there is wide support in the record for this approach, and it will enhance the flexible and efficient use of the band for next-generation services and other advance spectrum-based services. In contrast to a paired channel configuration that assumes frequency division duplex operations, an unpaired spectrum configuration is technology neutral, *i.e.,* enables time division duplex operations, which has become increasingly prevalent in deployments of digital broadband networks. In light of these considerations, the Commission concludes that an unpaired spectrum block configuration will provide licensees the flexibility necessary to increase the capacity of their networks and make the most efficient use of C-band spectrum.

64. *Use of Geographic Licensing.*—Consistent with its approach in several other bands used to provide fixed and mobile services, the Commission finds that it is in the public interest to license the A, B, and C Blocks in 20 megahertz sub-blocks on an exclusive, geographic area basis. Geographic area licensing provides flexibility to licensees, promotes efficient spectrum use, and helps facilitate rapid assignment of licenses, using competitive bidding when necessary. There is wide support in the record for licensing C-band flexible-use spectrum on an exclusive, geographic basis, and the Commission finds that such an approach will give certainty to licensees and provide the efficiencies of scale and scope that drive innovation, investment, and rapid deployment of next generation services.

65. *Geographic License Area.*—The Commission adopts PEAs as the geographic license area for new 3.7 GHz Service licenses and divide those licenses into 20 megahertz sub-blocks within the A, B, and C Blocks; the Commission finds that this license-area size best optimizes and balances our statutory and regulatory objectives in licensing spectrum. In determining the appropriate geographic license area size, the Commission must consider several factors, including: (1) Facilitating access to spectrum by both small and large providers; (2) providing for the efficient use of spectrum; (3) encouraging deployment of wireless broadband services to consumers, including those in rural areas and Tribal lands; and (4) promoting investment in and rapid deployment of new technologies and services. In the *NPRM,* the Commission sought comment on using PEAs, as well as on licensing on a county, nationwide, or other basis.

66. The Commission finds that licensing on a PEA basis strikes the appropriate balance between being sufficiently large to facilitate wide-area deployments of 5G, while also being sufficiently small to ensure that small and regional carriers are able to compete for new 3.7 GHz Service licenses. PEAs offer a compromise between EAs, on the one hand, and CMAs or counties, on the other hand, because they are smaller than EAs and serve to separate rural from urban markets to a greater degree than EAs do (given that EAs often include both rural and urban markets), yet PEAs are also subdivisions that ''nest'' within EAs and can easily be aggregated to larger areas such as EAs, Major Economic Areas, and Regional Economic Areas. As a result, licensing new 3.7 GHz Service licenses on a PEA basis in the contiguous United States will encourage entry by providers that contemplate offering wireless broadband service on a localized basis, yet at the same time will not preclude carriers that plan to provide service on a much larger geographic scale. PEAs therefore will encourage auction participation by a diverse group of buyers and will generate competition between large, regional, and small carriers across various geographic areas, while also minimizing the difficult coordination and border issues that might arise from smaller license areas. The Commission agrees with commenters that recommend excluding areas outside of the contiguous United States from the transition and will not issue licenses in those PEAs.

67. In summary, for Blocks A, B, and C, the Commission will issue 3.7 GHz Service licenses on a PEA basis for 20 megahertz sub-blocks in the contiguous states and the District of Columbia (PEAs 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411). The Commission will not issue flexible-use licenses for Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico (PEAs numbers 42, 212, 264, 298, 360, 412–416).

b. Application Requirements & Eligibility

68. Licensees in the A, B, and C blocks must comply with the Commission's general application requirements. Further, the Commission adopts an open eligibility standard for licenses in the A, B, and C Blocks. The Commission has determined that eligibility restrictions on licenses may be imposed only when open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm.

69. The Commission agrees that the record in this proceeding does not demonstrate a compelling need for regulatory intervention to exclude potential participants. The Commission finds that adopting an open eligibility standard appropriately relies on market forces and will encourage efforts to develop new technologies, products, and services, while helping to ensure efficient use of this spectrum. Generally applicable qualifications that may apply under the Commission's rules, including those relating to citizenship and character, apply to any and all licenses issued for flexible use of this spectrum, and any person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract,

participating in an auction, or receiving a grant is ineligible.

c. Mobile Spectrum Holdings

70. The Commission does not impose a pre-auction bright-line limit on acquisitions of the 3.7–3.98 GHz band. Instead, it will incorporate into the spectrum screen the 280 megahertz of spectrum that we make available in the 3.7–3.98 GHz band. The Commission will also perform case-by-case review of the long-form license applications filed as a result of the auction.

71. In the *NPRM,* the Commission sought comment on whether and how to address mobile spectrum holdings issues to meet its statutory requirements and ensure competitive access in the 3.7–4.2 GHz band, including whether to include the 3.7–4.2 GHz band in the spectrum screen for secondary market transactions. The Commission proposed not to adopt a pre-auction bright-line limit on a party's ability to acquire spectrum in the 3.7–4.2 GHz band in a public auction. The Commission also asked whether to apply a post-auction case-by-case review of holdings when applications for initial licenses are filed and whether to limit the amount of spectrum one party can acquire through a market-based mechanism.

72. Similar to its approach in the *2017 Spectrum Frontiers Order and FNPRM (83 FR 37, Jan. 2, 2018; 83 FR 85, Jan. 2, 2018)* and the *2018 Spectrum Frontiers Order and FNPRM* (83 FR 34478, July 20, 2018), the Commission finds that, ''[g]enerally, bright-line, pre-auction limits may restrict unnecessarily the ability of entities to participate in and acquire spectrum in an auction, and we are not inclined to adopt such limits on auction participation absent a clear indication that they are necessary to address a specific competitive concern.''

73. The Commission agrees with commenters that an in-band spectrum aggregation limit is unnecessary for this band. Commenters requesting an in-band limit raise only general concerns regarding the need to prevent a few dominant carriers from obtaining an excessive concentration of this spectrum and to ensure smaller carriers have a fair opportunity to obtain the spectrum. But limiting the amount of 3.7–3.98 GHz band spectrum that one party can acquire, as these commenters request, could unnecessarily restrict providers' ability to participate in the auction and acquire spectrum in this band. This ultimately could ''constrain providers in their paths towards 5G deployment,'' limit providers' ''incentives to invest'' in the band, and ''delay the realization of related economic benefits.'' Further, ''a variety of spectral paths to 5G deployment in the United States'' exist, including the additional opportunities for access to spectrum through our recent actions to remove restrictions on the 2.5 GHz band, to make the 3.5 GHz band available for priority access licenses, and to make millimeter-wave spectrum available through auction. Because the Commission's ''balancing of objectives'' has ''shift[ed] towards facilitating rapid 5G deployment in the United States,'' and because commenters have not pointed to ''a clear indication'' that in-band limits ''are necessary to address a specific competitive concern,'' the Commission finds it unnecessary to impose an in-band limit on the 3.7–3.98 GHz band. Instead, the Commission finds that a case-by-case review of acquisitions of 3.7–3.98 GHz band spectrum will allow the Commission to review spectrum aggregation on market competition without unnecessarily restricting entities from acquiring spectrum to deploy 5G services.

74. The Commission will include the A, B, and C Blocks of the 3.7–3.98 GHz band in the screen for secondary market transactions because the spectrum will become ''suitable and available in the near term for the provision of mobile telephony/broadband services.'' The relevant product market for the screen incorporates both mobile voice and data services, including services provided over advanced broadband wireless networks—particularly emerging, next generation wireless services. The Commission adopts flexible-use rules here to enable terrestrial mobile use for 5G deployment. Accordingly, it is appropriate to incorporate this band into the screen for mobile telephony/broadband services.

75. The Commission will add the 280 megahertz to the spectrum screen once the auction closes. While winners of the auction must clear incumbents from the band following the auction, the Commission finds it is ''fairly certain'' that the auctioned spectrum ''will meet the criteria for suitable spectrum in the near term'' once the auction closes, given the Commission's transition plan. This is consistent with its approach for the 600 MHz band (where the Commission found that the spectrum was available following the Broadcast Incentive Auction, even though incumbents had to be moved) and the 700 MHz band (where the Commission found that the spectrum was available a year and a half before the spectrum would be cleared by incumbents).

76. Finally, the Commission will perform case-by-case review of the long form applications of the 3.7–3.98 GHz spectrum following the auction. The Commission will use the same case-by-case review as it does for secondary market transactions, updated to account for the additional 3.7–3.98 GHz spectrum. As the Commission has explained, case-by-case review ''permits bidders to participate fully'' in acquiring the spectrum, ''while still allowing the Commission to assess the impact on competition from the assignment of initial . . . licenses, and to take appropriate action to preserve or protect competition only where necessary.'' As it has done in other bands made available for flexible use, the Commission will apply the standard articulated in the 2008 *Union Telephone Order.* This review will create sufficient bidder certainty for the auction, consistent with Section 309(j)(3)(E).

d. License Term

77. The Commission finds that a 15-year license term will provide sufficient time to encourage investment in the 3.7–3.98 GHz band given the clearing, relocation, and repacking that must occur prior to mobile operations. In the *NPRM,* the Commission proposed a 15-year license term for this very reason, suggesting that 15 years would afford licensees sufficient time to achieve significant buildout obligations post-transition. Many commenters agree that a longer term is warranted where time-consuming activities are needed to ready the spectrum for mobile use, and several argue that 15 years will promote the provision of innovative services and applications.

78. The Commission agrees and concludes that a 15-year license term for the A, B, and C Blocks best serves the public interest by providing the time needed for significant investment that ultimately will usher in valuable services to consumers.

e. Performance Requirements; Renewal

79. The Commission recognizes the critical role that performance requirements play in ensuring that licensed spectrum does not lie fallow. The performance requirements the Commission adopts for the 3.7–3.98 GHz band take into account the unique characteristics of this band, but also will ensure that licensees begin providing service to consumers in a timely manner by relying on specific quantifiable benchmarks. To support a variety of different use cases in this spectrum, the Commission adopts below specific metrics for mobile/point-to-multipoint, fixed, and IoT services in the A, B, and C Blocks, consistent with its proposal in the *NPRM.*

80. *Mobile or Point-to-Multipoint Performance Requirements.*—The Commission concludes that licensees in the A, B, and C Blocks offering mobile or point-to-multipoint services must provide reliable signal coverage and offer service to at least 45% of the population in each of their license areas within eight years of the license issue date (first performance benchmark), and to at least 80% of the population in each of their license areas within 12 years from the license issue date (second performance benchmark). These population benchmarks are slightly more aggressive than those for other flexible-use services under part 27. Given the critical role of mid-band spectrum in today's spectral environment, the Commission finds that this approach is warranted.

81. Commenters generally support performance requirements to prevent warehousing of this valuable spectrum, but some object that these benchmarks are more stringent than for other part 27 services in lower frequency bands that have better propagation characteristics, *e.g.,* BRS, H Block, AWS–3, AWS–4, 600 MHz, and 700 MHz Upper C Band, that have better propagation characteristics than the 3.7–3.98 GHz band.

82. In the *NPRM,* the Commission proposed that the deadline for the first performance benchmark would be six years from the license issue date. However, consistent with the rules the Commission adopts for the transition of existing space station and earth station operations to the upper 200 megahertz of the band, new flexible-use licensees may not commence operations until the necessary clearing has been completed and the flexible-use licensee has complied with all obligations to provide reimbursement for relocation costs and any additional accelerated relocation payments have been made. The Commission anticipates that flexible-use licensees will begin deploying their systems and constructing their networks while incumbents are still transitioning out of the 3.7–3.98 GHz band so that flexible-use licensees are able to commence operations soon after incumbent clearing is complete. Nevertheless, given the potential length of that transition, the Commission finds that a six-year initial benchmark may not be reasonable. The Commission therefore finds it appropriate to adjust its proposed deadline for the first performance benchmark to eight years from the license issue date, in order to provide licensees additional time to deploy once the license area has been cleared of FSS use.

83. The Commission believes that 12 years will provide sufficient time for A, B, and C Block licensees, relying on mobile or point-to-multipoint service in accordance with our part 27 rules, to meet the proposed coverage requirements. Given the expected desirability of mid-band spectrum for the provision of innovative 5G services that promote American competitiveness, the performance benchmarks the Commission adopts are not unduly burdensome because it expects that the market will drive deployment beyond these Commission's benchmarks. The Commission anticipates that after satisfying the 12-year second performance benchmark, a licensee will continue to provide reliable signal coverage, or point-to-point links, as applicable, and offer service at or above that level for the remaining three years in the 15-year license term prior to renewal. The Commission, therefore, declines to set the second performance benchmark at the end of the license term, as some commenters proposed. Establishing benchmarks before the end of the license term will ensure continuity of service over the license term, which is essential to the Commission's evaluation under its renewal standards. We note that our Wireless Radio Services Renewal requirements include safe harbor certifications, in lieu of a detailed renewal showing, for qualified licensees.

84. *Alternate IoT Performance Requirements.*—The Commission recognized in the *NPRM* that 3.7–3.98 GHz licenses have flexibility to provide services potentially less suited to a population coverage metric. Therefore, the Commission sought comment on an alternative performance benchmark metric for licensees providing IoT-type fixed and mobile services. Based on the record evidence, the Commission will provide licensees in the A, B, and C Blocks the flexibility to demonstrate that they offer geographic area coverage of 35% of the license area at the first (eight-year) performance benchmark, and geographic area coverage of 65% of the license area at the second (12-year) performance benchmark. The Commission finds that the aforementioned levels of geographic coverage maintain reasonable parity between the requirements in these IoT-focused metrics and the requirements for mobile providers relying on population-based coverage metrics. This framework is intended to provide enough certainty to licensees to encourage investment and deployment in these bands as soon as possible, while retaining enough flexibility to accommodate both traditional services and innovative services or deployment patterns.

85. A performance metric based on geographic area coverage (or presence) will allow for networks that provide meaningful service but deploy along lines other than residential population. This definition separates ''traditional'' point-to-point links from the sensor and device connections that likely will be part of new IoT networks in these bands and applies to a network of fixed sensors or smart devices operating at low power over short distances. Although the Commission adopts an additional metric in order to facilitate the deployment of IoT and other innovative services, there is no requirement that a licensee build a particular type of network or provide a particular type of service in order to use whatever metric it selects to demonstrate that it met its performance requirement.

86. *Fixed Point-to-Point Under Flexible Use.*—Recognizing that its part 27 flexible-use policies enable licensees to potentially offer a variety of different services in the 3.7–3.98 GHz band, the Commission sought comment in the *NPRM* on performance metrics for licensees offering point-to-point service in the band. For licensees providing fixed, point-to-point links, the Commission generally has evaluated buildout by comparing the number of links in operation to the population of the license area.

87. The Commission adopts performance metrics using this framework, as proposed in the *NPRM.* Specifically, the Commission adopts a requirement that part 27 geographic area licensees providing Fixed Service in the A, B, and C Blocks band must demonstrate within eight years of the license issue date (first performance benchmark) that they have four links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, the Commission requires a licensee relying on point-to-point service to demonstrate it has at least one link in operation and providing service, either to customers or for internal use, per every 67,000 persons within a license area. The Commission requires licensees relying on point-to-point service to demonstrate within 12 years of the license issue date (final performance benchmark) that they have eight links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the

license area is greater than 268,000, the Commission requires a licensee relying on point-to-point service to demonstrate it is providing service and has at least two links in operation per every 67,000 persons within a license area.

88. These standards are generally similar to the standards the Commission established for fixed point-to-point services in the 2.3 GHz band and several *Spectrum Frontiers* bands. In the *NPRM,* the Commission also asked whether to require point-to-point links to operate with a transmit power greater than +43 dBm in order to be eligible to be counted under the point-to-point buildout standard. The Commission observed that for the UMFUS bands, the 43 dBm minimum power requirement is intended to separate traditional point-to-point links from the sensor and device connections anticipated to be part of new Internet of Things networks in those bands. The Commission received no comment on this issue. Based on the record, including the different propagation characteristics of the 3.7–3.98 GHz band, the Commission find that its approach in the *Spectrum Frontiers* proceeding does not support adoption of a similar rule for the 3.7–3.98 GHz band. Links in the 3.7–3.98 GHz band, however, must be part of a network that is actually providing service, whether to unaffiliated customers or for private, internal uses, and all links must be present and operational in accordance with our discontinuance and renewal rules. As with the mobile performance milestone, the size of the population will be calculated over the entire license area.

89. *Penalty for Failure To Meet Performance Requirements.*—Along with performance benchmarks, the Commission adopts meaningful and enforceable penalties for failing to ensure timely build-out. Specifically, as proposed in the *NPRM,* the Commission adopts a rule requiring that, in the event a licensee in the A, B, or C Block fails to meet the first performance benchmark, the licensee's second benchmark and license term would be reduced by two years, thereby requiring it to meet the second performance benchmark two years sooner (at 10 years into the license term) and reducing its license term to 13 years. Consistent with the approach in many other bands, the Commission concludes that, if a licensee fails to meet the second performance benchmark for a particular license area, its authorization for each license area in which it fails to meet the performance requirement shall terminate automatically without Commission action.

90. This approach will promote prompt buildout and appropriately penalize a licensee for not meeting its performance obligations for a particular license area. The Commission declines to adopt a ''use-or-lose'' regime, as suggested by some commenters, under which a licensee would lose only those areas within a license area that are not developed. The Commission finds that such an approach, which has been adopted rarely for other bands, likely would reduce incentives for licensees to build out to the less populated areas covered by their license, and would be less effective in ensuring use of the spectrum. In addition, in the event a licensee's authority to operate terminates, the licensee's spectrum rights would become available for reassignment pursuant to the competitive bidding provisions of Section 309(j) and any licensee who forfeits its license for failure to meet its performance requirements would be precluded from regaining the license.

91. *Compliance Procedures.*—In addition to compliance procedures applicable to all part 27 licensees, including the filing of electronic coverage maps and supporting documentation, the Commission adopts a rule requiring that such electronic coverage maps must accurately depict both the boundaries of each licensed area and the coverage boundaries of the actual areas to which the licensee provides service. Although the Commission sought comment on additional compliance procedures in the *NPRM,* only a small number of commenters addressed this issue.

92. As proposed in the *NPRM,* the rule the Commission is adopting requires measurements of populations served on areas no larger than the Census Tract level so a licensee deploying small cells has the option to measure its coverage using a smaller acceptable identifier such as a Census Block. The Commission finds that such procedures will confirm that the spectrum is being used consistent with the performance requirements. If a licensee does not provide reliable signal coverage to an entire license area, the licensee must provide a map that accurately depicts the boundaries of the area or areas within each license area not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology. The Commission will adopt conforming amendments to part 27 to include these requirements. The Commission directs the Wireless Telecommunications Bureau to specify the format of submissions, consistent with these determinations.

93. *License Renewal.*—As proposed in the *NPRM,* the Commission will apply the general renewal requirements applicable to all Wireless Radio Services licensees to 3.7–3.98 GHz band licensees in the A, B, and C Blocks. This approach will promote consistency across services.

94. *Renewal Term Construction Obligation.*—In addition to, and independent of, these general renewal provisions, the Commission finds that any additional renewal term construction obligations adopted in the *Wireless Radio Services Renewal Reform* proceeding would apply to licenses in the A, B, and C Blocks of the 3.7–3.98 GHz band.

95. In the *NPRM,* the Commission noted that the *Wireless Radio Services Renewal Reform FNPRM* (82 FR 41580, Sept. 1, 2017) sought comment on various renewal term construction obligations such as incremental increases in the construction metric in each subsequent renewal term. The Commission also noted that the *Wireless Radio Services Renewal Reform FNPRM* proposed to apply any rules adopted in that proceeding to all flexible geographic licenses. Commenters generally support the Commission's adopting renewal term construction obligations for the 3.7–3.98 GHz band in the context of the *Wireless Radio Services Renewal Reform* proceeding, as its decision ensures consistency across services.

96. The Commission finds that applying any additional renewal term construction obligations adopted in the *Wireless Radio Services Renewal Reform* proceeding to licenses in the A, B, and C Blocks will encourage robust deployment and maintain consistency across flexible geographic licensees.

B. The Transition of FSS Operations

97. For a successful public auction of overlay licenses in the 3.7–3.98 GHz band, bidders need to know before an auction commences when they will get access to that currently occupied spectrum as well as the costs they will incur as a condition of their overlay license. In this section, the Commission addresses precisely those questions while also setting forth a transition path that ensures that incumbent FSS users will continue to receive the content they

do today both during and after the transition.

98. That transition of FSS operations relies on the Commission's *Emerging Technologies* framework, a framework the Commission has relied on since the early 1990s to facilitate the swift transition of spectrum from one use to another. In short, the framework allows for new licensees to incentivize a swift transition while requiring those licensees to hold incumbents harmless during the transition. Specifically, the Commission requires overlay licensees to pay for the reasonable relocation costs of incumbent space station and incumbent earth station operators who are required to clear the lower 300 megahertz of the C-band spectrum in the contiguous United States.

99. To effectuate that process, the Commission takes several steps. *First,* the Commission defines the class of incumbent earth stations and incumbent space stations to make clear what FSS entities it expects to take part in the transition (and what entities may be eligible for relocation payments). *Second,* the Commission lays out its legal authority to carry out the transition as well as the effect of that transition on future operations in the C-band. *Third,* the Commission sets a deadline for clearing the band by 2025 while offering incumbent space station operators the option to accelerate that process to 2021 for the lower 120 megahertz and 2023 for the upper 180 megahertz. *Fourth,* the Commission sets forth the relocation payments we expect incumbent operators to receive and how to apportion such payments among overlay licensees. *Fifth,* the Commission establishes a neutral, third-party clearinghouse to manage collection and distribution of relocation payments. *Sixth,* the Commission describes the logistics of transitioning FSS operations out of the lower 300 megahertz of the C-band spectrum. *Finally,* the Commission addresses additional issues related to the FSS transition, including the maintenance of IBFS data and revisions to the coordination policy for FSS and Fixed Services. The Commission finds that these rules will best promote the rapid and effective transition of incumbent FSS operations out of the portion of C-band spectrum to be made available for public auction.

1. Incumbent FSS Operations

100. In this section, the Commission defines the class of incumbent FSS space stations and earth stations that must be accommodated during the transition and reimbursed for their relocation costs. The Commission finds that its definition of incumbents effectively captures existing C-band FSS users that will need to be transitioned and protected in order to ensure that they are able to continue providing and receiving their existing services during and after the transition. Commenters generally agree that the Commission should define incumbent FSS operations for these purposes.

101. *Incumbent Space Station Operators.*—The Commission defines ''incumbent space station operators'' to include all C-band space station operators authorized to provide service to any part of the contiguous United States pursuant to an FCC-issued license or grant of market access as of June 21, 2018—the date of the International Bureau's temporary freeze on certain new space station applications in the 3.7–4.2 GHz band. There are eight such operators: ABS, Empresa, Eutelsat, Hispasat, Intelsat, SES, Star One, and Telesat.

102. *Incumbent Earth Stations.*—The Commission defines ''incumbent earth stations'' to be protected from interference from flexible-use licensees to include FSS earth stations that: (1) Were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS database as of November 7, 2018; and (3) have timely certified, to the extent required by the July 2018 *Order* adopted in FCC 18–91 (as we clarify below to include certain renewal applications and license and registration applications filed through November 7, 2018), the accuracy of information on file with the Commission.

103. This definition largely parallels the definition the Commission proposed in the *NPRM,* with a few minor changes. For one, the Commission affirms the finding of the International Bureau that registrants and licensees that filed applications or modifications during the processing window, which effectively updated or confirmed their earth station details, are exempt from the separate certification requirement. For another, the Commission includes all license and registration applications that were filed through November 7, 2018, rather than the initial filing window deadline (October 17, 2018) or the extended filing deadline (October 31, 2018) due to outages in the IBFS filing system around that deadline. Under the approach the Commission adopts, the fact that an earth station has not filed an exhibit demonstrating coordination with terrestrial Fixed Service stations will not disqualify it as an incumbent earth station. For earth stations licensed or registered before the processing window, the Commission finds that renewal applications, as well as certifications, filed by the May 28, 2019 certification deadline, effectively updated or confirmed their earth station details. And finally, the Commission makes clear that the definition does not include those whose authorization terminated by law because the earth station was not operational for more than 90 days.

104. Several commenters, including CCA, Microsoft, Motorola, and Verizon, support the Commission's proposed definition of incumbent earth stations. The Commission disagrees with commenters who assert the definition is too restrictive. Earth station operators have been provided ample opportunity to register their earth stations with the Commission. In addition to waiving the coordination requirement during the freeze filing window, the International Bureau took numerous other steps to ease the filing process, including conducting tutorials and providing step-by-step filing instructions on the Commission's website to assist those unfamiliar with the International Bureau's filing system. Moreover, the filing deadline was extended numerous times to accommodate filers. Therefore, contrary to the arguments of some commenters, the Commission has decided not to open another window for the registration of earth stations that existed as of April 19, 2018.

105. The Commission also declines to adopt the C-Band Alliance's suggestion that incumbent earth stations should encompass all earth stations identified by the C-Band Alliance. The Commission finds that there is a significant public interest in providing a stable, comprehensive list of incumbent earth stations that meet the criteria described above. The members of the C-Band Alliance and other space station operators may, of course, treat unregistered earth stations like incumbent earth stations for their own commercial purposes. But any such commercial decisions are outside the scope of this proceeding.

106. The Commission also adopts the proposal in the *NPRM* that the classes of earth stations entitled to protection and transition are those registered as fixed or temporary fixed (*i.e.,* transportable) earth stations in IBFS. That proposal was supported by the record. The Commission did not propose to include other classes of earth stations registered in IBFS, such as earth stations on vessels and other licensees operating under blanket earth stations, and the record does not support the inclusion of any additional classes of earth stations. The Commission directs the International Bureau to complete the

processing of earth station license and registration applications filed during the limited freeze filing window.

107. As the Commission proposed in the *NPRM,* any receive-only earth stations that failed to meet the requirements to be incumbent earth stations will be removed from IBFS. In the *NPRM,* the Commission proposed to update IBFS to terminate 3.7–4.2 GHz band earth stations licenses or registrations for which the licensee or registrant had not timely filed the certification required by the *July 2018 Order* (to the extent it held or applied for a license or registration before April 19, 2018). Several commenters support such termination, as well as eliminating an obligation to protect those stations from harmful interference. For the same reasons that the Commission limits incumbent earth stations to those that timely filed the required certifications or submitted renewal applications by the certification deadline, the Commission now directs the International Bureau to terminate automatically the registrations of those uncertified receive-only earth stations in IBFS, consistent with our treatment of surrendered licenses and registrations that no longer authorize operations. The Commission proposes to modify the licenses of transmit-receive earth stations that failed to submit a certification or submit a renewal application by the certification deadline to remove their protection rights in 3.7–4.0 GHz and to allow them to continue to receive transmissions on an unprotected basis in 4.0–4.2 GHz. These licensed transmit-receive earth stations will not be considered eligible earth stations and will not be eligible to have their relocation expenses reimbursed, but can adjust their reception so as to receive transmissions to the upper 200 megahertz at their own expense.

2. Clearing the 3.7–4.0 GHz Band of FSS Operations

108. The Commission next adopts rules to limit FSS operations to the 4.0–4.2 GHz band in the contiguous United States. To accomplish this goal and make the 3.7–4.0 GHz band available for terrestrial wireless use, the Commission uses its authority under Section 316 of the Communications Act to modify the existing FSS licenses and market access authorizations held by space station operators in the band. The Commission finds that such modifications are consistent with its statutory authority, supported by judicial and Commission precedent, and will serve the public interest. The Commission also revises its rules to prohibit new applications for space station licenses and new petitions for market access concerning space-to-Earth operations in the 3.7–4.0 GHz band in the contiguous United States.

109. *Clearing Space Station Operations.*—Section 316 of the Communications Act vests the Commission with broad authority to modify licenses ''if in the judgment of the Commission such action will promote the public interest, convenience, and necessity.'' The Commission finds that modifying the authorizations of incumbent space station operators to clear use of the 3.7–4.0 GHz band (and confine their operations in the contiguous United States to the 4.0–4.2 GHz band) is within the Commission's statutory authority, consistent with prior Commission practice, and will promote the public interest convenience, and necessity. The Commission accordingly proposes to modify the authorizations of the incumbent space station operations to carry out the clearing of this band.

110. The Commission has long relied on Section 316 to change or reduce the frequencies used by a licensed service where it has found that doing so would serve the public interest. For example, in the *2002 MSS Order,* the Commission relied on its Section 316 authority to relocate the Motient Services, Inc. (Motient) spectrum assignment from solely upper L-band frequencies to mostly lower, internationally coordinated L-band frequencies and reduce it from 28 to 20 megahertz, to enable Motient to construct and operate an economically viable MSS system without interfering with maritime distress and safety communications. In the *DEMS Relocation Order,* the Commission, pursuant to Section 316, modified licenses to relocate the operations of certain Digital Electronic Message Service (DEMS) licensees from the 18 GHz band to the 24 GHz band, in order to accommodate Department of Defense military systems. Similarly, in the 2004 *800 MHz Order (69 FR 67823, Nov. 22, 2004),* the Commission relied on Section 316 to relocate the public safety and other land mobile communications systems operating in the 800 MHz band to new spectral locations both within and outside the band (including the relocation of a large set of licenses then held by Nextel Communications, Inc., to the 1.9 GHz band), in order to eliminate the interference to the public safety and other high site, non-cellular systems caused by the inherently incompatible operations of the band's cellular-architecture multi-cell systems. The Commission has also relied on its Section 316 authority to ''rearrang[e] licensees within a spectrum band.'' And as part of the recent *Spectrum Frontiers* incentive auction, the Commission modified the authorizations of incumbent licensees by altering their assigned frequencies and, in many cases, their geographic service areas, in a way that ensured that the spectrum usage rights under the modified licenses were comparable to those under the originally configured licenses.

111. Notably, the Commission's modification authority under Section 316 does not require the consent of licensees. As the United States Court of Appeals for the District of Columbia Circuit has stressed, ''if modification of licenses were entirely dependent upon the wishes of existing licensees, a large part of the regulatory power of the Commission would be nullified.'' [1] Indeed, that court has reiterated that Congress broadened the Commission's discretion by adding Section 316, which ''provides the FCC with the authority to modify licenses without the approval of their holders.'' [2] Rather, the Commission need only find, as it does here, that the modification ''serves the public interest, convenience and necessity.'' [3] Further, the courts have consistently held that the Commission may exercise its license modification authority as part of a rulemaking proceeding, as it does here.[4]

112. The International and Wireless Telecommunications Bureaus sought comment on the scope of our Section 316 authority to modify licenses in this proceeding in the *May 3 Public Notice.* The record confirms that modifying the licenses of the incumbent space station operators falls within the scope of the Commission's authority and would serve the public interest. As several commenters argue, modifying the authorizations of the incumbent space station operators is in the public interest because it will enable the clearing of 280 megahertz for public auction while preserving the content distribution system currently offered over the C-band spectrum by reserving for incumbent space station operators the upper 200 megahertz of the band.

113. One constraint, however, is that Congress limited the Commission's

[1] *Peoples Broadcasting Co.* v. *United States,* 209 F.2d 286, 288 (D.C. Cir. 1953).

[2] *Rainbow Broadcasting* v. *FCC,* 949 F.2d 405, 410 (D.C. Cir. 1991).

[3] *California Metro Mobile Commc'ns, Inc.* v. *FCC,* 365 F.3d 38, 45 (D.C. Cir. 2004). As the D.C. Circuit has noted, the Commission's judgements on the public interest arising from a license modification ''are entitled to substantial judicial deference.'' *NTCH, Inc.* v. *FCC,*—F.3d —, 2020 WL 855465 at *7 (D.C. Circ. 2020).

[4] *See Celtronix Telemetry, Inc.* v. *FCC,* 272 F.3d 585, 589 (D.C. Cir. 2001) (citing cases and noting that the Commission retains the power ''to alter the term[s] of existing licenses by rulemaking'').

authority to only ''modify'' a license under Section 316, which the courts have construed to mean we may not effect a ''fundamental change'' to a license under this authority. Although effectively revoking a license or substantially disrupting a licensee's ability to provide service may amount to a fundamental change, courts have repeatedly found that if a licensee can continue to provide substantially the same service, a modification to that license is not a fundamental change.

114. The Commission finds that the upper 200 megahertz of spectrum it is reserving for future FSS operations is sufficient to continue the services that are provided today over the whole 500 megahertz of the C-band. Indeed, all incumbent space station operators that responded to the space-station data collection have agreed that the upper 200 megahertz portion of the band provides a sufficient amount of spectrum to support their services. Users of FSS services, agree that 200 megahertz is a sufficient amount of spectrum for space station operators to continue their services uninterrupted. Indeed, by adopting the clearing plan proposed by incumbent space station operators themselves and that they themselves have claimed allows for the full range of C-band services to continue in the contiguous United States, the Commission is confident that incumbent space station operators can continue to offer the services they do today after they clear their operations out of the 3.7–4.0 GHz band (and thus that this license modification does not constitute a fundamental change).

115. In sum, the Commission finds that a Section 316 modification would serve the public interest, as it will spur the investment in and deployment of next generation wireless services, while ensuring that incumbent space station services will be able to maintain the same services as they are currently providing. Consistent with prior practice, in these circumstances the Commission will accord to grants of market access the same protections in this regard that we accord to Commission licenses and grants of market access.

116. The Commission notes that, consistent with the scope of the public auction it adopts, the Section 316 license modification that the Commission adopts applies only to licenses and grants of market access held within the contiguous United States; authorizations for FSS operations outside of the contiguous United States may continue to operate in the entire 3.7–4.2 GHz band. Commenters argue, and the Commission agrees, that the Commission should exclude locations outside of the contiguous United States from the license modification. Locations outside of the contiguous United States, many of which are remote, have a greater need for a wide variety of C-band services, particularly for the provision of services necessary for the protection of life and property—including telehealth, E911, and education services.

117. The Commission finds that retaining C-band operation is important for the time being in areas outside of the contiguous United States. As a result, the Commission believes it is appropriate to exclude PEAs outside of the contiguous United States from the proposed license modification, notably in the Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico PEAs (PEA numbers 42, 212, 264, 298, 360, 412–416) and FSS operations in those PEAs may continue to use the entire 3.7–4.2 GHz band.

118. The Commission also notes that, due to the nature of space-to-earth transmissions and the practicalities of space-to-earth communications, it does not modify the authorizations of incumbent space station operators to prohibit transmissions in the 3.7–4.0 GHz band entirely. Transmissions from space station operators can reach many countries at the same time. As a result of this, many transmissions from space station operators sent to locations outside of the contiguous United States and other countries may incidentally transmit to earth stations within the contiguous United States. Since space-to Earth transmissions pose no risk of harmful interference to terrestrial wireless operations, the Commission will allow such incidental transmissions without penalty, if the transmissions are duly authorized by a foreign government or the Federal Communications Commission. In other words, the Commission allows those transmissions that incidentally occur within the contiguous United States but are directed at earth stations outside that area. Beyond these incidental transmissions, the Commission will only permit space station operators to continue to operate in the contiguous United States in the 3.7–4.0 GHz band on an unprotected basis after the sunset date for the purpose of transmitting service to earth stations at four designated TT&C sites.

119. The C-Band Alliance and the Small Satellite Operators have argued that eliminating their right to operate and be protected from harmful interference over the lower 300 megahertz of the C-band without their consent would constitute a fundamental change to their license. The C-Band Alliance and the Small Satellite Operators also argue that, even if their existing services could continue after the transition, modifying their licensees would impermissibly alter their ability to expand their services to additional customers. The Commission disagrees. The D.C. Circuit has consistently upheld the Commission's authority to modify licenses where the affected licensee is able to continue providing substantially the same service following the modification. Thus, regardless of the amount of spectrum being repurposed or the licensees' ability to expand its operations after its license is modified, the primary consideration in determining whether a Section 316 modification is valid is whether the licensee will be able to provide substantially the same service after the modification as it was able to provide before. In the case of the C-Band Alliance and Eutelsat, the record clearly demonstrates that C-Band Alliance members will—by their own admission—be able to continue to provide service to their existing customers after the transition. For the Small Satellite Operators, the record clearly demonstrates that their members provide little to no service in the contiguous United States today and, as such, the remaining 200 megahertz of spectrum available after the transition period exceeds any reasonable estimate of their needs.

120. *First,* the amount of spectrum repurposed under a 316 modification is not the controlling factor in determining whether such a modification is valid. The C-Band Alliance and the Small Satellite Operators in particular contend that removing a licensee's rights to operate in 60% of the spectrum covered by its license constitutes a fundamental change to the license on its face. They argue that a reduction in the spectrum use rights afforded a licensee constitutes a fundamental change, regardless of whether the licensee is actually using the spectrum at the time. Both the C-Band Alliance and the Small Satellite Operators point to a decision by the Supreme Court, *MCI Telecommunications Corp.* v. *FCC,* which they assert supports their argument that the reduction of a certain percentage of a licensee's spectrum usage rights has been found to exceed the Commission's ''modification authority.'' [5] However, the Court in *MCI* was addressing a statutory

[5] *MCI Telecommunications Corp.* v. *AT&T,* 512 U.S. 218, 228–29 (1994).

interpretation question under Title II of the Act: Whether ''the statutory phrase 'modify any requirement' gave it authority to eliminate rate-filing requirements, 'the essential characteristic of a rate regulated industry,' for long-distance telephone carriers.'' [6] It was not examining the scope of the Commission's ability to modify a license pursuant to its ''broad authority to manage spectrum'' under Title III [7] including its specific authority under Section 316 to modify the terms of licenses if—''in the judgment of the Commission''—such action ''will promote the public interest, convenience, and necessity.'' [8] Ultimately, the Court concluded that rather than a legitimate exercise of the Commission's authority to make modifications in the tariffing requirement established by the Act, ''[w]hat we have here, in reality, is a fundamental revision of the statute, changing it from a scheme of rate regulation in long-distance common-carrier communications to a scheme of rate regulation only where effective competition does not exist. That may be a good idea, but it was not the idea Congress enacted into law in 1934.''

121. Rather than standing, as the C-Band Alliance and the Small Satellite Operators would have it, for the proposition that a 60% change of anything, under any circumstances, cannot be regarded as a modification, *MCI* represents the Court's view that eliminating a requirement entirely is not a ''modification'' of that requirement. In this context, the Commission agrees that eliminating an incumbent space station operator's right to transmit entirely would not be a modification—but that is not what the Commission does here. Instead, the Commission finds that where an incumbent will be fully reimbursed to upgrade its facilities so that it can provide the same level of service more efficiently using less spectrum, requiring the incumbent to do so falls within the Commission's Title III authority to modify a license. In other words, a 60% reduction in spectrum available to an incumbent space station licensee—under the terms and conditions specified herein that provide the continuation of service throughout and after a transition—would not fundamentally change the overall nature of the rights and privileges originally granted under its license, and that the action therefore falls within the modification authority that Congress intended to bestow upon the Commission in granting this agency its broad Section 316 authority.

122. Indeed, since *MCI,* courts have examined various license modifications that the Commission has ordered under its Section 316 authority under the same basic standard the Commission is applying here—asking whether the modifications have worked a fundamental change in the nature of the license, using as a touchstone whether the licensee can still provide the same basic service under the modified license that it could prior to the modification. This functional test does not apply an arbitrary numerical limit on the amount of spectrum that must be preserved under a license. Thus, the C-Band Alliance and Small Satellite Operators' argument for applying such a test is contrary to both case law and Commission precedent.

123. *Second,* the Commission rejects C-Band Alliance and the Small Satellite Operators' contention that, since they will be foreclosed from transmitting to earth stations below 4.0 GHz, their licenses will be fundamentally altered. To the extent their argument rests on the potential foreclosure of the future reception of their signals by registered earth stations in the 3.7–4.0 GHz band, the Commission finds that any harm is, at best, speculative. The incumbent space station licensees will retain flexibility to expand their business within the 4.0–4.2 GHz band after the transition. With the deployment of compression and other technologies, this block is sufficient to at least serve the licensees' existing customers—which is the relevant standard governing the legality of a 316 modification—and may provide flexibility to obtain additional customers. The Commission notes that the failure of the Small Satellite Operators to demonstrate any significant past, present, or future base of earth station customers makes it reasonable to assume that any opportunities they might be losing as a result of the Commission's actions are, on a practical level, *de minimis.* Moreover, the opportunities they will have to continue to serve existing customers and to obtain new customers are sufficient to support the Commission's determination that the modification the Commission makes to their authorizations does not constitute a fundamental change. The Small Satellite Operators have failed to demonstrate their ability to lure existing customers away from their contracts with other providers or to explain how they had planned to obtain new customers, including how they planned to compete against the growing reliance on fiber delivery services as a high-quality substitute for satellite delivery.

124. *Third,* space station incumbents will not incur any unreimbursed reasonable expenses as a result of this license modification. Under the rules adopted here, the new C-band entrants would pay for the cost of the reconfiguration of all incumbent earth stations, as well as reasonable relocation costs associated with repacking FSS operations into the upper portion of the band. In sum, because the record indicates that space station operators will continue to be able to serve their customers with essentially the same services under very similar terms following the license modification we adopt today, and should not suffer any interruption of service during the repacking process, the Commission concludes that any reduction in spectrum access rights here will not effect a ''fundamental change'' for these companies under Section 316 precedent.[9]

125. The record in this proceeding, which sought comment on this question, supports this conclusion. The Commission also rejects the argument that, by modifying FSS space station licenses to remove their authorization in the lower 300 megahertz, the Commission will establish a ''dangerous precedent about the FCC's ability to unilaterally devalue existing licenses.'' *First,* it is unlikely that the Commission's decision to modify incumbent licenses in a manner that will allow them to continue to provide service to their customers and reimburse them for all of the relocation costs associated with the transition will appreciably devalue other, similarly situated non-exclusive licenses. According to SIA, the C-band satellite industry has been able to realize a return on their investments in the band amounting to an estimated $340 million in revenue per year. Given that incumbent space station operators will be fully reimbursed for the transition, the Commission finds that they will be able to continue to realize such returns after they transition to the upper 200 megahertz of the band, and that the actions the Commission takes here will not have a chilling effect on potential licensees going forward.

[6] *City of Arlington* v. *FCC,* 569 U.S. 290, 304 (2013).

[7] *Cellco P'ship* v. *FCC,* 700 F.3d 534, 541–42 (D.C. Cir. 2012) (D.C. Cir. 2012) (''expansive powers''), quoting *NBC* v. *United States,* 319 U.S. 190, 216 (1943); *see also NTCH, Inc.* v. *FCC,*—F.3d—, 2020 WL 855465 at *6 (D.C. Cir. 2020).

[8] 47 U.S.C. 316(a)(1).

[9] *See Mobile Relay Assocs.* v. *FCC,* 457 F.3d 1, 12 (D.C. Cir. 2006) (upholding the Commission's decision not to compensate a licensee for hypothetical customer loss it might suffer as a result of rebanding).

126. *Second,* by their very nature, these incumbent space station licenses are fundamentally distinct, and easily distinguishable, from the exclusive geographic terrestrial licenses that the Commission issues through competitive bidding both in the rights conferred to the licensees and the method by which they are issued. Incumbent space station licensees have non-exclusive access to the band and did not obtain their current licenses through competitive bidding. Indeed, space station operators with grants of market access did not even have to pay an application fee to receive their license and have not been obligated to pay any regulatory fees as a condition of the authorization. Thus, unlike terrestrial licensees, incumbent space station operators have no expectation of exclusive access to a particular spectrum band and incurred no appreciable costs for use of this valuable public resource beyond investment in their own network. These clear differences are more than sufficient to distinguish incumbent space station licenses from exclusive terrestrial licenses and should reassure terrestrial licensees that their license rights will not be appreciably devalued by our actions in this order.

127. What is more, satellite licensees in this band can effectively reuse spectrum at the same terrestrial location without causing interference to overlapping transmissions. This effectively gives them more capacity than the spectrum in their licenses would provide without these techniques, and this will continue to be the case when they transition to the upper 200 megahertz of the band. Space station operators in the 3.7–4.2 GHz band are authorized to use the entire band exclusively at any orbital slot, but non-exclusively in terms of geographic coverage. Satellites operating in the C-band typically have 24 transponders, each with a bandwidth of 36 megahertz. Thus, the 24 transponders on a given satellite provide capacity that is equivalent to 864 megahertz of spectrum, or 364 megahertz more than the 500 megahertz currently available. This is the result of spectrum reuse—adjacent transponders overlap, and self-interference is avoided by using opposite polarizations. Today, multiple FSS incumbents using satellites deployed at different locations in the geostationary orbit can transmit within the same geographic boundaries over different frequencies or polarizations. After the transition, space station operators will still be able to use the same mechanisms to effectively achieve more capacity than the spectrum in their licenses will provide. In addition, they will be able to take advantage of new technologies to improve spectral efficiency (that will be implemented and funded by the transition), such as improved data compression and modulation techniques to further improve their spectral efficiency.

128. The Commission likewise rejects the argument that a Section 316 modification of FSS space station licenses to remove authorization in the lower 300 megahertz would constitute an unlawful ''taking'' under the Takings Clause of the U.S. Constitution. Commission licenses do not constitute a property right. Section 301 of the Act states that Commission licenses ''provide for the use of [radio] channels, but *not the ownership thereof,* by persons for limited periods of time.'' Section 304 of the Act requires licensees to waive ''any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.'' Courts have generally affirmed that spectrum rights are not property rights subject to the Takings Clause.[10] The plain language of the Act makes clear that a spectrum license is just that—a license to use spectrum—not a deed of ownership. The mere existence of Section 316 authority to modify licenses, including by removing authorization to operate on certain frequencies, makes clear that a Commission license is not an absolute property right to which the Takings Clause might apply.

129. Furthermore, even if FSS space station authorizations conferred cognizable property rights, which they do not, the license modification the Commission adopts in this *Report and Order* would not amount to a taking. A regulatory taking occurs ''where a regulation denies all economically beneficial or productive use'' of the property.[11] The Commission agrees that, ''because C-band satellites will still have significant economic benefit for the duration of their authorizations despite the C-band transition, the potential for a regulatory taking is significantly diminished.'' The U.S. Supreme Court has explained that a taking is not readily found where ''interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.'' [12] Here, by the space station operators' own admission, they will be able to continue to provide service to their existing customers after the transition, and the Commission adopts rules ensuring that incumbent FSS licensees are made whole for any costs they incur as a result of the transition. The Commission's modification of incumbent FSS licenses therefore does not amount to a taking under the U.S. Constitution.

130. *Clearing Earth Station Operations.*—Finally, the Commission's public interest analysis for transitioning the 3.7–3.98 GHz band to flexible use and reserving the 3.98–4.0 GHz band as a guard band extends to incumbent earth stations. The Commission reiterates its finding above that earth station registrants are not licensees. The Commission issues licenses pursuant to its authority under Title III of the Act, which requires a license for ''the *transmission* of energy, or communications or signals by radio.'' The Commission has long concluded that, because receive-only earth stations do not transmit, they do not require a license under Section 301 of the Act. In adopting rules providing for earth station registrants to receive interference protection through voluntary coordination, the Commission has done so under its Title I ancillary authority to its ''other regulatory responsibilities to maximize effective use of satellite communications'' over which the Commission has express Title III authority, including its Section 301 licensing and conditioning authority and its Section 303 authority to regulate radio transmissions in various specified ways, and made clear that a receive-only earth station registration does not confer a license. While Section 316 governs the Commission's modification of licenses, the Commission is not required by the Act to license receive-only earth stations and has found that it is not in the public interest to do so. The Commission has therefore relied on its ancillary authority to administer a registration regime for these stations, which it has an ongoing responsibility to modify as appropriate to ensure that it remains consistent with its regulation in the

[10] *See, e.g., NextWave Pers. Commc'ns, Inc.,* 200 F.3d 43, 51 (2d Cir. 1999), *cert. denied,* 531 U.S. 924 (2000) (citing 47 U.S.C. 301 (the purpose of the Communications Act is to ''to provide for the use of [radio] channels, but not the ownership thereof'')).

[11] *See Lucas* v. *South Carolina Coastal Council,* 505 U.S. 1003, 1015 (1992); *Agins* v. *City of Tiburon,* 447 U.S. 255, 260–61 (1980) (balancing the property owner's economic losses and lost reasonable investment-backed expectations against the character of the government action).

[12] *Penn Central Transportation Co.* v. *New York City,* 438 U.S. 104, 124 (1978) (citing *Pennsylvania Coal Co.* v. *Mahon,* 260 U.S. 393, 413 (1991) (''[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law'')).

public interest of the licensed satellite stations. As an exercise of that responsibility, the Commission is thus modifying the earth station registrations to comport with the C-band reconfiguration it is ordering herein, by limiting the frequencies on which these earth stations may receive interference protection to the upper 200 megahertz of C-band spectrum.

131. A relatively small number of earth stations that receive in the 3.7–4.2 GHz band are licensed to transmit in another band (*i.e.,* licensed transmit-receive earth stations). That license to transmit does not provide the earth station operator with the right to transmit in the C-band, where they hold no ''licensed spectrum usage rights.'' To the extent earth stations have licenses to transmit in another band, the Commission finds that it has ample authority to propose to modify their authorizations to eliminate their interference protection rights in the lower 300 megahertz of the band, once cleared of satellite operations under the Commission's Section 316 authority. Like with the space station operators, this proposed modification does not effect a fundamental change because earth stations will continue to receive the same level of service (from satellite providers operating in the upper 200 megahertz of the band) and will remain able to provide the same services to their own customers as before their registration or license modification.

132. *New Earth Stations.*—On April 19, 2018, the staff released the *Freeze and 90-Day Earth Station Filing Window Public Notice (83 FR 35454, July 26, 2018),* which froze applications for new or modified earth stations in the 3.7–4.2 GHz band to preserve the current landscape of authorized operations pending action as part of the Commission's ongoing inquiry into the possibility of permitting mobile broadband use and more intensive fixed use of the band through this proceeding. Given its decision to limit FSS operations in the 3.7–4.0 GHz band in the contiguous United States but not elsewhere, the Commission converts the freeze for new FSS earth stations in the 3.7–4.0 GHz band in the contiguous United States into an elimination of the application process for registrations and licenses for those operations, and the Commission lifts the freeze for new FSS earth stations in the 3.7–4.2 GHz band outside of the contiguous United States as of the publication date of the *Report and Order.*

133. The Commission revises the part 25 rules such that applications for 3.7–4.0 GHz band earth station licenses or registrations in the contiguous United States will no longer be accepted. Several commenters support permanently limiting eligibility to file applications for earth station licenses or registrations to incumbent earth stations. The Commission finds that limiting, as described, the registration of new earth stations in spectrum being transitioned to primary terrestrial use will provide a stable spectral environment for more intensive terrestrial use of 3.7–3.98 GHz and facilitate the rapid transition to terrestrial use.

134. With respect to registered incumbent earth stations that are transitioned to the 4.0–4.2 GHz band, the Commission will permit these earth stations to be renewed and/or modified to maintain their operations in the 4.0–4.2 GHz band. The Commission will not, however, accept applications for new earth stations in the 4.0–4.2 GHz portion of the band for the time being, during this transition period.

135. *New Space Station Operations.*—Consistent with its decision to continue to permit satellite operations in the upper 200 megahertz of the C-band, the Commission modifies its proposal to revise the rules to codify the International Bureau's June 21, 2018 freeze. Specifically, the Commission revises its rules to prohibit new applications for space station licenses and new petitions for market access concerning space-to-Earth operations in the 3.7–4.0 GHz band in the contiguous United States. Outside the contiguous United States for the 3.7–4.2 GHz band and nationwide for the 4.0–4.2 GHz band, these revisions do not apply. For the contiguous United States, allowing new satellite space station applicants to claim access to the 4.0–4.2 GHz FSS band could complicate the transition process. Accordingly, the Commission will continue the freeze on new applicants until the transition is completed, which will allow incumbent space station operators the flexibility to launch additional satellites to achieve an efficient transition to the upper portion of the band. Once the transition is completed, the International Bureau is directed to release a public notice announcing that the freeze is lifted.

136. Several terrestrial wireless operators support limiting new space station operations as proposed by the Commission. The Commission finds its approach strikes the appropriate balance between not allowing new space station applicants to claim access to the band to complicate the transition process and providing incumbent space station operators the flexibility to launch additional satellites to achieve an efficient transition to the upper portion of the band.

3. Transition Schedule

137. Consistent with the *Emerging Technologies* framework, the Commission finds a mix of carrots and sticks best accommodates the need to clear FSS operations out of the lower 300 megahertz as quickly as possible to facilitate new terrestrial, flexible-use operations and the need to preserve the content distribution ecosystem now contained in the C-band. Given the disagreements in the record on how long the transition will take, the Commission finds that a multi-stage transition that offers both positive incentives to operators for clearing early as well as negative incentives for operators that fail to clear by the end of the sunset period will best serve these goals.

138. The Commission establishes a Relocation Deadline of December 5, 2025 to ensure that all FSS operations are cleared in a timely manner, as well as two Accelerated Relocation Deadlines—a Phase I deadline of December 5, 2021 and a Phase II deadline of December 5, 2023—for incumbent space station operators that voluntarily relocate on an accelerated schedule (with additional obligations and incentives for such operators). And the Commission sets forth the consequences for meeting or failing to meet these deadlines.

139. In the *NPRM,* the Commission sought comment on reasonable benchmarks for incumbent space station operators to clear and make C-band spectrum available for flexible use to ensure a timely transition process. Recognizing that spectrum would likely be cleared incrementally over the course of the full clearing process, the Commission sought comment on appropriate periodic reporting requirements, as well as any procedural safeguards or penalties that may be necessary if the transition facilitator is unable to clear the spectrum within the designated clearing time period.

140. The record is divided on how long it will take to clear the lower 300 megahertz for terrestrial operations and relocate incumbent space station operators and incumbent earth stations to the upper 200 megahertz. In the context of proposing a private sale, the C-Band Alliance states that it could clear and repack enough satellite transponders to make 280 megahertz of spectrum available for 5G use in the contiguous United States within 36 months of such a sale in a two-step process. First, within 18 months of Commission action in this proceeding,

the C-Band Alliance would be able to clear 120 megahertz in 46 of the top 50 PEAs. The C-Band Alliance claims it could achieve this benchmark without the need to launch new satellites. To achieve this, the C-Band Alliance proposes to provide passband filters to all earth stations that potentially may be affected by wireless terrestrial operations anywhere within the PEA, including earth stations that are outside of, but near enough to, the PEA to experience harmful interference. Second, within 36 months of its private sale, the C-Band Alliance would be able to clear the remaining PEAs for the first 120 megahertz, as well as an additional 180 megahertz throughout the contiguous United States. Space station operators that are not members of the C-Band Alliance support a rapid transition of C-band spectrum and have put forth similar transition timelines to those proposed by the C-Band Alliance. Eutelsat supports the 18- and 36-month timelines proposed by the C-Band Alliance, and states that, with diligent effort from all interested parties, an auction could commence in 2020, with transition milestones for the release of 100 megahertz and 300 megahertz of spectrum for flexible use at the end of 2021 and 2023, respectively. The Small Satellite Operators agree that 300 megahertz of C-band spectrum could be made available for 5G within 18 to 36 months through the use of non-proprietary, readily available compression technology. And other commenters agree that the proposed 18-month and 36-month timelines are attainable if all stakeholders' incentives are properly aligned.

141. Some commenters express skepticism that a transition of FSS operations can be accomplished under the timelines proposed by the C-Band Alliance. Meanwhile, users of FSS services like broadcasters simply caution that the transition will be enormous and complex.''

142. Given that the members of the C-Band Alliance and Eutelsat manage most of the C-band satellite traffic today and are the most knowledgeable parties about their operations in the C-band, the Commission is inclined to give the C-Band Alliance and Eutelsat the opportunity to make good on their claims that they can relocate existing C-band operations into the upper 200 megahertz quickly and to provide incentives for them to do so. The Commission nonetheless recognizes that the transition may take longer than the C-Band Alliance and Eutelsat claimed was necessary as a technical matter. Given the reasoned skepticism of many in the record and our own agreement with commenters that this transition will be an enormous and complex task, the Commission adopts a somewhat longer Relocation Deadline of five years to ensure the protection of incumbent earth stations should the transition take longer than the C-Band Alliance has forecast.

143. Specifically, the Commission concludes that a Relocation Deadline of December 5, 2025 is in the public interest. In particular, the Commission finds that the December 5, 2025 transition date strikes a fair and appropriate balance between bringing C-band spectrum to market and ensuring space station operators, earth station operators, and other stakeholders have the necessary time to complete this transition in a careful, fair, and cost-effective manner. This date ensures this spectrum will be made available for flexible use, while guaranteeing that vital television and radio services currently provided using the C-band will continue operating without interruption, both during and after the transition.

144. FSS operations in the C-band are critical to the delivery of television and radio programming, as well as many other services, for tens of millions of Americans, and it is in the public interest to ensure that these services are not disrupted. Given this, it is in the public interest to avoid sunsetting FSS operations before all services can be transitioned fully out of this part of the band. And the Commission finds that, even with the uncertainties in the record, a transition period through December 5, 2025 will be sufficient to ensure continued operations throughout the contiguous United States and the relocation of stations to the upper 200 megahertz of the band.

145. In setting the Relocation Deadline, the Commission must also account for the costs to the American public from delays in freeing up this important mid-band spectrum for terrestrial use, including for 5G. The C-Band Alliance itself has claimed that ''[e]ach year of [delaying the deployment of C-band spectrum for flexible use] is value lost forever—here, about $50 billion or more per year in consumer surplus.'' Whatever the merits of that particular valuation, the Commission agrees that delaying the transition of this spectrum longer than necessary will have significant negative effects for the American consumer and American leadership in 5G. The Commission thus finds that because a 2025 deadline is sufficient to relocate existing FSS operations, it is imperative we set the Relocation Deadline no later than 2025 so that we do not delay the use of this valuable public resource any longer than necessary.

146. The Commission notes that a five-year Relocation Deadline is wholly consistent with our precedent and past spectrum transitions. The Commission has overseen several complex transitions in other bands, involving thousands of authorized entities with diverse operational needs, customer bases, and technical requirements. Recent transition timelines have been as short as 39 months—such as in the Broadcast Incentive Auction—or longer than fourteen years—as in the 800 MHz transition.

147. In the *800 MHz Order,* the Commission repacked portions of the 800 MHz band to address a growing problem of harmful interference to 800 MHz public safety communication systems caused by the inherent incompatibility of those systems with high-density commercial wireless systems when situated in an increasingly congested, interleaved spectral environment. The 800 MHz repack has taken over fourteen years to complete, due to the need to ensure public safety transmissions are not disrupted. In contrast, the Commission expects the transition after the Broadcast Incentive Auction, which involves repacking full power and Class A television broadcast facilities, will take only 39 months. The Broadcast Incentive Auction, authorized by Congress, sought to reallocate spectrum used by TV broadcasters in order to provide new spectrum to be used for next generation wireless services. TV broadcasters, who previously used portions of spectrum above Channel 37, ranging from 614 MHz to 698 MHz, were assigned to a channel ranging from Channel 2 to Channel 36, consisting of the VHF low band (between Channel 2 and Channel 6), the VHF high band (between Channel 7 and 13), and the UHF band (between Channel 14 and 36). Additionally, some TV broadcasters operating in channels below Channel 37 were relocated to other channels below Channel 37.

148. The Commission sees this transition as more analogous to the Broadcast Incentive Auction repacking than it is to the 800 MHz transition. Here, unlike the 800 MHz transition, public safety services are not at stake and—although incumbent operations will be protected throughout the transition—moving FSS transmissions will not require the careful incremental adjustments required in the 800 MHz repack. As a result, repacking FSS transmission will not need as much time as has been needed for the repack of the 800 MHz band. However, the

Commission also believes that the C-band transition may take longer than the Broadcast Incentive Auction, as this transition will involve a variety of different and complex elements that may require a longer transition timeline. For example, the transition here will likely require the design, construction, launch, and deployment of additional new satellites. Additionally, that transition involved only 987 TV licenses and not communications and coordination among and reimbursement to thousands of satellite and earth station stakeholders.

149. C-band space station operators do not have direct contractual relationships with many of the earth stations that receive their service transmissions and, as such, it may take additional time and effort to ascertain which FSS earth stations receive content from each incumbent space station operator and to assign responsibility for clearing each earth station. Regardless, the incumbent space station operators are in the best position to expeditiously transition this band to flexible use service and we note that they have already made significant progress in identifying earth stations and developing transition plans.

150. Despite having claimed it can complete the transition in three years, the C-Band Alliance has recently suggested that Commission precedent could require a 10-year (or greater) deadline for relocation under the *Emerging Technologies* precedent. The Commission disagrees. The Commission acknowledges that the Commission can and has set a 10-year deadline before, for example, when it relied on the *Emerging Technologies* framework to transition terrestrial fixed service licensees relocating from the 18.58–18.8 GHz and 18.8–19.3 GHz bands, to the 17.7–18.3 GHz band, in addition to allowing operations in the 18.3–18.58 GHz and 19.3–19.7 GHz bands on a co-primary basis. But in doing so, the Commission expressly found that, based on the circumstances before it, a sunset period of ten years for continued co-primary status of existing terrestrial fixed stations was an appropriate compromise that will allow these systems to continue to operate in these bands, while giving FSS interests the option to pay the cost of relocating such systems if FSS interests want to deploy operations in those areas before the 10-year sunset. But just because the Commission determined a ten-year transition was appropriate under one set of facts does not mean that a ten-year sunset period is appropriate or necessary for clearing the C-band. And the C-Band Alliance fails to acknowledge that involuntary relocation procedures became available after only two years in the precedent it cites—so no incumbent was ''entitled'' to a ten-year transition.

151. *Accelerated Relocation.*—The Commission also adopts two Accelerated Relocation Deadlines—a Phase I deadline of December 5, 2021 and a Phase II deadline of December 5, 2023—for incumbent space station operators that voluntarily relocate on an accelerated schedule (with additional obligations and incentives for such operators). The Commission will provide an opportunity for accelerated clearing by space station operators by making them eligible for accelerated relocation payments, if those space station operators are able to meet certain early clearance benchmarks for the band.

152. The Commission also finds that adopting rules to provide for Accelerated Relocation Deadlines, with incentives for eligible space station operators that voluntarily relocate according to an accelerated schedule, will promote the rapid introduction of a significant tranche of C-band spectrum by leveraging the technical and operational knowledge of space station operators, aligning their incentives to achieve a timely transition, and enabling that transition to begin as quickly as possible. It is undisputed in the record that eligible C-band space station operators are in a unique position to quickly clear a significant portion of this band spectrally by using satellite grooming to repack existing services into the upper portion of the band. Thus, under this scenario, the clearing process would begin much sooner and proceed at a more rapid pace in the years following release of this *Report and Order* than if the Commission relied on the December 5, 2025 sunset date as the sole means of incentivizing space station operators to make C-band spectrum available for flexible use.

153. Specifically, eligible space station operators will have the option to clear according to the following accelerated clearing timeline: (1) Clearing 100 megahertz (3.7–3.8 GHz) by December 5, 2021, and (2) clearing the remaining 180 megahertz (3.8–3.98 GHz) by December 5, 2023. To satisfy the early clearing benchmarks, space station operators would be required to clear an additional 20 megahertz by the end of the clearing period to be used as a guard band to protect FSS users that will continue to operate in the upper portion of the band.

154. In order to satisfy the Phase I Accelerated Relocation Deadline, a space station operator must repack any existing services and relocate associated incumbent earth stations throughout the contiguous United States into the upper 380 megahertz of the C-band (3820–4200 MHz) and must also provide passband filters to block signals from the 3700–3820 MHz band to associated incumbent earth stations in 46 of the top 50 PEAs by December 5, 2021. To satisfy the Phase II Accelerated Relocation Deadline, a space station operator must repack any existing service and relocate associated incumbent earth stations throughout the contiguous United States into the upper 200 megahertz of the C-band (4.0–4.2 GHz), and provide passband filters to block signals from the 3700–4000 MHz band to all associated incumbent earth stations in the contiguous United States by December 5, 2023. In both instances, the space station operator must not knowingly cause the incumbent earth stations that receive its transmission to temporarily or permanently lose service during or after the transition and must take all steps necessary to allow incumbent earth station operators to continue to receive substantially the same service during and after the relocation that they were able to receive before the transition.

155. As discussed below, a space station operator must coordinate with relevant earth station operators to perform any necessary system modifications, repointing, or retuning to receive transmissions that have been migrated to frequencies on new transponders or satellites, and must ensure that any incumbent earth stations currently receiving in the bottom 300 megahertz are able to continue receiving those services once they are transitioned to the upper portion of the band.

156. *Payments and Penalties Related to the Deadlines.*—Incumbent space station and earth station operators that clear their existing services from the lower 300 megahertz by the Relocation Deadline shall be eligible for reimbursement of their reasonable costs to transition.

157. In addition to reimbursement for their relocation costs, incumbent space station operators that satisfy the Accelerated Relocation Deadlines shall be eligible to receive an Accelerated Relocation Payment. A space station operator that elects to accept the Accelerated Relocation Payment for satisfying the Phase I Accelerated Relocation Deadline must also commit to complete the transition of the full 300 megahertz by the Phase II clearing deadline. If a space station operator fails to satisfy either the Phase I or Phase II

deadline, it will not be eligible for the portion of the accelerated relocation payment attributable to the deadline that it missed.

158. Space station operators that fail to clear their existing services from the lower 300 megahertz by the final Relocation Deadline will not receive reimbursement for their reasonable relocation costs or any additional Accelerated Relocation Payments, and will also be subject to penalties for their failure to timely clear. Radio transmissions must be authorized by the FCC pursuant to Section 301, and transmissions sent by space station operators after the Relocation Deadline established above would be unauthorized and a violation of Section 301. Unauthorized transmissions by incumbent space station operators in violation of Section 301 can result in the imposition of sanctions by the FCC on such operators, including forfeiture penalties. Thus, after the Relocation Deadline, a space station operator which continues to operate in the 3.7–4.0 GHz band with the willful purpose of transmitting to earth stations within the contiguous United States, both registered and unregistered, would be ''operat[ing] without an instrument of authorization for the service'' and potentially subject to forfeitures and other sanctions.

159. While the Commission will review any potential violations on a case-by-case basis, unauthorized satellite transmissions to earth stations could result in forfeitures based on each unauthorized satellite operation, each unauthorized earth station operation, or each day of unauthorized operation of such satellites and earth stations. There are approximately 20,000 registered earth stations in the contiguous U.S., and some space station operators—some of whom transmit from multiple satellites—transmit to thousands of earth stations in the contiguous U.S. A space station operator operating in violation of its authorization could be assessed a separate violation on a daily basis for each earth station to which they willfully transmit and for each satellite from which the unauthorized transmission is sent. Alternatively, the Commission may consider each discrete transmission between a satellite and earth station a violation, resulting in a penalty for each of those unauthorized transmissions. Operation without an instrument of authorization for the service carries a base forfeiture of $10,000 per violation.

160. The Commission's rules allow it to adjust forfeiture penalties upward according to a set of criteria. Specifically, in exercising its forfeiture authority, the Commission must consider the ''nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.'' In addition, the Commission has established forfeiture guidelines, under which the Commission may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator. Thus, the Commission could potentially upwardly adjust the forfeiture penalties for space station operators if it found that a space station operator's misconduct merited an increase in penalties.

4. Relocation and Accelerated Relocation Payments

161. Under the framework the Commission adopts to facilitate a public auction of 280 megahertz of C-band spectrum, new overlay licensees must pay their share of relocation and accelerated relocation payments to reimburse incumbents for the reasonable costs of transitioning out of the lower 300 megahertz of the C-band in the contiguous United States. In this section, the Commission explains its authority to require such payments, explains what relocation costs are compensable, estimates the total relocation payments, establishes the accelerated relocation payments available to incumbent space stations that elect for an accelerated transition and meet those deadlines, and explains what share of the costs each overlay licensee will bear.

162. *Authority to Require Payments.*—The Commission finds that incumbent space station operators and incumbent earth station operators that must transition existing services to the upper portion of the band should be compensated for the costs of that transition. Because winning bidders will benefit from use of the spectrum, the Commission will condition their licenses on making all necessary relocation and accelerated relocation payments before they are allowed to deploy in the spectrum made available for flexible use.

163. The Commission's broad spectrum management and licensing authority under Section 303 provides it with the ability to ''[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this [Act.]'' [13] The Commission has repeatedly used this authority to impose conditions on new licensees, including buildout conditions, public safety obligations, and obligations to facilitate the transition of incumbents out of the spectrum at issue before commencing operations.

164. The Commission's authority to require new licensees to make relocation payments to incumbents is well established. Starting in 1992, the Commission adopted a series of rules (known as the *Emerging Technologies* framework) to enable new licensees to enter into voluntary or mandatory negotiations with incumbent operators to clear a spectrum band after which, failing an agreement, the new entrant could involuntarily clear incumbent operations by expressing its intent to commence operations in that band and paying for all reasonable relocation costs. For example, in 2000, the Commission, recognizing that new licensees in a band might be unable to design their systems to avoid interference from incumbent stations, adopted a relocation reimbursement process to ''afford[ ] reasonable flexibility'' for those new licensees ''to roll out their operations in a timely and economic manner.'' Similarly, in 2006, the Commission established procedures for the relocation of Broadband Radio Service and Fixed Microwave Service operation and further adopted cost-sharing rules to identify the reimbursement obligations for new entrants benefitting from the relocation of those incumbent services.

165. Notably, the Commission has taken a flexible approach in applying the *Emerging Technologies* framework, tailoring the particular obligations on incumbents and new licensees to suit the circumstances. And so, for example, the Commission has imposed cost-sharing obligations on incoming licensees to insure that relocation expenses would be borne by all new licensees that would benefit from such clearing—even if one such licensee were to take lead in working with incumbents to facilitate speedier clearing. Indeed, in 2013, the Commission adopted a cost-sharing mechanism for winning bidders to reimburse the entities that had previously cleared incumbents from the band.

166. Courts have upheld the Commission's use of this authority. In 1996, the U.S. Court of Appeals for the D.C. Circuit upheld the Commission's repeal of an exemption, which had previously shielded public safety licensees from a relocation regime in

[13] 47 U.S.C. 303(r).

which new licensees would pay all costs associated with relocating incumbents to comparable facilities.[14] The court found that the Commission had ''adequately articulated a *reasoned* analysis based on studies and comments submitted during the rulemaking process'' that justified its decision to require all incumbent licensees, including public safety licensees, to mandatory relocation. In the 2001 *Teledesic* case, the D.C. Circuit, in affirming the Commission's authority to adopt such relocation compensation mechanisms, noted that the Commission's ''consistent policy has been to prevent new spectrum users from leaving displaced incumbents with a sum of money too small to allow them to resume their operations at a new location.'' [15] The court observed that it previously had approved aspects of a similar relocation scheme, in a decision upholding the elimination of an exemption for public safety incumbents from a relocation regime in which new licensees would pay all costs associated with relocating incumbents to comparable facilities.

167. That same authority also allows the Commission to require overlay licensees to make accelerated relocation payments—payments designed to expedite a relocation of incumbents from a band. The Commission starts again with the *Emerging Technologies* framework, in which the Commission expressly allowed new licensees to make relocation payments separate and above relocation expenses ''as an incentive to the incumbent to locate quickly.'' For example, in reallocating certain bands for PCS operations in the 1990s, the Commission provided that incoming licensees could offer ''premium payments or superior facilities, as an incentive to the incumbent to relocate quickly.'' Ten years later, the Commission expressly authorized incentive payments to incumbent operators to expedite clearing. In those transitions, the Commission found that such acceleration agreements not only benefitted both entrants and incumbents, but, more importantly, served the public interest by significantly expediting transitions to flexible use.

168. Given the significant public interest benefits of clearing terrestrial, mid-band spectrum more quickly, which would bring next-generation services like 5G to the American public years earlier and help assure American leadership in the 5G ecosystem, the Commission finds that requiring overlay licensees to make accelerated relocations is in the public interest. The Commission starts by noting the significant benefits of accelerating a transition of this spectrum. Studies in the record indicate that licensing mid-band spectrum will lead to substantial economic gains. Economist Jeffrey Eisenach points to ''consumer welfare gains from rapid allocation of C-band spectrum to mobile broadband carriers,'' and he estimates that the ''*annual* increase in consumer surplus is approximately equal to the total amount paid by the purchasers.'' Eisenach also notes that ''for every year of delay'' in making the C-band spectrum available, ''consumer welfare is reduced by $15 billion.'' Similarly, Coleman Bazelon estimates that just one year of delay in transitioning the spectrum would reduce the value of repurposing the C-band by between 7% and 11%. Noting that the ''economic value of spectrum is only a fraction of its total social value, the Brattle Group notes that ''every $1 billion in delay costs would create total social costs of $10 billion to $20 billion.'' These studies underscore the importance of incentivizing incumbents to clear the band for 5G use as quickly as possible.

169. Next, the Commission finds that simply allowing overlay licensees to negotiate with incumbent space station operators and incumbent earth station operators for an expedited departure from the band likely would prove ineffective in ensuring a speedy transition. *First,* incumbent space station operators face holdout problems. The complex nature of spectrum-sharing in the band (including the non-exclusive, non-terrestrially-bound, full band, full arc transmission rights held by each incumbent space station operator) poses one hurdle, since persuading a single operator to accelerate relocation may have no impact on expedited clearing of the band because other operators have not relocated (for example, a single incumbent earth station operator may have multiple earth stations clustered together, each pointing at a different satellite owned by a different incumbent space station operator). Because of this regulatory structure, each incumbent space station operator has strong incentives to holdout to extract a disproportionate premium for its participation. *Second,* overlay licensees face free rider problems. If one flexible-use licensee pays to clear a single PEA (let alone the contiguous United States), other licensees could benefit significantly from the clearing without paying their fair share. *Third,* numerous coordination problems exist. Transitioning the C-band satellite ecosystem to the upper part of the band will require communication and coordination with a large and diverse group of entities with different interests, including multiple incumbent space station operators and thousands of incumbent earth stations. *Fourth,* to meet the clearing deadlines set by the Commission and, in so doing, maximize the economic and social benefits of providing spectrum for next generation wireless services, space station operators will need to begin the clearing process immediately. To accomplish an early transition via negotiation, however, the satellite licensees would need to know the identities of each of the overlay licensees in the band and those will not be known until after the completion of the auction, sometime in 2021. Thus, relying solely on individual negotiations between licensees to accomplish earlier transition would be incompatible with the clearing deadlines established by the Commission.

170. Based on the unique circumstances of the band, the Commission therefore finds that it would best serve the public interest, consistent with the *Emerging Technologies* framework, to condition new licenses on making acceleration payments to satellite incumbents that voluntarily choose to clear the band on an expedited schedule. Like relocation payments, the Commission finds that requiring such mandatory payments is both in the public interest and within our Title III authority.

171. The Commission finds its decision to require new terrestrial licensees to pay relocation costs is broadly supported by the record. Commenters overwhelmingly urge the Commission to require new licensees to reimburse incumbents' costs to clear the band for flexible use.

172. Commenters also agree that it is appropriate to require new terrestrial licensees to make additional payments above relocation costs to incumbents that clear on accelerated timelines.

173. The vast majority of stakeholders that have submitted filings in the record on this issue agree that the Commission has the authority to require the new flexible use licensees both to pay the relocation costs of the incumbent space station operators and to make an accelerated relocation payment when certain conditions are met. The Commission's long practice of

[14] *Ass'n of Public Safety Communications Officials-Int'l, Inc.* v. *FCC,* 76 F.3d 395, 397, 400 (D.C. Cir. 1996).

[15] *Teledesic LLC* v. *FCC,* 275 F.3d 75, 84–86 (D.C. Cir. 2001).

permitting voluntary relocation payments was affirmed by the D.C. Circuit in *Teledesic.* In the proceeding underlying that decision, the Commission followed its *Emerging Technologies* precedent and adopted rules that allowed new licensees to compel incumbents to relocate from the 18 GHz band and required such licensees to negotiate with incumbents prior to requiring them to leave the band and to pay reasonable relocation expenses. The SSOs similarly agree that the Commission's exercise of its general Title III authority to condition wireless licenses would include a mandatory acceleration payment and would constitute a reasonable extension of the Commission's *Emerging Technologies* precedent. Still other reports focus on the value of accelerating the clearing of this band. Coleman Bazelon estimates that a one year of delay in transitioning the spectrum would reduce the economic value of repurposing this band by between 7% and 11%. Additionally, Bazelon highlights the importance of consumer surplus, or social value, associated with accelerated clearing. He notes that ''every $1 billion in delay costs would create total social costs of $10 billion to $20 billion.'' Similarly, Dr. Eisenach, citing a study by Hazlett and Munoz, states that the ''*annual* increase in consumer surplus is approximately equal to the total amount paid by the purchasers.''

174. Some commenters argue that the Communications Act prohibits the Commission from requiring overlay licensees to make accelerated relocation payments because Section 309(j) of the Act requires that ''all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury.'' The Commission disagrees that this statutory provision would preclude such relocation payments. Under the rules the Commission adopts, all proceeds from the public auction will indeed be deposited in the Treasury in accordance with the requirements of the Act. By contrast, accelerated relocation payments are not ''proceeds'' of the auction. Instead, they will flow from the new licensees to the incumbents. This is precisely the arrangement that courts have upheld in the *Emerging Technologies* framework, and precisely the framework that allows us to require incumbents to make *any* relocation payments. The Commission does not read OTI as arguing that *all* relocation payments are prohibited—doing so would significantly hinder the Commission's work to manage spectrum in the public interest in a variety of bands and contexts (and would contradict the clear line of judicial precedent that has affirmed the Commission's authority to require such payments). And we cannot see why the language of Section 309(j) should treat one form of relocation payment as proceeds but not another, so long as all are tied to facilitating the swift and efficient transition of incumbents out of the band.

175. Some parties argue that earth station operators should receive accelerated relocation payments in exchange for expedited clearing as well. The Commission finds such arguments unavailing. Based on the record, the Commission anticipate that clearing any given incumbent earth station will be a relatively quick process—and will take far less time than the deadlines we establish for the transition. Instead, it is the fact that incumbent space station operators must account for the operational logistics of hundreds if not thousands of incumbent earth stations that make the overall transition significantly longer than it would take to transition a single earth station. And indeed, the Commission already requires incumbent space station operators that elect Accelerated Relocation to take upon themselves responsibility for transitioning all incumbent earth station operators that receive their services—they must coordinate with incumbent earth station registrants to perform any necessary system modifications, repointing, or retuning to receive transmissions that have been migrated to the upper portion of the band. The Commission thus finds that incumbent earth station operators can and will transition in a timely manner without the need for accelerated relocation payments.

176. *Compensable Relocation Costs.* The Commission next sets forth guidelines for compensable costs, *i.e.,* those reasonable relocation costs for which incumbent space station operators and incumbent earth station operators can seek reimbursement. Consistent with Commission precedent, compensable costs will include all reasonable engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the incumbent space station operators and incumbent earth station operators may incur as a result of relocation.

177. The Commission expects incumbents to obtain the equipment that most closely replaces their existing equipment or, as needed, provides the targeted technology upgrades necessary for clearing the lower 300 megahertz, and all relocation costs must be reasonable. ''Reasonable'' relocation costs are those necessitated by the relocation in order to ensure that incumbent space station operators continue to be able to provide substantially the same or better service to incumbent earth station operators, and that incumbent earth station operators continue to be able to provide substantially the same service to their customers after the relocation compared to what they were able to provide before. For example, parties have indicated that upgrades such as video compression, modulation/coding, and HD to SD down-conversion at downlink locations, may be necessary to accomplish efficient clearing—particularly in an accelerated timeframe. So long as the costs for which incumbents are seeking reimbursement are reasonably necessary to complete the transition in a timely manner (and reasonable in cost), such expenses would be compensable. Similarly, the Commission expects that some incumbents will not be able to replace older, legacy equipment with equipment that is exactly comparable in terms of functionality and cost because of advances in technology and because manufacturers often cease supporting older equipment. Incumbents may receive the reasonable replacement cost for such newer equipment to the extent it is needed to carry out the transition—and the Commission intends to allow reimbursement for the cost of that equipment and recognize that this equipment necessarily may include improved functionality beyond what is necessary to clear the band. In contrast, the Commission does not anticipate allowing reimbursement for equipment upgrades beyond what is necessary to clear the band. For example, if an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation.

178. The Commission recognizes that incumbents may attempt to gold-plate their systems in a transition like this. Incumbents will not receive more reimbursement than necessary, and the Commission requires that, to qualify for reimbursement, all relocation costs must be reasonable. This requirement should give incumbents sufficient incentive to be prudent and efficient in their expenditures. If a particular expenditure is unreasonable, the incumbent will only receive compensation for the reasonable costs that the incumbent

would have incurred had it made a more prudent decision.

179. Similarly, the Commission will not reimburse incumbent licensees for the speculative value of any business opportunities that they claim they would lose as a result of the transition. Since the incumbent space station operators will be able not only to maintain their current level of service after the transition, but to potentially serve new clients by employing point technology and adopting other network efficiencies, the Commission finds that there will be no compensable loss of business opportunity over and above their actual costs associated with the transition. Compensating licensees for speculative claims of future loss would be inconsistent with established Commission precedent and would not serve the public interest.

180. As in prior cases, the Commission will allow reimbursement of some ''soft costs''—''legitimate and prudent transaction expenses'' incurred by incumbents ''that are directly attributable'' to relocation. The Commission defines soft costs as transactional expenses directly attributable to relocation, to include engineering, consulting, and attorney fees, as well as costs of acquiring financing for clearing costs. This is consistent with suggestions from some commenters that the Commission should allow recovery of soft costs for relocation expenses.

181. In some prior proceedings, the Commission has subjected ''soft'' costs to a cap of 2% of the hard costs involved. Without a limit, ''soft cost'' transaction expenses such as engineering and attorney fees, could easily eclipse the ''hard costs'' of relocation, particularly for the thousands of incumbent earth stations that must be filtered, retuned, or repointed. A limit on transaction expenses can encourage transition efficiency, as many incumbent earth station operators own or manage multiple incumbent earth stations and thus have the ability to identify and implement economies of scale. Rather than a hard cap, the Commission finds it reasonable to establish a rebuttable presumption that soft costs should not exceed 2% of the relocation hard costs. This way, an incumbent may demonstrate that any fees in excess of 2% were reasonably and unavoidably incurred—and thus properly compensable. Establishing a rebuttable presumption is consistent with the Commission's approach in the 800 MHz Rebanding proceeding, in which the Commission used 2% of the hard costs as a ''useful guideline for determining when transactional costs are excessive or unreasonable and charge[d] the Transition Administrator to give a particularly hard look at any request involving transactional costs that exceed two percent.'' As discussed below, the Commission will establish a Relocation Payment Clearinghouse that can serve ''as a watchdog over excess transactional costs.'' Parties seeking reimbursement for soft costs that exceed 2% shall bear the burden of justifying these expenses.

182. For incumbent space station operators, flexible-use licensees will be required to reimburse eligible space station operators for their actual relocation costs, as long as they are not unreasonable, associated with clearing the lower 300 megahertz of the band while ensuring continued operations for their customers. First, the Commission expects that procuring and launching new satellites may be reasonably necessary to complete the transition. These new satellites will support more intensive use of the 4.0–4.2 GHz band after the transition. Second, incumbent space station operators will also need to consolidate their TT&C sites—to a maximum of four facilities in the contiguous United States—and reduce the number of gateway facilities. The costs involved with this consolidation process may include the installation of additional antennas at these facilities, procurement of new real estate, and support for customer migration to the relocated facilities. Third, the Commission expects that incumbent space station operators will need to install compression and modulation equipment at their terrestrial facilities to make more efficient use of spectrum resources and ensure that they are able to provide a consistent level of service after the transition. All of these migration tasks must be coordinated with the earth station transition process to ensure that earth stations are able to receive existing C-band services during and after the transition.

183. The Commission reiterates that compensable relocation costs are only those that are reasonable and needed to transition *existing* operations in the contiguous United States out of the lower 300 megahertz of the C-band. In order to meet this standard and qualify as eligible for relocation cost reimbursements, an incumbent space station operator must have demonstrated, no later than February 1, 2020, that it has an existing relationship to provide service via C-band satellite transmission to one or more incumbent earth stations in the contiguous United States. These existing relationships could include, for example, contractual obligations to provide C-band service to be received at a specific earth station location. And these existing relationships need not be direct but could include indirect relationships through content distributors or other entities, so long as the relationship requires the provision of C-band satellite services to one or more specific incumbent earth stations in the contiguous United States. Based on the record, only five incumbent space station operators have such operations: Eutelsat, Intelsat, SES, Star One, and Telesat. The Commission does not expect any other incumbent space station operators to need to incur any relocation costs, and thus the Commission does not expect them to be eligible for relocation payments. Nonetheless, such operators may be compensated for reasonable relocation costs should they demonstrate that those costs were truly required as a direct result of the transition of existing C-band services provided to one or more incumbent earth stations in the contiguous United States.

184. For incumbent earth station operators, the Commission expects the transition will require two types of system changes that may occur separately or simultaneously: Earth station migration and earth station filtering. First, earth station migration includes any necessary changes that will allow the earth stations to receive C-band services on new frequencies or from new satellites once space station operators have relocated their services into the upper portion of the band. For example, in instances where satellite transmissions need to be moved to a new frequency or to a new satellite, earth stations currently receiving those transmissions may need to be retuned or repointed in order to receive on the new frequencies or from the new satellite. Such a transition requires a ''dual illumination'' period, during which the same programming is simultaneously downlinked over the original frequency or satellite and over the new frequency or satellite so that the receiving earth station can continue receiving transmissions from the original frequency or satellite until it retunes or repoints the antenna to receive on the new frequency or satellite. Earth station migration may also require the installation of new equipment or software at earth station uplink and/or downlink locations for customers identified for technology upgrades necessary to facilitate the repack, such as compression technology or modulation. Second, passband filters must be installed on all existing earth

stations to block signals from adjacent channels and to prevent harmful interference from new flexible-use operations. Earth station filtering can occur either simultaneously with, or after, the earth station migration. All of these earth station migration actions must be coordinated with satellite transponder clearing in order for earth stations to continue receiving existing C-band services during and after the transition. As such, the Commission expects relocation costs to include the cost to migrate and filter earth stations, including costs to retune, repoint, and install new antennas and install filters and compression software and hardware. The Commission clarifies that incumbent earth station operators will include some gateway earth station operators who are likewise eligible for reasonable relocation costs, and the Commission recognizes that their reasonable relocation costs may differ from those of non-gateway earth stations.

185. Some commenters request that the Commission give incumbent earth station operators flexibility to replace existing earth stations with fiber in their transition planning. The Commission agrees that providing incumbent earth station operators flexibility may allow them to make efficient decisions that better accommodate their needs. But the Commission also recognizes that replacing existing C-band operations with fiber or other terrestrial services may be, for some earth stations, more expensive by an order of magnitude. As such, incumbent earth station operators will have a choice: They may either accept reimbursement for the reasonable relocation costs by maintaining satellite reception or they may accept a lump sum reimbursement for *all* of their incumbent earth stations based on the average, estimated costs of relocating all of their incumbent earth stations. Incumbent earth station owners that elect the lump sum payment will not be eligible to submit estimated or actual reasonable relocation costs to the Clearinghouse. The Commission requires incumbent earth station operators (including any affiliates) to elect one of these two options, which must apply to all of each earth station operator's earth stations in the contiguous United States in order to prevent any improper cost shifting. And the Commission requires the decision to accept a lump sum reimbursement to be irrevocable—by accepting the lump sum, the incumbent takes on the risk that the lump sum will be insufficient to cover all its relocation costs—to ensure that incumbents have the appropriate incentive to accept the lump sum only if doing so is truly the more efficient option. While earth station operators that elect the lump sum payment will be responsible for performing any necessary transition actions, earth station operators that elect the lump sum payment must complete relocation consistent with the space station operator's deadlines (Phase I and Phase II Accelerated Relocation Deadlines to the extent applicable) for transition.

186. The Commission directs the Wireless Telecommunications Bureau to announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments. The Bureau should identify lump sum amounts for various classes of earth stations—*e.g.,* MVPDs, non-MVPDs, gateway sites—as appropriate. Incumbent earth station owners must make the lump sum payment election no later than 30 days after release of the announcement, and must indicate whether each incumbent earth station for which it elects the lump sum payment will be transitioned to the upper 200 megahertz in order to maintain C-band services or will discontinue C-band services.

187. The Commission reiterates that compensable relocation costs are only those that are reasonable and needed to transition *existing* operations in the contiguous United States out of the lower 300 megahertz of the C-band. The Commission stresses that, parties should seek cost reimbursement pursuant to the process outlined in this *Report and Order* for relocation costs outside of the contiguous United States, they must demonstrate that they were required to make the system modifications for which they seek reimbursement as a direct result of the transition in the contiguous United States to make spectrum available for flexible use.

188. *Estimated Relocation Costs of the FSS Transition.*—The Commission finds it appropriate to provide potential bidders in its public auction with an estimate of the relocation costs that they may incur should they become overlay licensees. The Commission cautions that its estimates are estimates only, and the Commission makes clear that overlay licensees will be responsible for the entire allowed costs of relocation—even to the extent that those costs exceed the estimated range of costs.

189. The record contains estimates of the total clearing cost ranging from about $3 billion to about $6 billion. Based on the current record, the Commission believes that reasonable estimated costs will include the following ranges, subject to further reevaluation when the Commission creates and releases the cost category schedule. With respect to satellite procurement and launch costs, the Commission believes that $1.28 billion to $2.5 billion is a reasonable estimated range. This accounts for $160–$250 million in capital costs for each satellite, the high and low ranges provided by the C-Band Alliance and SES, respectively, and the estimated range of eight to ten additional satellites. With respect to earth station costs, the Commission finds that a range of $1 billion to $2 billion is a reasonable estimate for repacking transponders, filter installing, re-pointing earth station dishes, and antenna feeding. This would account for the lower-end estimates provided by the C-Band Alliance and the upper-end estimates provided by ACA Connects. With respect to MVPD compression hardware, the Commission finds $500–$520 million to be a reasonable estimated range. This is consistent with ACA Connects' estimate of about $10,000 per transcoder and its claim that about 20 transcoders will be needed at each of 2,600 MVPD locations. It is also consistent with the C-Band Alliance's estimate of $500 million for compression costs. This leads to a total clearing cost estimate ranging from about $3.3 billion to $5.2 billion.

190. *Accelerated Relocation Payments.*—The Commission next addresses the amount of accelerated relocation payments that each eligible incumbent space station operator would receive if the Accelerated Relocation Deadlines are met.

191. The Commission starts by noting that predictions of the prices that will be paid for licenses to operate on this spectrum vary widely both in the record and in publicly available reports. On the low side, the Public Interest Spectrum Coalition estimates a range of $0.065 to $0.196 per MHz-pop and the Brattle Group suggests a range of $0.003 to $0.415 per MHz-pop from recent international C-band auctions. On the high side, the C-Band Alliance recently submitted a report by NERA Economic Consulting that estimates $0.50 to $0.90 per MHz-pop. In the middle, Kerrisdale Capital Management analyzed C-band auction revenues in three other advanced industrial economies to estimate $0.50 per MHz-pop and the American Action Forum estimate a range topping out at $0.597 per MHz-pop based on an econometric analysis of previous auctions.

192. It is thus no surprise that the commenters have proposed a wide range of values for accelerated relocation payments. On the low side, Eutelsat proposes making $2.75 billion

available for ''premium'' payments for accelerated relocation. On the high side, the C-Band Alliance essentially argues that incumbent space station operators should receive a 50–50 split of auction revenues, or a $21.5 to $38.5 billion accelerated relocation payment, on the theory that incumbent space station operators should receive an equal part given the sale of their ''asset.'' The Commission notes, however, that the C-Band Alliance's analysis is based on the assumption that the Commission otherwise set a relocation deadline for FSS operations of 10 years.

193. The Commission notes, as a preliminary matter, that the C-Band Alliance's proposal seems to misunderstand the purpose of accelerated relocation payments. Incumbent space station operators are not ''selling'' their spectrum usage rights—instead they have the right to provide the services they currently offer going forward. Indeed, they have no terrestrial spectrum usage rights to ''sell.'' Furthermore, the transition we adopt, including relocation payments, will make them whole during and after that transition. The Commission's responsibility is to set an accelerated relocation payment that fairly incentivizes incumbent space station operators to expedite the transition while increasing the value of the entire transition effort for the American public.

194. The Commission starts by examining the value to the American public of an accelerated transition. Specifically, if all eligible space station operators are able to hit the Phase I Accelerated Relocation Deadline, then terrestrial operations by overlay licensees can commence in the lower 100 megahertz of the band in 46 PEAs (covering 58% of the population of the contiguous United States) by December 5, 2021 rather than December 5, 2023 (the Phase II deadline). And if all eligible space station operators are able to hit the Phase II Accelerated Relocation Deadline, then terrestrial operations by overlay licensees can commence throughout the contiguous United States by December 5, 2023 rather than by December 5, 2025 (the Relocation Deadline).

195. One useful exercise to frame an appropriate accelerated relocation payment would be to estimate the price that overlay licensees would willingly pay for an earlier transition, assuming that the free-rider and holdout problems could be overcome. Making the spectrum available to a licensee earlier increases the potential producer surplus earned by the licensee because it can begin to provide services to consumers on that spectrum sooner, thereby granting a specific commercial benefit to a new overlay licensee. So long as the Commission sets the accelerated relocation payment as a fraction of the bidder's expected incremental profits from deploying spectrum earlier, overlay licensees will themselves benefit even after making the accelerated relocation payment. In other words, if the Commission treats an estimated willingness to pay as an upper bound, allowing for an accelerated relocation payment in the amount specified would make overlay licensees no worse off and would likely make them better off for each year they received their new licenses earlier.

196. To establish a reasonable estimate of the price that overlay licensees would willingly pay to accelerate relocation, the Commission extrapolates the increase in expected profits from having access to the spectrum and the ability to deploy earlier than the Relocation Deadline. To do this, the Commission observes that the difference between an amount of money received at date T_2 and the same amount received at an earlier date T_1 is simply the accumulated interest that can be earned by investing the amount at date T_1, and holding it until date T_2.[16] If S is the present value of an infinite stream of profits associated with deploying a spectrum license, then the additional value, A, of accelerating the date when spectrum license is available to T_1, as opposed to T_2, is the accumulated interest earned from the stream S between those two periods. Mathematically, the additional value of accelerating an income stream, S, by m months, where the industry annual weighted average cost of capital is r with interest compounded monthly is given by: $A = [(1+r/12)^m - 1]S$.[17]

197. To apply these observations in this context, the Commission uses a weighted average cost of capital of 8.5%, consistent with our precedent. The Commission also uses the index of PEA weights adopted by the Commission in the 39 GHz reconfiguration proceeding that were based on the 600 MHz, 700 MHz, and AWS–3 auctions to estimate that the 46 PEAs that are cleared by the Phase I Accelerated Relocation Deadline account for 77% of the total value of the first 100 megahertz cleared. Finally, the Commission estimates the present value of future profits that licensees expect to receive from their overlay licenses in 2025 (the Relocation Deadline) to be $0.50 per MHz-pop. The Commission finds this to be a reasonable estimate given the wide range of valuations in the record—which notably do not account for the spectrum potentially not becoming available until the Relocation Deadline nor for the additional costs of clearing this spectrum in the contiguous United States. Applying the general formula to the facts at hand then yields an estimated increase in economic profits for an accelerated relocation of approximately $10.52 billion.

198. Given the record, the Commission finds that a $9.7 billion accelerated relocation payment is reasonable and will serve the public interest. The Commission recognizes that the Commission could find reasonable several of the methods advocated in the record for calculating the total size of the accelerated relocation payment, and in doing so, it would need to rely on estimates on several variables such as increased willingness to pay for the spectrum, potential future industry profits for flexible use licensees, spectrum valuation, and the costs of accelerated transitioning. Ultimately, the Commission recognizes that this determination is a line-drawing exercise, in which it must attempt to establish an amount that is less than the incremental value to new entrants of accelerating the clearing deadline but large enough to provide an effective incentive to incumbent space station operators to complete such accelerated clearing. The Commission finds that a $9.7 billion accelerated relocation payment strikes the appropriate balance between these considerations and the amounts advocated in the record. Although some incumbent space station operators have argued for significantly more, the Commission finds that $9.7 billion is reasonably close—but still falls below the total amount we conservatively estimate that overlay licensees themselves would be willing to pay to clear this spectrum early and less than the additional profits overlay licensees expect to earn as a result of the accelerated clearing. This helps ensure that the Commission does not impose an obligation on overlay licensees that the

[16] For example, the additional benefit of receiving $100 at the beginning of year 4 instead of year 5 if the interest rate were, say, 3% compounded annually, is simply $.03 \times \$100 = \$3$, and the total value of receiving that amount at the start of year 4 is simply $(1 + .03) \times \$100 = \$103$. Similarly, the total value of receiving $100 in year 3 instead of year 5 would be $(1 + .03)^2 \times \$100 = \$106.10$, and the incremental value of receiving the $100 two years early would be $[(1 + .03)^2 - 1] \times \$100 = \$6.10$.

[17] As an example, if a portion of a profit stream that was worth say $15 was accelerated by 42 months, and the weighted cost of capital was 7%, then the benefit from accelerating that payment is given by: $A = [(1+.07/12)^{42} - 1] \times \$15 = \$4.15$. For ease of calculation, we assume monthly compounding.

Commission is not convinced they would have assumed on their own in the typical *Emerging Technologies* scenario in which voluntary accelerated relocation payments would be feasible.

199. Commenters challenge our decision to establish a $9.7 billion payment for accelerated relocation from two directions. Intelsat argues the amount is too low, while the Small Satellite Operators argue that the amount of the payment is too high. The Commission rejects these arguments. Set against one another, these competing arguments illustrate the complex policy considerations at issue and how our chosen accelerated relocation payment balances these competing concerns.

200. At the outset, each party questions how long relocation should take without any accelerated relocation payments. The Commission has already explained at length our reasoning for selecting the deadlines we do: The Relocation Deadline the Commission chooses reflects the balance between bringing C-band spectrum to market quickly (and thus not setting an excessively long transition) and ensuring no disruption to the C-band content distribution market that hundreds of millions of Americans currently rely on C-band services (and thus not setting a too short mandatory transition). Hence the Commission disagrees with each party that we should adjust the acceleration periods at issue in calculating accelerated relocation payments.

201. Next, parties challenge the decision to establish an upper bound at the overlay licensees' willingness to pay for the early clearing of spectrum. On the one hand, Intelsat argues that this ceiling is too low—and that focusing only on the economic benefit to new licensees ignores potential benefits to American consumers from the rapid deployment of 5G. The Small Satellite Operators, on the other hand, argue that this willingness-to-pay ceiling is too high. They argue that the upper bound must be ''proportionate to the cost of providing comparable facilities.'' The Commission finds that both parties misunderstand the *Emerging Technologies* framework.

202. The Commission agrees that it must take into account the tremendous public benefits of authorizing terrestrial use of this mid-band spectrum—but that does not mean the Commission's ability to impose obligations on overlay licensees is unbounded. Instead, the Commission reads its precedent as recognizing the justification for accelerated relocation payments only to the extent that willing market actors (free from holdout and free-rider problems) would pay for accelerated relocation. And in the end, no rational licensee would pay *more* than the amount they stood to gain from earlier access to the spectrum—regardless of whatever value was created for third parties.

203. The Commission does not read the language quoted as limiting the Commission's authority under the *Emerging Technologies* framework but instead just recognizing how the Commission applied that framework in one particular context. In that case the Commission had established guidelines for good-faith negotiations that limited incumbents' ability to demand ''premium payments'' that were not proportionate to the cost of providing comparable facilities. But as the court recognized in *Teledesic,* the Commission added that limitation as a check against holdout problems created by mandatory good-faith negotiations. Here the Commission chooses a different approach to address the problem of holdouts as well as the free-rider problem inherent to this transition. And by estimating the willingness of overlay licensees to make accelerated relocation payments, the Commission avoids the need for a lengthy period of mandatory negotiations before mandatory relocation—which the Commission estimates will bring about significant benefits to the public of making this spectrum available for terrestrial use much sooner.

204. Parties challenge the determination that an acceleration payment total of $9.7 billion strikes the appropriate balance. The Small Satellite Operators argue that it is too much, while Intelsat argues that it is not enough. To some extent both parties are correct: There is no precise science that allows the Commission to arrive at the ''right'' accelerated relocation payment total. But that is in large part because eligible space station operators have had every incentive not to disclose precisely how high an accelerated relocation payment must be for them to accept it. As these arguments make plain, the Commission's determination of an acceleration payment is a line-drawing exercise that balances a number of competing considerations. The accelerated relocation payment of $9.7 billion is an $800 million reduction from the estimated total willingness of flexible use licensees to pay $10.52 billion for earlier access to this spectrum. Allocating the vast majority of the estimated total willingness to pay to satellite operators (1) maximizes the possibility that such a payment will be sufficient to incent early clearing (2) while not exceeding the estimated value of acceleration to new licensees, and (3) accounts, to some extent, for a relatively conservative estimate of the value of the underlying spectrum. Of course, the Commission might have chosen a number lower than $9.7 billion, to gamble that space station operators might accept a lower price. But the smaller the payment the greater the risk that such a payment will be insufficient to incent earlier clearing. In light of the enormous benefit that the rapid deployment of 5G will confer on American consumers, and the costs of delaying such deployment for even one additional year, the Commission has chosen the figure that most minimizes that risk. While this exercise is necessarily imprecise, the Commission believes that $9.7 billion threads the needle through all of the considerations raised by the Small Satellite Operators, Intelsat, others in the record, as well as its own predictive judgment on what is necessary here.

205. The Commission also finds it necessary to specify the specific accelerated relocation payments that will be offered to each of the eligible space station operators so that each can make an intelligent decision whether to elect to participate in the accelerated relocation process. To accelerate clearing, each space station operator will need to engage in a complex and iterative process of coordinating between its programmer customers and incumbent earth stations, allocating resources to effectuate changes in both the space station and earth station segments of the FSS network, and orchestrating changes both in space and on the ground in order to ensure continuous and uninterrupted delivery of content. Given that these burdens will fall more heavily on some space station operators than others, the Commission finds that the most appropriate basis on which to allocate accelerated relocation payments among eligible space station operators is to estimate the relative contribution that each eligible space station operator is likely to make towards accelerating the transition of the 3.7–3.98 GHz band to flexible use and clearing the 3.98–4.0 GHz band, assuming all other operators accelerate their clearing. To that end, the Commission examines several pieces of evidence in the record.

206. To start, the Commission finds the best evidence in the record is a confidential 2019 report prepared by an independent accounting firm on behalf of the C-Band Alliance, which SES has submitted into the record. Based on data provided by C-Band Alliance members, this report purports to calculate each member of the C-Band Alliance's

contribution to clearing (based in part on qualifying 2017 revenue) for the purpose of determining the share that each C-Band Alliance member would receive as a result of this proceeding. The Commission can think of no better evidence of the C-Band Alliance members' own understanding of their relative contribution to clearing than their own market-based assessment of the relative value that each member should derive from the process of freeing up this spectrum for flexible use. While many variables might enter into any valuation of contribution to clearing—such as each operator's relative number of earth stations, transponder usage, revenue, coverage, or other factors—the C-Band Alliance members were best situated to take all those variables into account in assigning allocations representing each member's valuation of its entitlement to a percentage of the proceeds from a private sale. The Commission calls this the ''the market-based agreement'' factor (note the Commission does not apply this factor to Star One, which was not a party to this agreement).

207. Intelsat objects to any reliance on this report and its prior agreement with SES, Eutelsat, and Telesat on how to approach a swift transition of the C-band. The Commission finds Intelsat's objections to the 2019 report unpersuasive. For one, Intelsat objects that the methodology of the report was premised largely on an assumption that SES and Intelsat had equal market share. That may be true—but that does not explain why Intelsat agreed to such an assumption just last year (nor what it has learned since then). Indeed, whatever the precise inputs underlying the confidential 2019 report, the ultimate findings were ratified by each member of the C-Band Alliance at the time—including Intelsat. For another, Intelsat points out that the confidential report was developed in the context of a private sale proposal in which the C-Band Alliance would receive a single payment for both clearing in an accelerated manner and relocation costs. But the Commission fails to see the relevance of these distinctions. For example, the Commission separately accounts for relocation payments from accelerated relocation payments in this *Report and Order*—but Intelsat provides no evidence, nor does any appear on the face of the report, that the relative contributions of each operator depended on relative relocation costs (nor does Intelsat explain why the separate treatment of such costs merits greater (or lesser) allocation of accelerated relocation payments). As another example, the Commission does not see why the negotiation of these allocations in the context of a private sale approach would fail to capture the contributions of the various signatories to another approach—like the public auction approach the Commission adopts herein. Indeed, the Commission finds the fact that these numbers were negotiated between experienced space station operators in the context of a concrete plan to clear the C-band for terrestrial use makes them more reliable, not less, as evidence of relative contribution to clearing. In short, despite Intelsat's recent protestations, the Commission finds the report is the single best proxy that we have for determining the relative contribution of each eligible space station operator (at least those four that signed the agreement) to accelerating the process of repurposing this spectrum.

208. Next, the Commission finds that transponder usage provides another proxy for the relative contributions of each space station operator to clearing. At a high level, the amount of transponder usage should correspond to the amount of traffic that the operator needs to repack—and space station operators with more traffic are likely to serve a greater number of earth stations with more content. And the Commission has reliable data for relative transponder usage: Satellite operators submitted confidential usage information in response to the Commission's May 2019 request for information on satellite use of the C-band. FSS space station licensees with C-band coverage of the United States or grants of market access were required to submit the average percentage of each transponder's capacity (megahertz) used and the maximum percentage of capacity used for each day in March of 2019. From this data the Commission can calculate the average megahertz of transponder usage as well as the usage shares for each satellite operator. The Commission thus includes transponder usage in its calculations because the Commission believes that it is a reliable proxy of the amount of traffic all eligible incumbent space station operators need to repack, as well as their relative contribution to accelerated clearing.

209. Third, the Commission takes into account each eligible space station operator's coverage of the contiguous United States with its C-band satellites. All operators with existing FSS space station licenses or grants of United States market access in the 3.7–4.2 GHz band also have equal access to the 280 megahertz of spectrum designated to transition to flexible use and the 20-megahertz guard band and an equal ability to serve customers in this band. Due to this shared licensing structure, all eligible space station operators serving incumbent earth stations in the contiguous United States will need to play a role in the transition and must cooperate to transition the spectrum successfully. This factor is, therefore, a very rough proxy for the myriad tasks that all eligible space station operators must undertake to clear the spectrum and for the fact that one of the eligible space station operators does not transmit to the full contiguous United States.

210. Finally, the Commission notes that there is no single correct weight to apply to each of these three factors. The Commission places the most significant weight on the market-based agreement factor because it reflects the parties' own valuation of each operator's relative contribution to clearing. But in acknowledgment of Intelsat's reservations about using the 2019 report, the fact that the report does not consider one eligible space station operator (Star One) because it wasn't a member of the C-Band Alliance, and the fact that the Commission does not have access to the underlying inputs evaluated by the independent auditor, the Commission is also assigning some weight to transponder usage and coverage separately. Among these two factors, the Commission finds that transponder usage, which reflects actual usage of the band, greatly outstrips (by an order of magnitude) the value of the third factor (coverage).[18] Thus, the Commission specifies the allocations as follows:

[18] We round all payments to the nearest thousand dollars and therefore the payment total does not sum exactly to $9.7 billion. Because we rely on confidential information in calculating these allocations and find that disclosing the relative weights placed on each factor could inadvertently disclose that confidential information to operators with knowledge of their own information, we reserve our discussion of the precise numbers involved in our calculations to a confidential appendix. And because Star One was not a signatory of the market-based agreement, we allocate the weight that would otherwise apply to that factor to the second most important factor (transponder usage) for its calculation and normalize all calculations to take this into account.

ACCELERATED RELOCATION PAYMENT BY OPERATOR

	Payment	Phase I payment	Phase II payment
Intelsat	$4,865,366,000	$1,197,842,000	$3,667,524,000
SES	3,968,133,000	976,945,000	2,991,188,000
Eutelsat	506,978,000	124,817,000	382,161,000
Telesat	344,400,000	84,790,000	259,610,000
Star One	15,124,000	3,723,000	11,401,000
Totals	9,700,001,000	2,388,117,000	7,311,884,000

211. The Clearinghouse will distribute the accelerated relocation payments to each eligible space station operator according to the amounts provided in the table. The Commission allocates roughly 25% of each operator's accelerated relocation payment to the completion of Phase I and 75% to the completion of Phase II. This split corresponds to the value of accelerated relocation that space station operators will need to make at each respective deadline. To be specific, the value of Phase II accelerated relocation (vis-à-vis relocation by the Relocation Deadline) is accelerating relocation of all 280 megahertz of spectrum across the contiguous United States by two years. Using the acceleration formula discussed above, this represents 75.38% of the total value to bidders of accelerated relocation. The value of Phase I accelerated relocation (vis-à-vis relocation by the Phase II Accelerated Relocation Deadline) is accelerating the relocation of 100 megahertz of spectrum in the 46 Phase I PEAs by two additional years. This represents 24.62% of the total value of bidders of accelerated relocation. The Commission notes that allocating the Phase I and Phase II payments this way maximizes the incentive for incumbent space station operators to complete the full Phase II transition in a timely manner, ensuring that all Americans get early access to next-generation uses of the 3.7 GHz band.

212. Taken together, the Commission finds that the three measures above should reflect—directly or by proxy—a variety of inputs, including relative contribution shares to relocation, population coverage in the contiguous United States, traffic, and number of earth stations served. These measures incorporate the best data presently available to the Commission on which to estimate the contributions of each eligible space station operator to the accelerated relocation process. Whatever the shortcomings of each individual measure or dataset, the Commission finds that these three measures considered together provide a reasonable approximation of the eligible space station operators' respective contributions, and therefore a reasonable basis on which to apportion accelerated relocation payments.

213. The Commission also finds that several alternative methods advocated by space station operators for allocating accelerated relocation payments are less reliable and objective than those the Commission relies on. For example, several parties suggest that the Commission should rely upon C-band revenues in measuring relative contributions, with Intelsat claiming that ''revenue earned with respect to the current use of C-band spectrum in the contiguous 48 states provides a reasonable proxy for every one of the factors cited by the FCC for value being created by accelerated clearing: The number of customers, the amount of encumbered spectrum; the scope of incumbent earth stations served; content-distribution revenues; population of the United States; and traffic.'' Although the Commission agrees that such revenues ordinarily would be closely correlated with traffic and a good proxy for a variety of other factors relevant to an eligible space station operator's estimated contribution—the record is largely bereft of such data. Intelsat itself, for example, has failed to file any reliable revenue or revenue share data. Instead, it estimates its own C-band revenues based on average usage as well as its own assertion that it has higher average wholesale prices than its competitors. The only other source evident of Intelsat's market share is a public report from Kerrisdale Capital Management that estimates Intelsat to have a roughly equal share with SES—although that report did not claim its estimates were particularly precise. In short, the Commission fails to see the value in relying on these incomplete and not-particularly-reliable proxies for revenue shares, especially given that actual revenue share itself is but a proxy for each operator's relative contribution to accelerated relocation.[19]

214. Or consider the C-Band Alliance's suggestion to allocate based on the number of incumbent earth station C-band feeds in the contiguous United States. Whatever the merits of such an approach (including the decision to count feeds, not incumbent earth stations), the Commission finds the record evidence insufficiently reliable to incorporate this metric into our analysis. Rather than pick and choose amongst this chaff of last-minute calculations that inevitably favor the filer, the Commission finds little evidence that relying on these estimates would produce a more accurate estimate of each operator's relative contribution to clearing (and we cannot find that a significant delay as initially suggested by the C-Band Alliance to create a new dataset would be in the public interest).

215. The Commission also rejects Eutelsat's proposal to allocate accelerated relocation payments not by relative contributions to a successful accelerated transition but instead based on ''stranded capacity,'' *i.e.,* the proportion of C-band satellite capacity that will be rendered unusable for protected FSS downlink services during the remaining useful lifetime of each relevant satellite. Eutelsat's proposal represents a significant departure from the *Emerging Technologies* precedent, fundamentally misinterprets the Commission's basis for the allocation of accelerated relocation payments among eligible space station operators, and lacks any economic rationale.

216. *First,* Eutelsat argues that allocation of accelerated relocation payments must be ''reasonably related to the cost of relocation'' and that the

[19] Ironically enough, the confidential report filed by SES does contain estimated (and audited) revenue shares for one space station operator, SES Feb. 20, 2020 *Ex Parte,* Attach. B (confidential), and to its credit, Intelsat does acknowledge as such, Intelsat Feb. 21, 2020 *Ex Parte* at 3. But to the extent such information is valuable, we find it better to incorporate it directly through the market-based agreement factor described above rather than by placing this information on par with other unreliable information about revenue shares from elsewhere in the record.

Commission's focus on the relative contribution of each operator to a successful transition is inconsistent with the *Emerging Technologies* framework. The Commission disagrees. Contrary to Eutelsat's claim, the basis of the Commission's allocation method is designed specifically to capture the relative contribution, in terms of both effort and cost, that each eligible space station operator will make to meet the Accelerated Relocation Deadlines based on three objective factors related to each space station operator's relative contribution: A market-based agreement reflecting space station operators' assessment of their own relative contribution to clearing; transponder usage; and satellite coverage in the contiguous United States. Each of these factors reflects both the effort that it will take to accelerate relocation and the corresponding costs of each operator to accomplish such acceleration.

217. *Second,* Eutelsat argues that stranded capacity is the better ''proxy'' for calculating relocation costs and thus allocating accelerated relocation payments. Again, the Commission disagrees. For one, stranded capacity is not a proxy for actual relocation costs. Actual relocation costs are those needed to relocate incumbents to comparable facilities that allow them to continue to provide *existing* services. Stranded capacity lacks any consideration of the extent to which existing services are actually provided over such capacity such that they would need to be relocated. Indeed, Eutelsat fails to acknowledge the substantial evidence in the record that the C-band satellite business suffers from significant and increasing excess capacity and rapidly declining revenues or that a space station operator with much stranded capacity but little existing business could likely continue to provide all of its existing services within the contiguous United States at relatively low cost (*e.g.,* without the need for new satellites). In other words, stranded capacity is not a good proxy for space station operator relocation costs. Nor is it a good proxy for the relocation costs of incumbent earth stations (indeed, stranded capacity does not account for such costs at all)—and Eutelsat simply asserts that such costs are not relevant. But of course, such costs *are* relevant to a successful relocation; and of course the Commission has expressly designed accelerated relocation payments to expedite the relocation of incumbent space stations *and* incumbent earth stations, to the benefit of the overlay licensees that require both to be relocated so they can deploy new terrestrial services in the band.

218. *Third,* despite Eutelsat's claim that its proposal is not a request to compensate satellite operators for the ''lost revenues'' or opportunity costs resulting from the transition, allocating relocation payments according to ''lost C-band capacity,'' without any consideration of whether such capacity actually has existing services that will need to be relocated as a result of the transition, as Eutelsat proposes, is precisely the type of opportunity cost calculation for which the Commission's *Emerging Technologies* precedent expressly declines to provide compensation. Rather than compensate space station operators based on the burden they are likely to bear in accelerating the clearing process, Eutelsat's proposal would reward those space station operators with the least-intensive use of existing capacity based on an assumption of future use of such capacity that far exceeds reasonably foreseeable demand. The Commission therefore finds that the formula for allocating accelerated relocation payments among eligible space station operators adopted herein, which provides compensation based on the relative contributions of each eligible space station operator to the accelerated relocation process, is far more grounded in Commission precedent and the underlying rationale for providing accelerated relocation payments than the allocation method proposed by Eutelsat.

219. Finally, the Commission finds that its definition of eligible space station operators appropriately encompasses the incumbent space station operators that will incur costs in order to transition existing U.S. services to the upper portion of the band and are therefore entitled to receive compensation for relocation costs and potential accelerated relocation payments. The Small Satellite Operators argue that any transition of C-band spectrum must provide compensation, including ''premium'' payments above relocation costs, to all space station operators that operate space stations that cover parts of the United States using C-band spectrum. However, the purpose of relocation costs and potential accelerated relocation payments is to compensate authorized space station operators that provide C-band services to *existing* U.S. customers using *incumbent* U.S. earth stations that will need to be transitioned to the upper portion of the band or otherwise accommodated in order to avoid harmful interference from new flexible-use operations. The Commission addresses the arguments of two of the Small Satellite Operators—Hispasat and ABS—that do not satisfy its definition of eligibility for relocation costs.

220. *Hispasat.*—Hispasat recently asked the Commission to make Hispasat eligible for relocation costs and accelerated relocation payments by changing the definition of eligible space station operators to remove the requirement that the incumbent space station operator must provide service to an *incumbent* earth station. The Commission notes that our definition of incumbent earth stations requires that earth stations must have been registered (or licensed as a transmit-receive earth station) by the relevant deadlines to qualify for relocation cost reimbursement. Hispasat states that it ''does currently provide service in the contiguous United States'' to nine earth stations in the contiguous United States operated by an evangelical church that did not register its earth stations with the Commission.

221. The Commission rejects Hispasat's request. *First,* the Commission is somewhat skeptical of Hispasat's apparently recent discovery that it serves earth stations using C-band spectrum in the contiguous United States. In its October 2018 comments in this proceeding, Hispasat made no mention of providing service to those or any other earth stations—indeed, Hispasat there claimed its plans to provide C-band services to the United States were placed on hold pending the outcome of the July 2018 *NPRM.* And so The Commission puts little weight in Hispasat's recent claim to have generated ''U.S. C-band revenue'' in 2017 from services provided to the ''at least nine'' earth station locations that it claims it still currently serves (a claim unsupported by any further documentation). And the Commission declines to accept Hispasat's revisions to history that its prior filings in this proceeding demonstrate (rather than disclaim) that it has been providing satellite service in the contiguous United States for some time.

222. *Second,* although Hispasat makes much of its speculation that the owner of these nine earth stations lacked the sophistication or knowledge to register by the relevant deadlines and qualify as incumbent earth stations, the Commission finds that Hispasat has not even shown that these nine earth stations were eligible to register. For one, Hispasat appears to be careful in its filings not to claim that it uses the *C-band* spectrum to provide service to all those earth stations. Indeed, the Commission does not see how it could given that publicly-available coverage

data for the Amazonas-3 satellite C-band beam footprint indicate that it is not capable of providing service to several of those earth station locations.[20] (In contrast, that same satellite's *Ku-band* North America beam does cover the entire contiguous United States.) For another, Hispasat does not provide any specific information regarding *when* the earth stations it claims to serve began using C-band spectrum—they had to have been operational as of April 19, 2018, if they were going to be eligible to be registered.[21] For yet another, Hispasat provides no explanation of unique circumstances that might merit consideration of these stations—and the Commission declines to adopt a different standard for the earth stations Hispasat claims to serve than the Commission does for any other existing C-band earth stations that were not registered by the relevant deadlines. Indeed, Hispasat fails to address one of the primary reasons the Commission froze new earth station authorizations and required existing earth stations to register by a fixed deadline in the first place: To avoid gamesmanship and stop operators from establishing new C-band operations or earth stations for the purpose of obtaining monies from the transition to new terrestrial, flexible-use operations in the band. It appears that Hispasat's entire premise is that it, and it alone, should be able to engage in that type of last-minute gamesmanship. The Commission does not accept that premise.

223. *Third,* the Commission rejects Hispasat's request because even if the Commission accepted it, Hispasat would not be an eligible incumbent space station operator. Specifically, the Commission limits relocation and accelerated relocation payments to those space station operators that had demonstrated, as of February 1, 2020, that they would incur any eligible costs as a result of the transition. Because Hispasat under its own proposal would not be able to recover any costs for transitioning incumbent earth stations (it makes clear that it is not asking to obtain incumbent status for the nine earth stations it now claims to serve), the only eligible costs it might have would be to transition transponder usage to the upper 200 megahertz. And Hispasat does not provide any information regarding what, if any, steps it would need to take to transition these alleged C-band services to the upper 200 megahertz; indeed it does not explicitly claim that those services are provided over frequencies in the lower 300 megahertz such that they would need to be transitioned *at all.*

224. Because the purpose of relocation and accelerated relocation payments is to compensate eligible space station operators for actually relocating their existing services to the upper 200 megahertz, Hispasat has failed to demonstrate that the Commission's definition of ''eligible space station operators'' unduly excludes it from the class of incumbent space station operators entitled to relocation and accelerated relocation payments.

225. *ABS.*—ABS asks the Commission to make incumbent space station operators eligible for reimbursement of space station facilities that ''will not remain comparable after the transition.'' Specifically, to be eligible for such reimbursement, ABS proposes that an incumbent space station operator must operate a non-replacement satellite that gained its FCC authorization to provide service to any part of the contiguous United States within 12 months of the announcement of the freeze on C-band earth station applications or, alternatively, within 18 months of the issuance of the *NPRM* in this proceeding. ABS argues that the *NOI,* freeze on new earth station applications, and the *NPRM* in this proceeding ''undermined ABS's reasonable efforts to commercialize the newly licensed satellite—and thus the Commission cannot know how much bandwidth ABS would have needed (but for the Commission's actions) to avoid an impairment of its C-band authorization.'' As a result, ABS argues that it should be compensated for the proportion of the costs of launching its ABS–3A satellite attributable to eight transponders that will be effected by the transition.

226. The Commission rejects ABS's argument that uncertainty about the outcome of this proceeding resulted in its failure to commercialize any of its ABS–3A capacity, as the Commission finds this argument both unconvincing and irrelevant. The only ABS satellite capable of serving the United States has been operational since 2015. The ABS–3A satellite is positioned just south of the Ivory Coast of northwest Africa, and both its global and western hemisphere C-band beams provide only edge coverage to portions of the Eastern United States.[22] ABS did not seek market access in the United States until March 2017, and only after the Commission released the *NOI* in this proceeding in August 2017 did ABS seek Commission authorization to construct an earth station in Hudson, NY in February 2018. Despite being granted such authorization in March 2018, ABS failed to construct and commence operations on the Hudson, NY earth station. In sum, ABS's satellite was operational for a year-and-a-half before it sought U.S. market access, for two years prior to the *NOI,* and nearly three years prior to the freeze on new C-band earth station registrations and the subsequent *NPRM.* The notion that ABS made significant investments in launching this satellite with the specific intent of providing robust services in the United States and that it must be compensated for the loss of those investments is contradicted both by its inaction in the United States in the four-and-a-half years since it launched ABS–3A and the actual capabilities of ABS–3A to provide service outside the United States. Indeed, the satellite's global and western hemisphere C-band beams target all or most of the South Atlantic Ocean, Africa, the Middle East, Europe, and South America and the eastern hemisphere C-band beam covers all or most of Africa, Europe, the Mediterranean Sea, and the Middle East.[23]

227. In any event, the requirement that new licensees reimburse incumbents for relocation costs applies to reasonable actual costs incurred in clearing the spectrum. This obligation does not include reimbursement of space station operators on an assumption of future use of currently unused capacity that far exceeds reasonably foreseeable demand—the loss of capacity that has not been used, is not used, and not likely to ever be used given the significant unused capacity that remains available to ABS is not a cognizable expense. Thus, the Commission rejects ABS's claim.

228. *Allocating Payment Obligations Among Overlay Licensees.*—Finally, the Commission explains the financial responsibilities that each flexible-use licensee will incur to reimburse the space station operators. The Commission finds it reasonable to base the share for each overlay licensee on the licensee's *pro rata* share of gross winning bids. This approach is similar to the Commission's approach in the H-Block proceeding, where the

[20] *See https://www.satbeams.com/footprints?beam=7690* (last visited Feb. 23, 2020).

[21] Beginning April 19, 2018, the Commission placed a freeze on all FSS earth station registrations for earth stations that were not operational as of that date.

[22] *See* Satbeams Coverage Report, *https://www.satbeams.com/footprints?beam=8203* (last visited Feb. 23, 2020).

[23] *See http://www.absatellite.com/satellite-fleet/abs-3a/* (last visited Feb. 23, 2020); *accord https://www.satbeams.com/footprints?beam=8203* (last visited Feb. 23, 2020).

Commission likewise used a *pro rata* cost-sharing mechanism based on gross winning bids. Indeed, several commenters in this proceeding proposed the H-Block *pro rata* calculation as a model for determining winning bidders' shares here.

229. Specifically, for space station transition and Relocation Payment Clearinghouse costs, and in the event the Wireless Telecommunications Bureau selects a Relocation Coordinator, Relocation Coordinator costs, the *pro rata* share of each flexible-use licensee will be the sum of the final clock phase prices (*P*) for the set of all license blocks (*I*) that a bidder wins divided by the total final clock phase prices for all *N* license blocks sold in the auction. To determine a licensee's reimbursement obligation (*RO*), that *pro rata* share would then be multiplied by the total eligible relocation costs (*RC*). Mathematically, this is represented as:

$$RO = \left(\frac{\sum_{i \in I} P_i}{\sum_{j=1}^{N} P_j}\right) \times RC$$

230. For incumbent earth stations and fixed service incumbent licensee transition costs, a flexible-use licensee's *pro rata* share will be determined on a PEA-specific basis, based on the final clock phase prices for the license blocks it won in each PEA. To calculate the *pro rata* share for incumbent earth station transition costs in a given PEA, the same formula above will be used except now *I* will be the set of licenses a bidder won in the PEA, *N* will be the total blocks sold in the PEA and *RC* will be the PEA-specific earth station and fixed service relocation costs.

231. For the Phase I accelerated relocation payments, the *pro rata* share of each flexible use licensee of the 3.7 to 3.8 MHz in the 46 PEAs that are cleared by December 5, 2021, will be the sum of the final clock phase prices (*P*) that the licensee won divided by the total final clock phase prices for all *M* license blocks sold in those 46 PEAs. To determine a licensee's *RO* the *pro rata* share would then be multiplied by the total accelerated relocation payment due for Phase I, *A1.* Mathematically, this is represented as:

$$RO = \left(\frac{\sum_{i \in I} P_i}{\sum_{j=1}^{M} P_j}\right) \times A1$$

232. For Phase II accelerated relocation payments, the *pro rata* share of each flexible use licensee will be the sum of the final clock phase prices (*P*) that the licensee won in the entire auction, divided by the total final clock phase prices for all *N* license blocks sold in the auction. To determine a licensee's *RO* the *pro rata* share would then be multiplied by the total accelerated relocation payment due for Phase II, *A2.* Mathematically, this is represented as:

$$RO = \left(\frac{\sum_{i \in I} P_i}{\sum_{j=1}^{N} P_j}\right) \times A2$$

5. Relocation Payment Clearinghouse

233. Next, the Commission finds that selecting a single, independent Relocation Payment Clearinghouse to oversee the cost-related aspects of the transition in a fair, transparent manner will best serve the public interest. The Commission's experience in overseeing other complicated, multi-stakeholder transitions of diverse incumbents demonstrates the need for an independent party to administer the cost-related aspects of the transition in a fair, transparent manner, pursuant to Commission rules and oversight, to mitigate financial disputes among stakeholders, and to collect and distribute payments in a timely manner.

234. In the *NPRM,* the Commission sought comment on a variety of approaches for expanding flexible use of the band. The Commission noted that, under the private-sale approach, there was record support for a centralized facilitator, and it sought comment on having the relevant space station operators form a transition facilitator as a cooperative entity to coordinate negotiations, clearing, and repacking in the band. The Commission also asked about the role of the transition facilitator and the form of supervisory authority the Commission should maintain over it.

235. In the *July 19 Public Notice,* the Commission specifically sought comment on how the Commission's approaches during the AWS–3 and 800 MHz transitions might inform this proceeding. The Commission asked whether it should designate a transition administrator or require the creation of a clearinghouse to facilitate the sharing of the costs for mandatory relocation and repacking.

236. The Commission agrees with those commenters who contend that, regardless of the approach selected to transition some or all of the band to flexible use, the Commission should ensure that mechanisms exist to guarantee a transparent transition process with appropriate Commission oversight. The Commission has adopted cost-sharing plans that included private clearinghouses to administer reimbursement obligations among licensees, and the Commission finds a similar approach to be in the public interest here. The Clearinghouse must be a neutral, independent entity with no conflicts of interest (organizational or personal) on the part of the organization or its officers, directors, employees, contractors, or significant subcontractors. The Clearinghouse must have no financial interests in incumbent space station operators, incumbent earth station operators, content companies that distribute programming using this band, wireless operators, or any entity that may seek to acquire flexible-use licenses, or to manufacture or market equipment in this band. In addition, the officers, directors, employees, and/or contractors of the Clearinghouse should also have no financial or organizational conflicts of interest. The Clearinghouse must be able to demonstrate that it has the requisite expertise to perform the duties required, which will include collecting and distributing relocation and accelerated relocation payments, auditing incoming and outgoing invoices, mitigating cost disputes among parties, and generally acting as clearinghouse.

237. *Duties of the Clearinghouse.*—The Commission is cognizant of the need to establish measures to prevent waste, fraud, and abuse with respect to reimbursement disbursements. The Commission finds that the record and the Commission's experience in managing other complicated transitions demonstrate that an independent Clearinghouse will ensure that the transition is administered in a fair, transparent manner, pursuant to narrowly-tailored Commission rules and subject to Commission oversight.

238. *First,* the Clearinghouse will be responsible for collecting from all incumbent space station operators and all incumbent earth station operators a showing of their relocation costs for the transition as well as a demonstration of the reasonableness of those costs.[24] In the event a party other than an incumbent earth station operator performs relocation work to transition an earth station (such as an incumbent space station operator or a network performing such work pursuant to an existing affiliation agreement), that party may directly submit the showing of relocation costs and receive reimbursement, provided the parties do not submit duplicate filings for the same earth station relocation work. The Clearinghouse will determine in the first instance whether costs submitted for

[24] When an incumbent space station operator takes responsibility for clearing an incumbent earth station, the incumbent space station operator bears solely the responsibility of showing relocation costs and their reasonableness.

reimbursement are reasonable. Parties seeking reimbursement for actual costs must submit to the Clearinghouse a claim for reimbursement, complete with sufficient documentation to justify the amount. The Clearinghouse shall review reimbursement requests to determine whether they are reasonable and to ensure they comply with the requirements adopted in this *Report and Order.* The Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.

239. All incumbents seeking reimbursement for their actual costs shall provide justification for those costs. Entities must document their actual expenses and the Clearinghouse, or a third-party on behalf of the Clearinghouse, may conduct audits of entities that receive reimbursements. Entities receiving reimbursements must make available all relevant documentation upon request from the Clearinghouse or its contractor.

240. To determine the reasonableness of reimbursement requests, the Clearinghouse may consider the submission and supporting documentation, and any relevant comparable reimbursement submissions. The Clearinghouse may also submit to the Wireless Telecommunications Bureau for its review and approval a cost category schedule. Reimbursement submissions that fall within the estimated range of costs in the cost category schedule issued by the Bureau shall be presumed reasonable. If the Clearinghouse determines that the amount sought for reimbursement is unreasonable, it shall notify the party of the amount it deems eligible for reimbursement. The Commission also directs the Wireless Telecommunications Bureau to make further determinations related to reimbursable costs, as necessary, throughout the transition process.

241. *Second,* the Clearinghouse will apportion costs among overlay licensees and distribute payments to incumbent space stations, incumbent earth station operators, and appropriate surrogates of those parties that incur compensable costs. Following the public auction, the Clearinghouse shall calculate the total estimated share of each flexible-use licensee, as well as the estimated costs for the first six months of the transition following the auction. The initial six-month estimate shall incorporate the costs incurred prior to the auction as well as the six months following the auction. Flexible-use licensees shall pay their share of the initial estimated relocation payments into a reimbursement fund, administered by the Clearinghouse, shortly after the auction. The Clearinghouse shall draw from the reimbursement fund to pay approved, invoiced claims.

242. Going forward, the Clearinghouse shall calculate the overlay licensees' share of estimated costs for a six-month period and provide overlay licensees with the amounts they owe at least 30 days before each six-month deadline. Within 30 days of receiving the calculation of their initial share, and then every six months until the transition is complete, overlay licensees shall pay their share of estimated costs into the reimbursement fund. The Clearinghouse shall draw from the reimbursement fund to pay approved reimbursement claims. The Clearinghouse shall pay approved claims within 30 days of invoice submission to flexible-use licensees so long as funding is available. If the reimbursement fund does not have sufficient funds to pay approved claims before a six-month replenishment, the Clearinghouse shall provide flexible-use licensees with 30 days' notice of the additional shares they must contribute. Any interest arising from the reimbursement fund shall be used to defray the costs of the transition for all overlay licensees on a *pro rata* basis. At the end of the transition, the Clearinghouse shall return any unused amounts to overlay licensees according to their shares.

243. As a condition of their licenses, flexible-use licensees shall be responsible collectively for the accelerated relocation payments based on their *pro rata* share of the gross winning bids, similar to the way a flexible-use licensee's space station relocation and Clearinghouse costs are calculated. Where a space station operator has elected to meet the Accelerated Relocation Deadlines, the accelerated relocation payment *pro rata* calculation will be adjusted to reflect the winning bidders of the flexible-use licenses benefitting from the portion of cleared spectrum. Under this scenario, only the flexible-use licensees in the 46 PEAs of the lower 100 megahertz (A block) that are the subject of the Phase I Accelerated Relocation Deadline would pay the Phase I accelerated relocation payment, and all overlay licensees would pay the Phase II accelerated relocation payment.

244. If an overlay license is relinquished to the Commission prior to all relocation cost reimbursements and accelerated relocation payments being paid, the remaining payments will be distributed among other similarly situated overlay licensees. If a new license is issued for the previously relinquished rights prior to final payments becoming due, the new overlay licensee will be responsible for the same *pro rata* share of relocation costs and accelerated relocation payments as the initial overlay license. If an overlay licensee sells its rights on the secondary market, the new overlay licensee will be obligated to fulfill all payment obligations associated with the license.

245. Overlay licensees will, collectively, pay for the services of the Clearinghouse and staff. The Clearinghouse shall include its own reasonable costs in the cost estimates it uses to collect payments from overlay licensees. To ensure the Clearinghouse's costs are reasonable, the Clearinghouse shall provide to the Office of the Managing Director and the Wireless Telecommunications Bureau, by March 1 of each year, an audited statement of funds expended to date, including salaries and expenses of the Clearinghouse. It shall also provide additional financial information as requested by the Office or Bureau to satisfy the Commission's oversight responsibilities and/or agency-specific/government-wide reporting obligations.

246. *Third,* the Clearinghouse will serve in an administrative role and in a function similar to a special master in a judicial proceeding. The Clearinghouse may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora.[25] Any dispute submitted to the Clearinghouse, or other mediator, shall be decided within 30 days after the Clearinghouse has received a submission by one party and a response from the other party. Thereafter, any party may seek expedited non-binding arbitration, which must be completed within 30 days of the recommended decision or advice of the Clearinghouse or other mediator. The parties will share the cost of this arbitration if it is before the Clearinghouse.

247. Should any issues still remain unresolved, they may be referred to the Wireless Telecommunications Bureau within 10 days of recommended decision or advice of the Clearinghouse or other mediator and any decision of the Clearinghouse can be appealed to the Chief of the Bureau. When referring

[25] We clarify that the Clearinghouse's dispute resolution role is limited to disputes over cost estimates or payments. Disputes related to the transition itself (*e.g.,* facilities, workmanship, preservation of service) should be reported to the Relocation Coordinator or the Wireless Telecommunications Bureau, as detailed below.

an unresolved matter, the Clearinghouse shall forward the entire record on any disputed issues, including such dispositions thereof that the Clearinghouse has considered. Upon receipt of such record and advice, the Bureau will decide the disputed issues based on the record submitted. The Bureau is directed to resolve such disputed issues or designate them for an evidentiary hearing before an Administrative Law Judge. If the Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within 10 days of the effective date of the initial decision, a Petition for *de novo* review, whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge. Parties seeking *de novo* review of a decision by the Bureau are advised that, in the course of the evidentiary hearing, the Commission may require complete documentation relevant to any disputed matters, and, where necessary, and at the presiding judge's discretion, require expert engineering, economic or other reports, or testimony. Parties may therefore wish to consider possibly less burdensome and expensive resolution of their disputes through means of alternative dispute resolution.

248. *Fourth,* the Clearinghouse shall provide certain information and reports to the Commission to facilitate our oversight of the transition. Each quarter, the Clearinghouse shall file progress reports in such detail as the Wireless Telecommunications Bureau may require. Such reports shall include detail on the status of reimbursement funds available for obligation, the relocation and accelerated relocation payments issued, the amounts collected from overlay licensees, and any certifications filed by incumbents. The quarterly progress reports must account for all funds spent to transition the band, including its own expenses (including salaries and fees paid to law firms, accounting firms, and other consultants). The quarterly progress reports shall include descriptions of any disputes and the manner in which they were resolved.

249. The Clearinghouse shall provide to the Wireless Telecommunications Bureau and the Office of the Managing Director additional information upon request. For example, the Bureau may request that the Clearinghouse estimate the average costs of transitioning an incumbent earth station to aid the Bureau's determination of a lump sum payment for such stations that seek flexibility in pursuing the transition. Or the Bureau may require the Clearinghouse to file special reports leading up to or after the Relocation Deadline or the Accelerated Relocation Deadlines, reporting on the status of funds associated with such deadlines so that the Commission can take appropriate action in response. The Commission would anticipate that the Bureau would require the Clearinghouse to issue a special, audited report after the Relocation Deadline, identifying any issues that have not readily been referred to the Commission as well as what actions, if any, need to be taken for the Clearinghouse to complete its obligations (including the estimated costs and time frame for completing that work). And the Commission directs the Wireless Telecommunications Bureau to assign the Clearinghouse any additional tasks as needed to ensure that the transition of the band proceeds smoothly and expeditiously.

250. To the extent commenters argue that an independent Clearinghouse is unnecessary, the Commission disagrees. Allowing incumbent space station operators, or other stakeholders, to determine the reasonableness of their own costs and bill overlay licensees accordingly creates an inherent conflict of interest—one that can be easily mitigated through an independent third-party Clearinghouse.

251. *Selecting the Clearinghouse.*—In the 800 MHz proceeding, the Commission appointed a committee of stakeholders to select an independent Transition Administrator to manage the complicated process of relocating incumbent licensees, including public safety, within the 800 MHz band. The Commission follows suit and finds that the best approach for ensuring that the transition of the band will proceed on schedule is for a committee of stakeholders in the band to select a Relocation Payment Clearinghouse.

252. The search committee will be composed of nine members appointed by nine entities that we find, collectively, reasonably represent the interests of stakeholders in the transition. Specifically, Intelsat, SES, Eutelsat, NAB, NCTA, ACA, CTIA, CCA, and WISPA will each appoint one representative to the search committee. Intelsat, SES, and Eutelsat represent varying views of the space station operators, and Eutelsat shares many views similar to those of the Small Satellite Operators. Although the interests of incumbent earth stations are richly diverse, we find that the membership of NAB, NCTA, and ACA and their positions advocated in this proceeding fairly represent the broad interests of earth stations large and small, including those in rural areas and those that are transportable. The Commission also finds that the membership and advocacy of CTIA, CCA, and WISPA fairly represents the views of prospective flexible-use licensees, including small and rural businesses. The search committee should proceed by consensus; however, if a vote on selection of a Clearinghouse is required, it shall be by a majority vote.

253. The Commission recommends the search committee convene by March 31, 2020; the Commission requires that it shall convene no later than 60 days after publication of this *Report and Order* in the **Federal Register**. Further, it shall notify the Commission of the detailed selection criteria for the position of Clearinghouse by June 1, 2020. Such criteria must be consistent with the qualifications, roles, and duties of the Clearinghouse. The search committee should ensure that the Clearinghouse meets relevant best practices and standards in its operation to ensure an effective and efficient transition.

254. The Clearinghouse should be required, in administering the transition, to (1) engage in strategic planning and adopt goals and metrics to evaluate its performance, (2) adopt internal controls for its operations, (3) use enterprise risk management practices, and (4) use best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. The Clearinghouse must be required to create written procedures for its operations, using the Government Accountability Office's (GAO) Green Book [26] to serve as a guide in satisfying such requirements.

255. The search committee should also ensure that the Clearinghouse adopts robust privacy and data security best practices in its operations, given that it will receive and process information critical to ensuring a successful and expeditious transition. The Clearinghouse should therefore also comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act (FISMA),[27]

[26] GAO, The Green Book: *Standards for Internal Control in the Federal Government,* GAO–14–704G, (rel. Sep 10, 2014). Available at *http://www.gao.gov/greenbook/overview.*

[27] Federal Information Security Management Act of 2002 (FISMA 2002), enacted as Title III, E-Government Act of 2002, Public Law 107–347, 116 Stat. 2899, 2946 (Dec. 17, 2002) was subsequently modified by the Federal Information Security Modernization Act of 2014 (Pub. L. 113–283, Dec. 18, 2014). As modified, FISMA is codified at 44 U.S.C. 3551 *et seq.*

National Institute of Standards and Technology (NIST) publications, and Office of Management and Budget guidance. The Clearinghouse should be required to hire a third-party firm to independently audit and verify, on an annual basis, the Clearinghouse's compliance with privacy and information security requirements and to provide recommendations based on any audit findings; to correct any negative audit findings and adopt any additional practices suggested by the auditor; and to report the results to the Bureau.

256. The Wireless Telecommunications Bureau is directed to issue a Public Notice notifying the public that the search committee has published criteria for the selection of the Clearinghouse, outlining the submission requirements, and providing the closing dates for the selection of the Clearinghouse.

257. The search committee shall notify the Commission of its choice for the Clearinghouse no later than July 31, 2020. This notification shall: (a) Fully disclose any actual or potential organizational or personal conflicts of interest or appearance of such conflict of interest of the Clearinghouse or its officers, directors, employees, and/or contractors; and (b) set out in detail the salary and benefits associated with each position. Additionally, the Commission expects that the Clearinghouse will enter into one or more appropriate contracts with incumbent space station operators, overlay licensees, and their agents or designees. The Clearinghouse shall have an ongoing obligation to update this information as soon as possible after any relevant changes are made.

258. After receipt of the notification, the Bureau is hereby directed to issue a Public Notice inviting comment on whether the entity selected satisfies the criteria set out here. Following the comment period, the Bureau will issue a final order announcing that the criteria established in this *Report and Order* either have or have not been satisfied; should the Bureau be unable to find the criteria have been satisfied, the selection process will start over and the search committee will submit a new proposed entity. During the course of the Clearinghouse's tenure, the Commission will take such measures as are necessary to ensure a timely transition.

259. In the event that the search committee fails to select a Clearinghouse and to notify the Commission by July 31, 2020, the search committee will be dissolved without further action by the Commission. In the event that the search committee fails to select a Clearinghouse and to notify the Commission by July 31, 2020, two of the nine members of the search committee will be dropped therefrom by lot, and the remaining seven members of the search committee shall select a Clearinghouse by majority vote by August 14, 2020.

260. To ensure the timely and efficient transition of the band, the Commission directs the Wireless Telecommunications Bureau to provide the Clearinghouse with any needed clarifications or interpretations of the Commission's orders. The Bureau, in consultation with the Office of the Managing Director, may request any documentation from the Clearinghouse necessary to provide guidance or carry out oversight. And to protect the fair and level playing field for applicants to participate in the Commission's auction, beginning on the initial deadline for filing auction applications until the deadline for making post-auction down payments, the Clearinghouse must make real time disclosures of the content and timing of, and the parties to, communications, if any, from or to applicants in the auction, as applicants are defined by the Commission's rule prohibiting certain auction-related communications.[28]

261. The Wireless Telecommunications Bureau is hereby directed to issue a Public Notice upon receipt of a request of the Clearinghouse to wind down and suspend operations. If no material issues are raised within 15 days of the release of said Public Notice, the Bureau may grant the Clearinghouse's request to suspend operations on a specific date. Overlay licensees must pay all costs prior to the date set forth in the Public Notice.

6. The Logistics of Relocation

262. The Commission next addresses the logistics of relocating FSS operations out of the lower 300 megahertz of the C-band spectrum. The Commission discusses the obligations for eligible space station operators that select to clear by the Accelerated Relocation Deadlines and adopts filing requirements and deadlines associated with those obligations. The Commission also adopts additional requirements for eligible space station operators that do not elect to clear by the Accelerated Relocation Deadlines in order to ensure that incumbent earth station operators, other C-band satellite customers, and prospective flexible-use licensees are adequately informed and accommodated throughout the transition. Finally, the Commission finds it in the public interest to appoint a Relocation Coordinator to ensure that all incumbent space station operators are relocating in a timely manner.

263. In the *NPRM,* the Commission sought comment on the logistics of relocating FSS operations. The Commission sought comment on having the relevant space station operators form a transition facilitator as a cooperative entity to coordinate negotiations, clearing, and repacking in the band. The Commission also asked about the role of the transition facilitator and the form of supervisory authority the Commission should maintain over it. The Commission also sought comment on a process whereby, after the transition facilitator has coordinated with relevant stakeholders regarding the transition of services to the upper portion of the band, it would file with the Commission a transition plan describing the spectrum to be made available for flexible use, the timeline for completing the transition, and the commitments each party has made to ensure that all relevant stakeholders are adequately accommodated and able to continue receiving existing C-band services post-transition. The Commission sought comment on whether to require that the transition plan explain how the spectrum will be cleared, what types of provisions should be required to ensure that relevant stakeholders are adequately accommodated, and whether to set a deadline for the submission of a transition plan. To facilitate transparency in the transition process, the *NPRM* sought comment on whether the transition plan should be subject to Commission approval, and on whether it should be made available for public review and comment.

264. Several commenters argue for a centralized transition facilitator to guarantee a transparent transition process with appropriate Commission oversight. Several incumbent space station operators argue that a transition facilitator to coordinate relocation is either unnecessary or that incumbent space station operators should coordinate the relocation of their own customers. Several commenters in turn support requiring the submission of a transition plan to be made available for public review and comment. Commenters ask the Commission to require that the transition plan describe

[28] See 47 CFR 1.2105(c). Because all applicants' communications with the Clearinghouse will be public as a result of this requirement and therefore available to other applicants, applicants must take care that their communications with the Clearinghouse do not violate the prohibition against communications by revealing bids or bidding strategies. Applicants further will have to consider their independent obligation to report potential violations to the Commission pursuant to auction rules.

in detail the estimated costs to transition the band, including reimbursement of reasonable costs to incumbent earth station operators and satellite customers, the schedule for clearing and deadlines for a completed transition, and plans for how incumbents will be accommodated and continue to receive existing C-band services.

265. The Commission finds that making eligible space station operators individually responsible for all space station clearing obligations will promote an efficient and effective space station transition process. In light of the complicated interdependencies involved in transitioning earth station operations to the upper 200 megahertz of C-band spectrum, as well as the extensive number of registered incumbent earth stations, incumbent space station operators are best positioned to know when and how to migrate incumbent earth stations and when filtering incumbent earth stations is feasible. Incumbent space station operators have the technical and operational knowledge to perform the necessary satellite grooming to transition C-band satellite services into the upper 200 megahertz of the band. This approach will leverage space station operators' expertise, as well as their incentive to achieve an effective transition of space station operations, in order to maintain ongoing C-band services in the future.

266. The Commission nonetheless agrees with commenters that the Commission must maintain oversight of the transition throughout. The Commission tailors this transition plan to whether incumbent space station operators elect to meet the Accelerated Relocation Deadlines in recognition that such an election would align the incentives of the incumbent space station operators with the Commission's goal of rapidly introducing mid-band spectrum into the marketplace. The Commission starts with that election.

267. *Transition for Operators that Elect Accelerated Relocation.*—If space station operators choose to clear on the accelerated timeframe in exchange for an accelerated relocation payment, they must do so via a written commitment by filing an Accelerated Relocation Election in this docket by May 29, 2020. Commitments to early clearing will be crucial components of prospective flexible-use licensees' decisions to compete for a particular license at auction. The Commission therefore finds it appropriate to require space station operators to commit to early clearing as soon as possible to provide bidders with adequate certainty regarding the clearing date and payment obligations associated with each license. Such elections shall be public and irrevocable, and the Commission directs the Wireless Telecommunications Bureau to prescribe the precise form of such election via Public Notice no later than May 12, 2020.

268. Because the Commission finds that overlay licensees would only value accelerated relocation if a significant majority of incumbent earth stations are cleared in a timely manner, the Commission finds that at least 80% of accelerated relocation payments must be accepted via Accelerated Relocation Elections in order for the Commission to accept elections and require overlay licensees to pay accelerated relocation payments.[29] The Commission accordingly directs the Wireless Telecommunications Bureau to issue a Public Notice by June 5, 2020, announcing whether sufficient elections have been made to trigger early relocation or not.

269. By electing accelerated relocation, an eligible space station operator voluntarily commits to paying the administrative costs of the Clearinghouse until the Commission awards licenses to the winning bidders in the auction, at which time those administrative costs will be repaid to those space station operators.

270. By electing accelerated relocation, an eligible space station operator voluntarily commits not only to relocating its own services out of the lower 300 megahertz by the Accelerated Relocation Deadlines (both Phase I and Phase II) but also to take responsibility for relocating its associated incumbent earth stations by those same deadlines. A space station operator must plan, coordinate, and perform (or contract for the performance of) all the tasks necessary to migrate any incumbent earth station that receives or sends signals to a space station owned by that operator, whether the satellite service provider is in direct privity of contract with the earth station operator or indirectly through another entity; in short, the space station operator must provide a turnkey solution to the transition. When a space station operator takes responsibility, its associated incumbent earth station operators need only facilitate the space station operator's completion of that earth station's relocation, for example, by helping with scheduling, providing access to facilities, and confirming the work performed.

271. The one exception to the rule is for incumbent earth station operators that choose to opt out of the formal relocation process by taking the lump sum relocation payment in lieu of its actual relocation costs. Such an incumbent earth station operator would then be responsible for coordinating with the relevant space station operator as necessary and performing all relocation actions on its own, including switching to alternative transmission mechanisms such as fiber.

272. Only incumbent earth station transition delays that are beyond the control of the incumbent space station operators will not impact their eligibility for the accelerated relocation payment. However, to partake of this exception, the Commission requires that any eligible space station operator submit a notice of any incumbent earth station transition delays to the Wireless Telecommunications Bureau within seven days of discovering an inability to accomplish the assigned earth station transition task. Such a request must include supporting documentation to allow for resolution as soon as practicable and must be submitted before the Accelerated Relocation Deadlines. To be clear, a space station operator's associated incumbent earth stations will lose their interference protection for the relevant band once the space station operator has met its obligations under the Accelerated Relocation Deadline for Phase I or Phase II.

273. The Commission will determine whether an eligible space station operator has met its accelerated benchmark on an individual basis in order to protect such operators from potential holdout from other operators. Maintaining individualized eligibility can facilitate competition among space station operators—after all, content distributors and incumbent earth stations are more likely to choose to use operators that can meet their publicly elected deadlines for the transition than those that fail to do so. And even if some eligible space station operators have not relocated by the Accelerated Relocation Deadlines, the Commission finds that value still exists for flexible-use licensees to be able to start deploying terrestrial operations in some areas before the final Relocation Deadline.[30]

[29] We make clear that if the accelerated elections meet the 80% threshold, only those space station operators that chose to clear on an accelerated timeframe will be expected to meet the accelerated deadlines.

[30] Although we anticipate that flexible-use licensees may begin deploying and constructing their networks before all incumbents have cleared the band, we clarify that—absent the consent of affected incumbent earth stations—flexible-use

Continued

274. By providing Accelerated Relocation Deadlines that eligible space station operators can commit to meet in order to receive accelerated relocation payments, the Commission will align the space station operators' incentives with the Commission's goal of rapidly introducing mid-band spectrum into the marketplace.

275. The Commission's goal is to facilitate the expeditious deployment of next-generation services nationwide across the entire 280 megahertz made available for terrestrial use, and the Commission's rules must properly align the incentives of eligible space station operators to hit that target. To the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines. And the Commission agrees with commenters that electing space station operators should receive reduced, but non-zero, accelerated relocation payments should they miss the specific deadlines. Indeed, commenters rightly argue that creating a ''cliff'' on the first day beyond the relevant deadline could create perverse incentives for space station operators to rush the relocation process at the expense of their customers (to avoid the loss of the entire payment), or to stop transition work entirely (since they could not get any accelerated relocation payment if they miss the deadline even by a day or a month). The Commission thus adopts a sliding scale of decreasing accelerated relocation payments that will provide enough of a ''carrot'' for space station operators to continue to accelerate their relocation even where they miss the relevant deadline while also maintaining a ''stick'' that does not render the accelerated relocation deadlines meaningless. Specifically, the Commission adopts the following schedule of declining accelerated relocation payments for the six months following each Accelerated Relocation Deadline. If an incumbent space station operator cannot complete the transition within six months of the relevant Accelerated Relocation Deadline, its associated payment will drop to zero.

Date of completion	Incremental reduction (%)	Accelerated relocation payment (%)
By Deadline		100
1–30 Days Late	5	95
31–60 Days Late	5	90
61–90 Days Late	10	80
91–120 Days Late	10	70
121–150 Days Late	20	50
151–180 Days Late	20	30
181+ Days Late	30	0

276. Subject to confirmation as to the validity of the certification, an eligible space station operator's satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline. An eligible space station operator shall file a Certification of Accelerated Relocation with the Clearinghouse and make it available for public review in this docket once it completes its obligations but no later than the applicable relocation deadline. The Commission directs the Wireless Telecommunications Bureau to prescribe the form of such certification.

277. The Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies. The Commission directs the Wireless Telecommunications Bureau to prescribe the form of any challenges by relevant stakeholders as to the validity of the certification, and to establish the process for how such challenges will impact the incremental decreases in the accelerated relocation payment. If credible challenges as to the space station operator's satisfaction of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges and will render a final decision as to the validity of the certification no later than 60 days from its filing. Absent notice from the Bureau of any such deficiencies within 30 days of the filing of the certification, the Certification of Accelerated Relocation will be deemed validated.

278. An eligible space station operator that meets the Phase I Accelerated Relocation Deadline and files the appropriate Certification of Accelerated Relocation may request its Phase I accelerated relocation payment for disbursement. The Clearinghouse will collect and distribute the accelerated relocation payments. The Clearinghouse shall promptly notify overlay licensees following validation of the Certification of Accelerated Relocation. Overlay licensees shall pay the accelerated relocation payments to the Clearinghouse within 60 days of the notice that eligible space station operators have met their respective accelerated clearing benchmark.[31] The Clearinghouse shall disburse accelerated relocation payments to relevant space station operators within seven days of receiving the payment from overlay licensees. Overlay licensees may begin operations in their respective blocks and PEAs upon notice of a validated Certification of Accelerated Relocation, and, as relevant, following payment of any required accelerated relocation payments.[32]

279. *Transition for Non-Electing Operators.*—By declining to elect for accelerated relocation payments, an incumbent space station operator is irrevocably forfeiting any right to accelerated relocation payments, even if it completes all tasks by the Accelerated Relocation Deadlines and files a Certification of Accelerated Relocation. This is so because bidders in the public auction must know what obligations they will incur if they become overlay licensees, and the commitment to accelerated relocation therefore must

licensees may not begin operations until either the filing of a validated Certification of Accelerated Relocation or the lapse of the Relocation Deadline.

[31] We note that overlay licensees that fail to submit timely payment would be in violation of a condition of their license and therefore be subject to enforcement action, including potential monetary forfeitures, as well as loss of the license.

[32] To the extent overlay licensees negotiate to clear incumbents from the band earlier than any deadlines, they may deploy service with the consent of affected incumbent earth stations earlier than the deadline—but only so long as they make all required payments to the Clearinghouse in a timely manner.

come well in advance of the auction. The Commission therefore finds it appropriate to limit eligible space station operators' ability to make such an election in the Accelerated Relocation Election filed no later than May 29, 2020.

280. *Transition Plan.*—The Commission requires each eligible space station operator to submit to the Commission and make available for public review a Transition Plan describing the necessary steps and estimated costs to transition all existing services out of the lower 300 megahertz of C-band spectrum. Such plans must be filed by June 12, 2020. The Transition Plan must describe in detail the necessary steps for accomplishing the complete transition of existing C-band services to the upper 200 megahertz of the band by the Relocation Deadline or, as applicable, by the Accelerated Relocation Deadlines.[33] Except where an incumbent earth station owner elects the lump sum payment and assumes responsibility for transitioning its own earth stations, eligible space station operators that elect Accelerated Relocation Payments are responsible for relocating all associated incumbent earth stations, and therefore must detail the details of such relocation in the Transition Plan.[34] To the extent an incumbent space station operator does not elect Accelerated Relocation Payments but nevertheless plans to assume responsibility for relocating its own associated incumbent earth stations, it must make that clear in the Transition Plan (the responsibility otherwise falls on incumbent earth station owners to work with overlay licensees to facilitate an appropriate transition). The Transition Plan must also state a range of estimated costs for the transition, with appropriate itemization to allow reasonable review by overlay licensees, the Clearinghouse, and the Commission.

281. To ensure that incumbent earth station operators, other C-band satellite customers, and prospective flexible-use licensees are adequately informed regarding the transition, the Transition Plan must describe in detail: (1) All existing space stations with operations that will need to be repacked into the upper 200 megahertz; (2) the number of new satellites, if any, that the space station operator will need to launch in order to maintain sufficient capacity post-transition, including detailed descriptions of why such new satellites are necessary; (3) the specific grooming plan for migrating existing services to the upper 200 megahertz, including the pre- and post-transition frequencies that each customer will occupy;[35] (4) any necessary technology upgrades or other solutions, such as video compression or modulation, that the space station operator intends to implement; (5) the number and location of earth stations antennas currently receiving the space station operator's transmissions that will need to be transitioned to the upper 200 megahertz; (6) an estimate of the number and location of earth station antennas that will require retuning and/or repointing in order to receive content on new transponder frequencies post-transition; and (7) the specific timeline by which the space station operator will implement the actions described in items (2) through (6).

282. The Commission recognizes that certain space station operators may find it advantageous or necessary to develop a combined space station grooming plan that allows for more efficient clearing by, for example, migrating customers to excess capacity on another space station operator's satellites. Such space station operators are free to file either individual or joint Transition Plans, so long as any combined plan separately identifies and describes all required information (*i.e.,* items 1 through 7) as it pertains to each individual operator.

283. Incumbent earth station operators, programmers, and other C-band stakeholders will have an opportunity to file comments on each Transition Plan by July 13, 2020. The Wireless Telecommunications Bureau is directed to issue a Public Notice detailing the process for such notice and comment.

284. The Commission also recognizes that there may be a need for an incumbent space station operator to make changes to its Transition Plan to update certain information or to cure any defects that may be identified by the Commission or by relevant stakeholders during the comment window. Space station operators must make any necessary updates or resolve any deficiencies in their individual Transition Plans by August 14, 2020. After this date, space station operators may only make further adjustments to their individual plans with the approval of the Commission.

285. *Relocation Coordinator and Status Reports.*—The Commission finds it in the public interest to provide for a Relocation Coordinator to ensure that all incumbent space station operators are relocating in a timely manner. If eligible space station operators elect accelerated relocation so that a supermajority (80%) of accelerated relocation payments are accepted (and thus accelerated relocation is triggered), the Commission finds it in the public interest to allow a search committee of such operators to select a Relocation Coordinator. Specifically, each electing space station operator may select one representative for the search committee, and the committee shall work by consensus to the extent possible or by supermajority vote (representing 80% of electing operators' accelerated relocation payments) to the extent consensus cannot be reached.[36] If electing eligible space station operators select a Relocation Coordinator, they shall also be responsible for paying for its costs out of accelerated relocation payments—this will align the incentives of the Relocation Coordinator and the search committee to minimize costs while maximizing the chances of meeting the Accelerated Relocation Deadlines.[37]

286. The Relocation Coordinator must be able to demonstrate that it has the requisite expertise to perform the duties required, which will include: (1) Coordinating the schedule for clearing the band; (2) performing engineering analysis, as necessary, to determine necessary earth station migration actions; (3) assigning obligations, as

[33] All required filings should be made in the docket for this proceeding, GN Docket No. 18–122.

[34] We encourage space station operators to coordinate with and seek input from associated incumbent earth station operators and other C-band satellite customers in developing their Transition Plans, and to work cooperatively with earth station operators—even those that elect a lump sum payment—during the transition. We decline, however, to require space station operators to include all of their ''express agreed commitments'' to their customers in the transition plans, as QVC and HSN request, as such requirement would be overly burdensome. The opportunity to comment on Transition Plans provides these customers the opportunity to raise concerns.

[35] While we recognize that space station operators may have an interest in maintaining confidentiality regarding certain aspects of specific contractual agreements and identifying customer information, we require that any information necessary to effectuate the transition in a transparent manner must be included in this filing. If space station operators will be migrating customers to frequencies on a different operator's space station, the details of that arrangement between two space station operators would be deemed necessary information.

[36] Given that the space station operators have primary responsibility for transitioning their associated incumbent earth stations, we decline NCTA's request to include earth station operators in the search committee for the Relocation Coordinator.

[37] Because this approach for selecting the Relocation Coordinator does not require that the selected entity be a neutral third-party, it is possible that the search committee will select a consortium of eligible space station operators. We therefore reject SES's request that overlay licensees, rather than space station operators, pay for the costs of the Relocation Coordinator, as such an approach could lead to self-dealing on the part of the Relocation Coordinator and create unnecessary additional costs for overlay licensees.

necessary, for earth station migrations and filtering; (4) coordinating with overlay licensees throughout the transition process; (5) assessing the completion of the transition in each PEA and determining overlay licensees' ability to commence operations; and (6) mediating scheduling disputes. The search committee shall notify the Commission of its choice of Relocation Coordinator no later than July 31, 2020.

287. The Wireless Telecommunications Bureau is hereby directed to issue a Public Notice inviting comment on whether the entity selected satisfies the criteria set out here. Following the comment period, the Bureau will issue a final order announcing that the criteria established in this *Report and Order* either have or have not been satisfied; should the Bureau be unable to find the criteria have been satisfied, the selection process will start over and the search committee will submit a new proposed entity. During the course of the Relocation Coordinator's tenure, the Commission will take such measures as are necessary to ensure a timely transition.

288. In the event that the search committee fails to select a Relocation Coordinator and to notify the Commission by July 31, 2020, the search committee will be dissolved without further action by the Commission. In the event the search committee fails to select a Relocation Coordinator, or in the case that at least 80% of accelerated relocation payments are not accepted (and thus accelerated relocation is not triggered), the Commission will initiate a procurement of a Relocation Coordinator to facilitate the transition. Specifically, the Commission directs the Office of the Managing Director to initiate a procurement process, and the Wireless Telecommunications Bureau to take other necessary actions to meet the Accelerated Relocation Deadlines (to the extent applicable to any given operator) and the Relocation Deadline.

289. In the case that the Wireless Telecommunications Bureau selects the Relocation Coordinator, overlay licensees will, collectively, pay for the services of the Relocation Coordinator and staff. The Relocation Coordinator shall submit its own reasonable costs to the Relocation Payment Clearinghouse, who will then collect payments from overlay licensees. It shall also provide additional financial information as requested by the Bureau to satisfy the Commission's oversight responsibilities and/or agency-specific/government-wide reporting obligations. Once selected, the Commission expects that the Relocation Coordinator will enter into one or more appropriate contracts with incumbent space station operators, overlay licensees, and their agents or designees.

290. However selected, the Relocation Coordinator's responsibilities will be the same. In short, the Relocation Coordinator may establish a timeline and take actions necessary to migrate and filter incumbent earth stations to ensure uninterrupted service during and following the transition. The Relocation Coordinator must review the Transition Plans filed by all eligible space station operators and recommend any changes to those plans to the Commission to the extent needed to ensure a timely transition. To the extent that incumbent earth stations are not accounted for in eligible space station operators' Transition Plans, the Relocation Coordinator must prepare an Earth Station Transition Plan for such incumbent earth stations and may require each associated space station operator to file the information needed for such a plan with the Relocation Coordinator. Where space station operators do not elect to clear by the Accelerated Relocation Deadlines and therefore are not responsible for earth station migration and filtering, the Earth Station Transition Plan must provide timelines that ensure all earth station relocation is completed by the Relocation Deadline. The Relocation Coordinator will describe and recommend the respective responsibility of each party for earth station migration obligations in the Earth Station Transition Plan and assist incumbent earth stations in transitioning including, for example, by installing filters or hiring a third party to install such filters to the extent necessary. For example, where an earth station requires repointing or retuning to receive transmissions on a new frequency or satellite, it might be most efficient for the same party performing those tasks to also install the necessary filter at the same time.

291. The Relocation Coordinator shall coordinate its operations with overlay licensees, who must ultimately pay for such relocation costs. The most efficient party to perform earth station migration actions or install an earth station filter, and the timeframe for doing so, likely will vary widely across earth stations. Incumbent space station operators must cooperate in good faith with the Relocation Coordinator—and the Relocation Coordinator must, likewise, coordinate in good faith with incumbent space station operators—throughout the transition. The Relocation Coordinator will also be responsible for receiving notice from earth station operators or other satellite customers of any disputes related to comparability of facilities, workmanship, or preservation of service during the transition and shall subsequently notify the Wireless Telecommunications Bureau of the dispute and provide recommendations for resolution.

292. To protect the fair and level playing field for applicants to participate in the Commission's auction, beginning on the initial deadline for filing auction applications until the deadline for making post-auction down payments, the Relocation Coordinator must make real-time disclosures of the content and timing of, and the parties to, communications, if any, from or to applicants in the auction, as applicants are defined by the Commission's rule prohibiting certain auction-related communications.

293. The Commission also agrees with commenters like Global Eagle and NAB that regularly-filed status reports would aid our oversight of the transition. Specifically, the Commission requires each eligible space station operator to report the status of its clearing efforts on a quarterly basis, beginning December 31, 2020. Because eligible space station operators will likely need to cooperate to meet the accelerated timelines, the Commission invites and encourages them to file joint status reports. The Commission also requires the Relocation Coordinator to report on the overall status of clearing efforts on the same schedule. The Commission directs the Wireless Telecommunications Bureau to specify the form and format of such reports.

294. Finally, the Commission rejects Eutelsat's assertion that the Commission should require the Relocation Coordinator to be a neutral third party. Eutelsat argues that allowing the Relocation Coordinator to be selected by a supermajority vote representing at least 80% of the electing operators' accelerated relocation payments would give Intelsat and SES effective control over the Relocation Coordinator, leading to potential conflicts of interest. Eutelsat argues that the Relocation Coordinator should, instead, be a neutral, independent third party akin to the Relocation Payment Clearinghouse. The Commission disagrees. The Relocation Coordinator's responsibilities will require detailed coordination with space station operators and earth stations to assess the validity of Transition Plans and ensure that the space station operators meet their relocation deadlines. A truly independent Relocation Coordinator may not have the requisite knowledge or expertise to perform these essential functions and

complete the transition in a timely manner. Given the complexity of the transition process, the importance of rapid clearing, and the need for ongoing coordination and cooperation with space station operators and their customers, the Commission finds that it is in the public interest for the Relocation Coordinator to be selected by parties representing the vast majority of the clearing responsibilities in the band. The Commission also finds that requiring the Relocation Coordinator to be a neutral, disinterested third party could create inefficiencies in the clearing process and endanger the successful completion of the transition. The Commission notes, however, that the Relocation Coordinator's responsibilities are the same vis-à-vis all incumbent space station operators and that it must operate in good faith to perform its duties on behalf of each incumbent operator.

7. Other FSS Transition Issues

295. In this section, the Commission addresses two additional issues related to the FSS Transition that were raised in the record.

296. *Maintenance of IBFS Data Accuracy.*—The Commission declines to require annual certification requirements or discontinuance requirements, as requested by advocates of point-to-multipoint flexible use in the band. The *NPRM* asked several questions about how best to maintain accurate earth station data in IBFS. The Commission believes there is increased awareness among incumbent earth station operators of their rights and responsibilities as a result of this proceeding and the various public notices associated with it. In addition, because FSS will no longer share with point-to-point in the contiguous United States and the Commission is not setting aside spectrum for point-to-multipoint or flexible use in the band on a shared basis with FSS using coordination or dynamic spectrum management, the Commission does not believe that such additional measures are necessary or worth the additional regulatory requirements. Further, Section 25.162 of the Commission's rules already requires FSS licensees to keep their Commission registration and license information up to date, and it is the responsibility of earth station registrants under the Commission's rules to surrender any registration or license for an earth station no longer in use.

297. *Revising the Coordination Policy Between FSS and FS Services.*—The full band, full arc coordination policy governs sharing between the co-primary FSS and FS services. In the contiguous United States this policy will be moot given our decisions today to transition the FSS allocation to the upper 200 megahertz of the band and to sunset incumbent point-to-point use of the band. Outside the contiguous United States, the record does not reflect any significant concerns with the existing policy. Indeed, satellite interests support retention of the full band, full arc policy and argue that the flexibility of full band, full arc is needed to deal with unanticipated satellite failures, emergencies on the ground, or unexpected interference. NCTA notes that earth station operators require flexibility to repoint and change frequencies. Accordingly, the Commission is not adopting its proposal to revise the coordination policy at this time to require earth stations to report to the Commission the actual frequencies and azimuths used. Nonetheless, if an earth station operator alleges harmful interference from wireless operations in adjacent bands, it must be prepared to provide all relevant technical data regarding its station's operation. Additionally, incumbent space station operations with earth stations will be protected on a primary basis in the remaining upper 200 megahertz of the band. Since the Commission is clearing 300 megahertz of the band and declining to permit point-to-multipoint communications within this band at this time, the Commission need not further limit the scope of earth station operations. Allowing continued flexibility will also facilitate antenna re-pointing to different satellites during the clearing process.

C. Fixed Use in the C-Band

298. The Commission adopts rules to sunset as of December 5, 2023, incumbent point-to-point Fixed Service use under part 101 in the 3.7–4.2 GHz band in the contiguous United States. The Commission finds that doing so will serve the public interest by facilitating the introduction of flexible use into this band and providing incumbent Fixed Service licensees with a reasonable period to self-relocate their permanent fixed operations out of the 3.7–4.2 GHz band. The Commission also declines to adopt modifications to part 101 to permit point-to-multipoint Fixed Service use in the 4.0–4.2 GHz band, as doing so could complicate the continued use of the 4.0–4.2 GHz band by FSS licensees during and after the transition.

1. Sunsetting Incumbent Point-to-Point Fixed Services

299. As noted in the *NPRM,* point-to-point Fixed Service use of the band has declined steeply over the past 20 years and many other spectrum options are available for point-to-point links. In the contiguous United States, there are now only 87 point-to-point Fixed Service licenses in this band, of which 51 are permanent point-to-point Fixed Service and 36 temporary Fixed Service licenses.[38] Frequency coordination allows FSS and terrestrial fixed microwave to share the band on a co-primary basis but coordination of mobile systems would be more complicated because the movement of the devices would require analyses and interference mitigation to avoid harmful interference to/from both services. Indeed, the Commission's *Emerging Technologies* framework has largely involved the relocation of fixed services to allow for mobile operations under new, flexible-use licenses. The Commission must therefore carefully balance these incumbent uses against the need for additional spectrum for flexible use in deciding upon the best means of resolving issues in this proceeding in the public interest.

300. The Commission finds that the relatively limited incumbent point-to-point Fixed Service use in this band may be accommodated by sunsetting primary operations in the 3.7–4.2 GHz band in the contiguous United States as of December 5, 2023. Accordingly, the Commission adopts a modified version of our proposal to sunset, in three years, incumbent point-to-point Fixed Service use in the 3.7–4.2 GHz band in the contiguous United States. Specifically, existing licensees, as of April 19, 2018, of licenses for permanent Fixed Service operations will have until December 5, 2023, to self-relocate their point-to-point links out of the 3.7–4.2 GHz band. The Commission is also revising its part 101 rules to specify that no applications for new point-to-point Fixed Service operations in the 3.7–4.2 GHz band will be granted for locations in the contiguous United States. The record in this proceeding demonstrates the need to allocate this spectrum for flexible use for the provision of 5G, and commenters overwhelmingly support the Commission's proposal to sunset incumbent point-to-point Fixed Service use in the contiguous United States. On the other hand, because the Commission is not authorizing new flexible-use services outside of the contiguous

[38] *See* Universal Licensing System, *https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp.*

United States at this time, the Commission finds that it would not be in the public interest to maintain the existing freeze on new point-to-point Fixed Service links in those areas. Therefore, the freeze on point-to-point microwave Fixed Service applications for sites outside of the contiguous United States will be lifted on the date of publication of this action in the **Federal Register**. This decision lifting the freeze, in part, relieves a restriction and therefore is exempt from the effective date requirements of the Administrative Procedure Act. Moreover, the Commission finds that there is good cause for not delaying the partial lifting of the freeze because such a delay would be unnecessary and contrary to the public interest because it would not serve purposes of the freeze.

301. New equipment in other bands is readily available for point-to-point operations and allowing new authorizations in the 4.0–4.2 GHz band could frustrate the satellite repacking and overall repurposing of the 3.7–3.98 GHz band for 5G in the contiguous United States. Other bands available for assignment for fixed microwave services under part 101 include 5925–6425, 6525–6875, 6875–7125, 10,700–11,700, 17,700–18,300, 19,300–19,700 MHz, and 21,200–23,600 MHz. This sunset provision that the Commission adopts pursuant to its spectrum management authority under Title III will protect the operations of incumbent Fixed Service licensees while avoiding harmful interference to new flexible-use licensees and facilitating the FSS transition to the upper 200 megahertz.

302. In the *NPRM,* the Commission also sought comment on whether to treat those with permanent licenses differently from those with temporary licenses. The 36 licenses for temporary fixed links in the contiguous United States are blanket licenses to use any frequencies in the 3.7–4.2 GHz band for temporary links within a defined geographic area, *e.g.,* statewide. These licenses allow carriers to meet short-term needs for fixed links by prior coordinating specific frequencies and locations with all affected licensees.[39] Although these licenses have 10-year terms, a link cannot be used at a given location for more than 180 days. To be sure, these temporary licenses are different from licenses for permanent links. The Commission finds, however, in the context of our actions today making 280 megahertz of mid-band spectrum available as rapidly as possible, that these distinctions do not provide a sufficient public interest justification for treating the 36 temporary fixed licensees differently from the 51 permanent fixed licensees in the 3.7–4.2 GHz band. While temporary fixed licensees operate on a non-interference basis, the burden of analyzing and responding to coordination requests from these operators and to protect any successfully coordinated operations for up to 180 days could add additional complexity to new flexible-use deployments and earth-station transitions. Accordingly, these 36 licensees will have until December 5, 2023, to modify or replace their temporary fixed 3.7–4.2 GHz band equipment with comparable equipment that operates in other bands. Additionally, given that other bands are available for temporary fixed operations, the Commission is revising our rules for the contiguous United States to bar acceptance of applications for new licenses for temporary fixed operations in the 3.7–4.2 GHz band.

303. *Relocation Reimbursement and Cost Sharing.*—Incumbent licensees of point-to-point Fixed Service links that relocate out of the 3.7–4.2 GHz band by December 5, 2023, shall be eligible for reimbursement of their reasonable costs based on the well-established ''comparable facilities'' standard used for the transition of microwave links out of other bands. Similar to the Commission's approach for earth station clearing, because fixed service relocation affects spectrum availability on a local basis, all flexible-use licensees in a PEA where an incumbent Fixed Service licensee self-relocated will share in the reimbursement of these reasonable costs on a *pro rata* basis. Incumbent Fixed Service licensees will be subject to the same demonstration requirements and reimbursement administrative provisions as those adopted above for incumbent earth station operators.

304. *Estimated Relocation Costs of the FS Transition.*—The Commission finds it appropriate to provide potential bidders in our public auction with an estimate of the relocation costs that they may incur should they become overlay licensees. The Commission cautions that our estimates are estimates only, and it makes clear that overlay licensees will be responsible for the entire allowed costs of relocation—even to the extent that those costs exceed the estimated range of costs. The Commission further cautions that the record contains no information on the cost estimates of clearing the 87 incumbent licensees in the band.

305. The Commission's licensing records reflect that the 51 licenses for permanent links authorize a total of 702 links (discrete frequencies). The Commission notes that for microwave links relocated from the 2.1 GHz Advanced Wireless Services bands, $184,991 was the average cost per link relocation registered with the AWS Clearinghouse. Using this average cost per link to estimate the total cost of clearing 702 links from the 3.7–4.2 GHz band, results in a cost estimate of $129.9 million. Licensees of temporary fixed links were not entitled to relocation reimbursement from AWS licensees so the AWS Clearinghouse data may be less informative. The record is devoid of any cost data but the average cost per temporary link should be 25–50% lower than for permanent links because temporary links do not usually involve towers. Using $138,743 (25% lower) as the average replacement cost, if each of the 36 licensees has equipment for one temporary fixed link in the 3.7–4.2 GHz band, this results in a cost estimate of $5.13 million and a total cost estimate for all fixed links of approximately $135 million.

2. More Intensive Point-to-Multipoint Fixed Use

306. The Commission has decided to adopt flexible-use rules for this band that allow operators the ability to use it for fixed or mobile operations (or a combination thereof), and thus declines to adopt changes to part 101 that would limit terrestrial use of any portion the 3.7–4.2 GHz band to point-to-multipoint Fixed Service use.

307. In the *NPRM,* the Commission sought comment on rules that would allow for the more intensive point-to-multipoint Fixed Service use of the band, how permitting fixed wireless would affect the possible future clearing of the band for flexible use and the use of the band for satellite operations, and the impact that point-to-multipoint use would have on the flexibility of FSS earth stations to modify their operations in response to technical and business needs. Although some commenters support variations of rules that would license non-geographic, unauctioned point-to-multipoint Fixed Service use of the 3.7–4.2 GHz band, a number of commenters oppose the proposal. Commenters emphasize that licensing point-to-multipoint Fixed Service before or during the transition would substantially devalue the spectrum for flexible use, increase the costs of the transition, and undermine market-based

[39] *See, e.g., Universal Licensing System,* Call Sign KCA74 (authorizing temporary fixed operations statewide in two states in three bands); Call Sign KJA75 (authorizing temporary fixed operations statewide in nine states in over ten bands).

approaches to placing this spectrum to its most valued use.

308. The Commission agrees and finds that the record demonstrates that it would be unwise to open this band to point-to-multipoint Fixed use, as a stand-alone service, at this time. Other bands are available for point-to-multipoint use, including licensed spectrum immediately below 3.7 GHz. In short, permitting flexible use, fixed or mobile, services across the entire cleared band will ensure that prospective wireless providers have the ability to provide whichever services (including point-to-multipoint) that consumers most demand. And authorizing more intensive point-to-multipoint Fixed Service use of the 4.0–4.2 GHz band before the transition is over could dramatically complicate the repacking and relocation of FSS operations and earth station registrants.

D. Technical Rules for the 3.7–4.2 GHz Band

309. The Commission adopts technical rules for the 3.7–4.2 GHz band spectrum. The Commission finds that the technical rules it adopts herein will encourage efficient use of spectrum resources and promote investment in the 3.7–3.98 GHz band while protecting incumbent users in the band and in adjacent bands.

310. The Commission notes that Comcast recommends that the Commission ''encourage interested stakeholders to convene a broad-based group to develop a comprehensive framework for addressing interference prevention, detection, mitigation, and enforcement.'' Such groups have been successful in the past in providing the Commission with valuable insights and useful information regarding spectrum transitions for new uses.[40] The Commission believes that such a multi-stakeholder group could provide valuable insight into the complex coexistence issues in this band and provide a forum for the industry to work cooperatively towards efficient technical solutions to these issues. The Commission encourages the industry to convene a group of interested stakeholders to develop a framework for interference prevention, detection, mitigation, and enforcement in the 3.7–4.2 GHz band. The Commission also encourages any multi-stakeholder group that is formed to consider best practices and procedures to address issues that may arise during the various phases of the C-band transition and to consider coexistence issues related to terrestrial wireless operations below 3.7 GHz. To ensure that all viewpoints are considered, the Commission encourages industry to include representatives of incumbent earth stations (including MVPDs and broadcasters), incumbent space station operators, wireless network operators, network equipment manufacturers, and aeronautical radionavigation equipment manufacturers. The Commission does not, however, take a position on the exact makeup or organizational structure of any such stakeholder group.

311. The Commission directs the Office of Engineering and Technology to act as a liaison for the Commission with any such multi-stakeholder group so formed. In particular, the Commission expects the Office to observe the functioning of any such group and the technical concerns aired to keep an ear to the ground, as it were, on technical developments that come to light as the relocation process occurs. The Commission also expects the Office to provide guidance to any such group on the topics on which it would be most helpful for the Commission to receive input and a sense of the time frames in which such input would be helpful.

1. Power Levels

312. *Base Station Power.*—To support robust deployment of next-generation mobile broadband services, the Commission will allow base stations in non-rural areas to operate at power levels up to 1640 watts per megahertz EIRP. In addition, consistent with other broadband mobile services in nearby bands (AWS–1, AWS–3, AWS–4 and PCS), the Commission will permit base stations in rural areas to operate with double the non-rural power limits (3280 watts per megahertz) in rural areas. The Commission extends the same power density limit to emissions with a bandwidth less than one megahertz to facilitate uniform power distribution across a licensee's authorized band regardless of whether wideband or narrowband technologies are being deployed. This approach also provides licensees the flexibility to optimize their system designs to provide wide area coverage without sacrificing the flexibility needed to address coexistence issues with FSS operations. Further, because advanced antenna systems often have multiple radiating elements in the same sector, the Commission clarifies that the power limits it is adopting apply to the aggregate power of all antenna elements in any given sector of a base station.

313. The Commission agrees with commenters and believe that, similar to development in other bands, these base station power limits will promote investment in the 3.7–3.98 GHz band and facilitate the rapid and robust deployment of next generation wireless networks, including 5G. The Commission also finds that adopting consistent power levels with other AWS bands will allow licensees to achieve similar coverage, creating network efficiencies between network deployments in different spectrum bands.

314. The Commission disagrees with commenters that argue that the base station power limits in this band should be lower to facilitate coexistence with FSS earth stations and flexible-use operations below the 3.7 GHz band edge. The Commission believes that the 3.7–3.98 GHz band will be a core band for next generation wireless networks, including 5G, and will require power levels consistent with other bands used for wide area wireless operations to reach its full potential. The Commission also finds that the protection mechanisms it adopts herein will ensure that the potential for harmful interference to incumbent FSS earth stations is minimized regardless of the base station power levels permitted in the band. Indeed, the Commission notes that the C-Band Alliance modified its original proposal specifically to support base station power levels consistent with those we adopt here and has indicated that such power levels will not inhibit the rapid introduction of next generation wireless services to this band.

315. The Commission declines to adopt its proposal to impose a different power level for emissions less than one megahertz wide as we do not believe such a distinction is necessary. That is, rather than impose an absolute power limit for narrow emissions, the Commission adopts the same power density limits for all emissions in the band. Verizon supports a power density rule without a separate power limit for emissions less than one megahertz and suggests a minimum channel bandwidth of five megahertz to ensure use of the band for broadband applications. The Commission notes that the power rules for PCS and AWS–1, *e.g.,* where base stations are permitted an EIRP of 1640 Watts/MHz for emissions greater than 1 megahertz or 1640 Watts per emissions with a bandwidth of less than 1 MHz, were developed when mobile services were transitioning from narrowband (GSM systems) to wideband

[40] For example, after the Commission created the Citizen's Broadband Radio Service, the Wireless Innovation Forum stood up the Spectrum Sharing Committee to serve as a common industry and government standards body to support the development and advancement of Citizen's Broadband Radio Service Standards. *See https://cbrs.wirelessinnovation.org/about.*

technologies (CDMA). Thus, the Commission adopted the rules to ensure continued service to the public regardless of technology deployed. While 4G and 5G technologies have continued the trend towards wider channel bandwidths, certain narrowband Internet of Things (NB-IoT) technologies use smaller bandwidths (*e.g.,* 180 kHz). The Commission does not believe a separate power per emission distinction is necessary to accommodate narrowband emissions because they are often integrated with wideband emissions as additional resource blocks as opposed to being deployed as separate systems. Nor does the Commission believe it should adopt a minimum emission bandwidth for the band because licensees should be permitted to choose the best technology or a mix of technologies to meet market demands. Moreover, the Commission is mindful of the interference potential possible under our proposed rule whereby a licensee could deploy up to five NB-IoT channels in one megahertz. This situation could lead to an aggregate power of 8200 Watts/MHz in an urban area and 16400 Watts/MHz in a rural area. Licensees still have flexibility to implement any technology in accordance with our technical flexibility framework and can design their networks to ensure coverage, but our rules will ensure power parity between technologies. This approach should avoid an unlikely, yet problematic scenario where a system stacks narrowband high-powered emissions to meet coverage goals while also potentially interfering with adjacent channel operations. Thus, the Commission set a uniform power density distribution across the full 3.7–3.98 GHz band regardless of channel bandwidth.

316. The Commission also declines to adopt a maximum power limit of 75 dBm EIRP, summed over all antenna elements. While the Commission sought comment on this limit in the *NPRM,* it received little support on the record and several parties claimed that such a limit could hinder network deployments. The Commission agrees and finds that an upper limit could hinder flexibility to deploy wider bandwidth technologies without any corresponding benefit, as 3.7–3.98 GHz band licensees will design their systems to protect earth station locations around their deployments.

317. *Mobile Power.*—The Commission adopts a 1 Watt (30 dBm) EIRP power limit for mobile devices, as proposed in the *NPRM.* The Commission finds that this mobile power limit will provide adequate power for robust mobile service deployment. Additionally, this limit will permit operation of mobile power classes as outlined in the 5G standards.[41] The Commission note that most commenters support the proposed 1 Watt EIRP mobile power limit as adequate for 5G operations and as being consistent with industry standards.[42]

318. While a few commenters suggest allowing higher power limits, the Commission does not find the record supports a specific need for higher power at this time. Mobile devices typically operate at levels below 1 Watt to preserve battery life, meet human exposure limits, and meet power control requirements.

319. Similarly, the Commission disagrees with commenters that suggest lower mobile power limits consistent with those in the 3.5 GHz band. The Citizens Broadband Radio Service, which is based on lower power, narrower channels and a dynamic spectrum sharing framework, is fundamentally different than the service we are permitting in the 3.7–3.98 GHz band. Thus, the limits adopted there are not appropriate for this band. Licensees are expected to deploy much wider channel bandwidths and will operate in exclusively licensed spectrum. The mobile power limit the Commission adopts is intended to provide consistency between mobile 5G deployments in the 3.7–3.98 GHz band and comparable macro cell deployment in the PCS, AWS, and similar bands.

2. Out-of-Band Emissions

320. *Base Station Out-of-Band Emissions.*—The Commission adopts base station out-of-band emission (OOBE) requirements based on our proposed limits, which are similar to other AWS services. Specifically, base stations will be required to suppress their emissions beyond the edge of their authorization to a conducted power level of −13 dBm/MHz.

321. This limit is supported by several commenters because it avoids unnecessary constraints on flexible-use equipment in areas far from FSS earth stations and is compatible with the rules governing other mobile broadband services. The Commission adopts a conducted limit of −13 dBm/MHz because it is consistent with the emission limits the Commission has established for other mobile broadband services and the emission limits established for 5G technologies by standards bodies, and the Commission finds that this limit has been widely accepted as being adequate for reducing unwanted emissions into adjacent bands. The C-Band Alliance supports the OOBE limits contained in the 3GPP standard for band n77. Here the Commission establishes a fixed emission mask that fits within the 3GPP specifications and is less complicated. Further, the Commission is not adopting a suggestion to relax the limits in the first 10 megahertz outside of a licensee's authorized band because there is insufficient debate in the record on the impact of such a relaxation to adjacent channel operations and we believe manufacturers and licensees are familiar with our standard −13 dBm/MHz limit and have tools to ensure they meet this limit.

322. While some commenters support emission suppression to levels lower than what the Commission adopts, these more stringent emission limits would likely hinder the full potential of 5G deployment in this band. Because out-of-band emissions generally continue to decrease with spectral separation and manufacturers typically are able to filter those emissions to levels lower than what either our adopted limits or the 3GPP emission masks require,[43] the Commission does not believe it is necessary to specify additional levels of suppression further outside the band.

323. For base station OOBE, the Commission applies the part 27 measurement procedures and resolution bandwidth that are used for AWS devices outlined in § 27.53(h). Specifically, a resolution bandwidth of 1 megahertz or greater will be used; except in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block where a resolution bandwidth of at least 1% of the emission bandwidth may be employed. These procedures have been successfully used to prevent harmful interference from similar services operating in nearby bands. Thus, the Commission concludes that there is no demonstrated reason to change them for the 3.7–3.98 GHz band.

324. *Mobile Out-of-Band Emissions.*—As with base station out-of-band emission limits, we adopt mobile emission limits similar to our standard emission limits that apply to other mobile broadband services. Specifically, mobile units must suppress the conducted emissions to no more than −13 dBm/MHz outside their authorized frequency band.

[41] *See* 3GPP 38.101–1 NR; User Equipment (UE) radio transmission and reception; Part 1: Range 1 Standalone (Release 15).

[42] *See* 3GPP TS 38.101–3 version 15.2.0 Release 15 at 80 (UE Power class (PC) For FR1: Power class 3: 23 dBm and Power class 2: 26 dBm). AT&T Reply at 18; Ericsson Comments at 20; Nokia Comments at 12.

[43] 3GPP Standard TS 38.104, version 16.1.0, clause 6.6.4.2.1 for Category A base stations.

325. This limit is widely supported by the comments. The Commission notes that those emission masks vary by channel bandwidth. The Commission agrees that requiring limits more stringent than the 3GPP requirements ''could prevent user equipment that operates on wide channel bandwidths from being certified for use in the United States.'' The Commission adopted a relaxation of the emission limit within the first five megahertz of the channel edge by varying the resolution bandwidth used when measuring the emission. For emissions within 1 megahertz from the channel edge, the minimum resolution bandwidth will be either one percent of the emission bandwidth of the fundamental emission of the transmitter or 350 kilohertz. In the bands between one and five megahertz removed from the licensee's authorized frequency block, the minimum resolution bandwidth will be 500 kilohertz. The adopted relaxation will not affect the interference to FSS above 4.0 GHz. The adopted relaxation will be entirely contained within the 20 megahertz guard band. The effect on Citizens Broadband Radio Service operations below 3.7 GHz should be minimal. This limit will ensure new 3.7 GHz Service operators have a robust equipment market in which mobile devices can be designed to operate across the variety of spectrum bands currently available for mobile broadband services. The Commission finds that this limit has been widely accepted as being adequate for reducing unwanted emissions into adjacent bands.

326. The Commission notes that the C-Band Alliance proposed a more stringent mobile equipment emission mask, but later supported emission masks developed by standards bodies suitable for 5G devices. As with the requirements for base stations, the Commission's approach will provide equipment developers and adjacent channel licensees certainty as compared to the 3GPP 5G OOBE specifications, which vary with bandwidth. The limit largely falls within the 3GPP mask and does not preclude higher levels of suppression should they be needed.

327. The Commission notes that, like the AWS requirements, the Commission is adopting provisions that permit licensees in the 3.7–3.98 GHz band to implement private agreements with adjacent block licensees to exceed the adopted OOBE limits. Finally, similar to other part 27 services, the Commission applies § 27.53(i), which states that the FCC may, in its discretion, require greater attenuation than specified in the rules if an emission outside of the authorized bandwidth causes harmful interference.

3. Antenna Height Limits

328. The Commission adopts its proposal not to restrict antenna heights for 3.7–3.98 GHz band operations beyond any requirements necessary to ensure physical obstructions do not impact air navigation safety. This is consistent with part 27 AWS rules, which generally do not impose antenna height limits on antenna structures.

329. Commenters generally support adopting 3.7–3.98 GHz band rules similar to existing part 27 rules to promote consistency.

330. Rather than using antenna height limits to reduce interference between mobile service licensees, as has been done in the past, the Commission more recently has used service boundary limits to provide licensees more flexibility to design their systems while still ensuring harmful interference protection between systems. As this has proven successful in other services, the Commission adopts that same approach in the 3.7–3.98 GHz band. Further, the Commission believes such limits would have limited practical effect because it expects that licensees generally will deploy systems predicated on lower tower heights and increased cell density achieving maximum 5G data throughput to as many consumers as possible. In rural areas where higher antennas may be used to provide longer range to serve sparse populations, the Commission believes that the service area boundary limits it is adopting will ensure that adjacent area licensees are protected from harmful interference.

4. Service Area Boundary Limit

331. The Commission adopts the -76 dBm/m^2/MHz power flux density (PFD) limit at a height of 1.5 meters above ground at the border of the licensees' service area boundaries as proposed in the *NPRM* and also permits licensees operating in adjacent geographic areas to voluntarily agree to higher levels at their common boundaries.

332. The commenters that specifically address the service area boundary limit support the -76 dBm/m^2/MHz PFD limit. The Commission also notes that this metric is straightforward to calculate or measure and also scales with channel bandwidth to provide licensees flexibility for demonstrating compliance.

5. International Boundary Requirements

333. The Commission adopts its proposal to apply § 27.57(c) of its rules to this band, which requires all part 27 operations to comply with international agreements for operations near the Mexican and Canadian borders. This requirement is consistent with all other part 27 services. Under this provision, licensee operations must not cause harmful interference across the border, consistent with the terms of the agreements currently in force. The Commission notes that modification of the existing rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands.

6. Other Part 27 Rules

334. As proposed in the *NPRM,* the Commission adopts several additional technical rules applicable to all part 27 services, including §§ 27.51 (Equipment authorization), 27.52 (RF safety), 27.54 (Frequency stability), and part 1, subpart BB, of the Commission's rules (Disturbance of AM Broadcast Station Antenna Patterns) for operations in the 3.7–3.98 GHz band. As operations in the 3.7–3.98 GHz band will be a part 27 service, the Commission finds these rules implement important safeguards for all wireless services to ensure that devices meet RF safety limits and that the potential for causing harmful interference to other operations is minimized. Further, few commenters address these issues other than supporting uniformity of 3.7–3.98 GHz band regulations with other part 27 services that will operate in nearby bands.

335. As the Commission has done for other part 27 services since 2014, the Commission also require client devices to be capable of operating across the entire 3.7–3.98 GHz band. Specifically, the Commission adds the 3.7–3.98 GHz band to Section 27.75, which requires mobile and portable stations operating in the 600 MHz band and certain AWS–3 bands to be capable of operating across the relevant band using the same air interfaces that the equipment uses on any frequency in the band. This requirement does not require licensees to use any particular industry standard. The Commission agrees that cross band operability is important to ensure a robust equipment market for all licensees.

7. Protection of Incumbent FSS Earth Stations

336. The record reflects widely varying views on how to protect incumbent operations and whether such protections should be negotiated or mandated by rule. The Commission adopts here specific criteria for the protection of the incumbent FSS earth stations but acknowledge the possibility

of private negotiations that depart from these limits.

337. The Commission will require a PFD limit of −124 dBW/m²/MHz as measured at the earth station antenna. This PFD limit applies to all emissions within the earth station's authorized band of operation, 4.0–4.2 GHz. In the event of early clearing of the lower 100 megahertz (Phase 1 of the transition), the limit will apply to all emissions within the 3.82–4.2 GHz band. The Commission also requires a PFD limit of −16 dBW/m²/MHz applied across the 3.7–3.98 GHz band at the earth station antenna as a means to prevent receiver blocking. This blocking limit applies to all emissions within the 3.7 GHz Service licensee's authorized band of operation.

a. Protection From Out of Band Emissions

338. The Commission adopts a PFD limit to protect registered FSS earth stations from out of band emissions from 3.7 GHz Service operations. For base and mobile stations operating in the 3.7–3.98 GHz band, the Commission adopts a PFD limit of −124 dBW/m²/MHz, as measured at the antenna of registered FSS earth stations. 3.7 GHz Service licensees will be obligated to ensure that the PFD limit at FSS earth stations is not exceeded by base and mobile station emissions, which may require them to limit mobile operations when in the vicinity of an earth station receiver.

339. The record contains a range of proposals on how FSS earth stations should be protected. Notably, the C-Band Alliance proposes a formula to calculate the expected received aggregate PSD at each FSS earth station receiver. The C-Band Alliance's proposed approach would require terrestrial licensees to consider the aggregate effect of all mobile and base station operations within 40 km of each earth station over a defined span of look angles for the earth station and a defined reference antenna. Several commenters argue that the C-Band Alliance's proposal is overly protective and would hinder 5G deployment. AT&T recommends adopting a PFD limit of −124 dBW/m²/MHz for 5G operations in the 50 megahertz immediately below the FSS band edge. The Commission agrees with this PFD value, but rather than apply it to stations only in a specific 50 megahertz as suggested by AT&T, it will apply that limit to all wireless operations in the 3.7–3.98 GHz band to ensure that earth stations are adequately protected.

340. The Commission finds that requiring compliance with a PFD limit is relatively simple and less burdensome on FSS earth station operators and 3.7 GHz Service licensees to implement than a PSD limit. Using PFD avoids the complexity of registering complex antenna gain patterns for more than twenty thousand earth stations, and it avoids multiple angular calculations that would be necessary to predict PSD within each satellite receiver. The PFD limit the Commission is adopting is based on a reference FSS antenna gain of 0 dBi, interference-to-noise (I/N) protection threshold of −6 dB, a 142.8K FSS earth station receiver noise temperature, and results in a calculated PFD of −120 dBW/m²/MHz.[44] To account for aggregate interference effects, which the Commission expects will be dominated by a single interferer, we adjust our calculated value by −4 dB (*i.e.,* assuming the dominant interferer is 40% of the aggregate power). This results in −120 dBW/m²/MHz −4 dB = −124 dBW/m²/MHz as the PFD limit to protect earth stations from out-of-band emissions. The Commission finds that using these parameters to calculate a PFD limit is reasonable and will adequately protect FSS earth station receivers from out-of-band emissions from fixed and mobile operations in the 3.7–3.98 GHz band.

341. The C-Band Alliance offered a method of estimating the effect of the aggregate power of all base stations within a certain distance of an FSS earth station. It provides a formula that considers the impact of aggregate power from all base stations and mobile devices from one licensee for operations within 40 km of an earth station, and if there are more than one licensee within 40 km it essentially divides allotted power by the number of licensees that operate in the subject area. This approach has challenges in that the number and location of mobile operations may be constantly changing, making it difficult to predict the aggregate power for all such stations. Thus, the C-Band Alliance approach assumes all relevant stations have equal potential to cause interference to an earth station. AT&T argues that the C-Band Alliance's aggregate power proposal is flawed, overly complex and does not account for the fact that a single dominant interferer drives the interference power received, not aggregate interference. The Commission agrees that the base stations closest to any earth station will have a larger potential for causing harmful interference than stations further away. The Commission declines to adopt the C-Band Alliance proposed methodology. The Commission finds that the methodology is excessively burdensome for FSS operators and terrestrial licensees, and it involves complex calculations that are unnecessary to reasonably limit the service impact of potential interference. Moreover, the PFD limit the Commission is adopting accounts for the potential of aggregate interference and will protect FSS earth stations from harmful interference.

342. The C-Band Alliance proposes that earth station protection be applied to all locations within one arc second (*i.e.,* about 30 meters depending on location) to provide a buffer around stations. The Commission declines to establish a buffered protection area for earth stations. The Commission observes that the angular variation over a 30 meter radius protection area is less than 1.7 degrees at distances greater than 1 km, and the path loss variation over a 30 meter radius protection area at distances greater than 1 km is less than 1 dB.[45] The Commission finds that protecting an area of a certain radius instead of an actual deployment could hinder deployment closer to earth stations because it could minimize the effect of terrain or shielding.

b. Protection From Receiver Blocking

343. The Commission will require base stations and mobiles to meet a PFD limit of −16 dBW/m²/MHz, as measured at the earth station antenna for all registered FSS earth stations. This blocking limit applies to all emissions within the 3.7 GHz Service licensee's authorized band of operation.

344. It is possible that emissions operating at high power, even one relatively removed in frequency, may overload a receiver in an adjacent band, also known as receiver blocking. Such blocking effects can be mitigated with filters designed to protect FSS earth stations from receiving energy intended for adjacent channels. Ericsson noted that the NTIA recommended the RF front-end preselection filters be included in new C-band earth station installation to preclude receiver front-end overload. The C-Band Alliance proposed an FSS blocking protection mechanism based on an aggregate power spectrum density (APSD) protection threshold that must be met by all terrestrial operators within 40 km of each earth station. The APSD is a function of the total amount of C-band spectrum, in megahertz, cleared for flexible-use licensees and the number of

[44] PFD (dBW/m²/MHz) = $10*\log[(kT)*(4\pi/\lambda^2)*(I/N)*(10^{-6}\ \text{MHz/Hz})]$ = (−228.6 dBW/Hz) + $10*\log(142.8)$ + 33.5 dB/m² − 6 dB (I/N) + 60 dB-Hz/MHz = −120 dBW/m²/MHz.

[45] $35*\log_{10}(1{,}030/970)$ = 0.91 dB.

distinct licensees using the same frequency block within a 40 km radius of an earth station. The C-Band Alliance also proposed to install filters on all protected earth stations to reduce their susceptibility to blocking. After a series of refinements and testing of several prototype filters, the C-Band Alliance proposed the following definition of the FSS earth station filter mask:

Frequency range	Attenuation
From 3.7 GHz to 100 megahertz below FSS band edge	−70 dB.
From 100 megahertz below lower FSS band edge to 20 megahertz below lower FSS band edge	−60 dB.
From 20 megahertz below lower FSS band edge to 15 megahertz below lower FSS band edge	−30 dB.
From 15 megahertz below lower FSS band edge to lower FSS band edge	0 dB.

345. The transition of the 3.7–3.98 GHz band to flexible use may be conducted in phases, with an accelerated clearing of the lower 100 megahertz of the band. Some earth stations may need to have two different filters installed over the course of the transition. The filter mask above is defined relative to the lower band edge of the FSS and is applicable to both phases of the accelerated clearing plan. In Phase I, the FSS lower band edge is defined to be 3.82 GHz while in Phase II the FSS lower band edge is defined to be 4.0 GHz.

346. The Commission acknowledges that there can be variation in filter performance. However, when properly designed and installed, filters can have significant impact in reducing interference to FSS earth stations. While the Commission agrees with Verizon that C-band filter mask technology may be subject to further improvement, the Commission believes that failure to develop a baseline minimum specification can and will delay deployment of 5G networks in this band.

347. The Commission adopts a PFD limit to protect FSS earth stations from receiver blocking, relying on C-Band Alliance's filter specification for suppression of signals from the 3.7–3.98 GHz band. PFD is easily modeled at the design phase of a deployment, facilitates independent verification and testing by 3.7 GHz Service licensees and will greatly reduce the amount of coordination and the burden on all relevant parties. The Commission declines to adopt C-Band Alliance's suggested PSD limit for the same reasons described above in determining the PFD limit for out of band emissions. Most importantly, a PSD limit would require the use of detailed antenna pattern data for each individual earth station antenna and a multitude of angular computations for each base station. This level of complexity is an unnecessary burden and is not needed to provide adequate protection for earth stations.

348. C-Band Alliance states that through testing and analysis they have determined that the earth station receiver will encounter insignificant degradation if the aggregate power level across its entire operational frequency range is lower than −59 dBm at the input of the low-noise block downconverter (LNB). In determining the PFD blocking limit, the Commission uses the −59 dBm saturation limit suggested by the C-Band Alliance which includes an aggregate power factor, the filter's total rejection, the bandwidth of flexible-use service, and a 0 dBi FSS antenna gain. The Commission believes the use of 0 dBi FSS antenna gain is a valid assumption that helps simplify compliance and, for virtually all earth stations of record, provides greater than necessary protection. For the filter mask described above, the Commission has determined the total rejection to be 60.85 dB, for an accelerated Phase I where 3.7 GHz Service use will only operate in the 3.7–3.8 GHz frequency range. In the later Phase II band, the Commission has determined the total rejection to be somewhat greater at 64.46 dB over the full 3.7–4.0 GHz frequency range.[46] Based on these parameters, we adopt a PFD blocking limit of −16 dBW/m²/MHz for both Phase I and Phase II. This PFD applies at the earth station antenna and over the authorized band of operation of the 3.7 GHz Service licensee. The Commission declines to adopt Intelsat's request to set the PFD blocking limit to −30 dBW/m2/MHz, which incorrectly asserts that aggregation was not included in the calculation of the value. The Commission anticipates all stakeholders will work with manufacturers to obtain filters that have better performance characteristics than the baseline minimum specification if they are available. In the event of a claim of harmful interference, the earth station operator must demonstrate that they have installed a filter that complies with the mask described above. If they have not installed such a filter or are unable to make such a demonstration, and the 3.7 GHz Service licensee can confirm it meets the blocking PFD, the earth station operator will have to accept the interference.

[46] The OOBE limit for base stations in the guard band is −13 dBm/MHz.

c. Full Band/Full Arc Protections

349. Once the transition is complete, all FSS earth stations will operate above 4.0 GHz, so the Commission will continue to allow full band/full arc use of that band. The Commission sought comment in the *NPRM* on revising the full band/full arc policy for the C-band and several commenters addressed this matter. For example, the C-Band Alliance proposed limiting the orbital arc of satellites that may serve earth stations in the contiguous United States to 87° W.L. and 139° W.L. The Commission recognizes, however, that the proposal excludes satellites of competing operators that operate outside that arc. While the Commission finds merit in knowing the actual spectrum uses and orientation of earth stations for protection purposes, the Commission finds these merits are outweighed by the need to provide flexibility to earth stations that will be transitioned to operate above 4.0 GHz. Accordingly, the Commission will maintain the existing policy regarding full band/full arc for earth stations above 4.0 GHz.

8. Protection of TT&C Earth Stations

350. The Commission establishes a protection mechanism to allow continued use of the 3.7–4.0 GHz band by space station licensees operating TT&C links until these operations can be moved to other bands. The Commission notes that, for some satellites, TT&C links cannot be moved to other transponders within the satellite, but the earth station location for those TT&C links can be moved. Accordingly, until a replacement satellite can be launched, certain TT&C links will need to continue to operate on a co-channel basis with terrestrial 3.7 GHz Service spectrum.

a. Identification of TT&C Earth Stations To Be Protected and Operations at Protected Sites

351. According to the record, there are 14 unique locations in the contiguous United States where earth stations are currently providing TT&C functions in the C-band. Due to the potential to hinder 3.7 GHz Service deployment around these locations, the C-Band Alliance indicated that these operations could be consolidated into four locations. Specifically, they identified Brewster, WA and Hawley, PA as two locations where consolidated TT&C could be located. C-Band Alliance noted

''[t]he key selection criteria are that any site: (1) Must be located at a sufficient distance from a major urban area or have a terrain profile such that the propagation losses between urban area and the TT&C/Gateway location will be large enough to attenuate Flexible Use base station transmissions to a level that will not unduly impair the Flexible Use licensee's operation in that urban area; (2) must be geographically diverse from the other TT&C/Gateway sites; (3) requires nearby access to major telecommunications points-of-presence; (4) requires some existing FSS infrastructure in place that can be improved upon for new or additional TT&C/Gateway infrastructure; (5) requires unhindered visibility to the geostationary satellite arc to elevation angles as low as 5 degrees; (6) must have sufficient land available to accommodate up to 20 very large (*i.e.,* up to 13m) transmit/receive antennas; (7) must be in an area unaffected by nearby aeronautical traffic; and (8) must be able to be built out (*e.g.,* building permits, zoning requirements) within a 36-month time frame.'' The space station operators must identify the four consolidated TT&C locations as soon as feasible, but not later than the submission of the Transition Plan.[47] Should the incumbent space station operators fail to come to consensus, the Commission expects that SES would identify two locations and Intelsat would identify the other two locations. The Commission's Wireless Telecommunications Bureau will assess the proposed locations, including consideration of the criteria proposed by C-band Alliance, and make a determination as to the reasonableness of the sites. The Wireless Telecommunications Bureau will consider the size of the population that would be affected as well as other factors in their assessment and may require alternative locations if the proposed sites are deemed deficient. Identification of the locations must also include all the technical parameters necessary to assess coexistence such as frequency, authorized bandwidth and specific look angles to existing satellites.

352. To facilitate protection of TT&C links while also transitioning them out of the 3.7 GHz Service band, the Commission will not authorize any new TT&C earth station links in the 3.7 GHz Service band within the contiguous United States unless it is to consolidate existing TT&C links into the selected locations for temporary operation. That is, the Commission will allow until December 5, 2021 to consolidate TT&C links to four protected locations. The Commission may allow existing TT&C operations to continue in their current location beyond the December 5, 2021 deadline either through a waiver request upon a sufficient showing to the International Bureau or through negotiated agreements with affected 3.7 GHz Service licensees. During the transition period prior to December 5, 2021, the space station operators will work to consolidate TT&C sites to four locations and ensure operations are adequately protected through coordination. After that date, operations that are not relocated may continue on an unprotected basis.

353. Further, until December 5, 2030, the Commission will allow protected operation of TT&C operations in the 3.7–4.0 GHz band at the consolidated locations. This should allow sufficient time for replacement satellites to be launched and satisfy the lifespan of existing satellites. After this transition period, these TT&C links may continue to operate on an unprotected basis until the satellites they are communicating with cease operation. The Commission will also allow negotiated agreements for longer operation where relevant parties should be able to arrange operating parameters to coexist to allow early entry by 3.7 GHz Service operations or extended operations by TT&C earth stations.

354. Further, the Commission will allow private negotiation of TT&C sites as well. Given the limited number of TT&C sites, the Commission believes private negotiations between the TT&C station operators and 3.7 GHz Service licensees may permit early entry of 3.7 GHz Service operations or may prolong TT&C operations in instances where these operations are designed to coexist. Alternatively, TT&C operations could negotiate to relocate to another country that is maintaining C-band FSS or a remote shielded location in the United States that is not heavily populated.

355. Lockheed Martin provides Launch and Early Operations Phase (LEOP) missions for new satellites. They state that the earth station, located in Carpentersville, NJ, has a unique topography that ''ensures that interference from the facility is highly unlikely and has historically resulted in no known interference from Lockheed Martin's operations to other users of the band.'' They requested that these LEOP operations be allowed to continue through use of the Commission's Special Temporary Authority (''STA'') licensing mechanism. The Commission agrees that such operations may seek authorization through the STA process.

356. The Commission also finds that earth stations located at TT&C sites may continue to be used—on an unprotected basis—for international gateway and other operations in the 3.7–4.0 GHz band. According to the C-band Alliance, these sites are critical ingestion points for a variety of customer services, including foreign language programming uplinked outside of the U.S, that require the use of the full 3.7–4.2 GHz band. SES contends that operations at these locations should be permitted to continue in the 3.7–4.0 GHz band on a protected basis. Intelsat argues that the Commission should permit FSS operations at designated TT&C sites on a secondary basis.

357. The Commission agrees with NAB and find that it is in the public interest to allow earth stations located at the four designated TT&C sites to continue to use the 3.7–4.0 GHz band for international gateway, and other purposes, on an unprotected basis during the TT&C transition period. Such uses will not cause harmful interference to terrestrial deployments in the band and will not be protected from harmful interference. As such, permitting these operations will not affect future deployments by flexible use licensees or delay the transition of the band. Extending interference protection to these operations, as requested by SES and C-band Alliance, could effectively preclude terrestrial operations across a wide geographic area near each TT&C facility across the entire 3.7–4.0 GHz band. This outcome would be inconsistent with the Commission's goals for this proceeding and the transition plan detailed herein.

358. The Commission declines to adopt Disney and Eutelsat's requests to allow secondary or unprotected FSS operations in the 3.7–4.0 GHz band nationwide. Expanding FSS access to the 3.7–4.0 GHz band during the transition period—even on an unprotected basis—could introduce uncertainty into the transition process and raise doubts about the availability of the band for new flexible use services. Such uses also create a perverse incentive for space station operators and earth station operators not to complete their transition work on schedule—leading to potential harmful interference or delays in making the spectrum available for next-generation services like 5G. In contrast, the Commission agrees with NAB that these operations should be permitted to continue in the 3.7–4.0 GHz band on an

[47] X2nSat requests that the Commission designate the TT&C site located in Las Cruces, New Mexico as one of the four protected TT&C sites. X2nSat Feb. 13, 2020 Ex Parte at 1. We decline the invitation because X2nSat's arguments do not address the key criteria we expect the space station operators will use to make their selections.

unprotected basis at designated TT&C sites during the 10-year TT&C transition period, or longer if agreements can be negotiated with terrestrial wireless operators. If all of the overlay licensees in the relevant PEA(s) agree that extending the use of any or all of these four TT&C sites for FSS operations is the highest and best use of the spectrum in the area, the Commission finds no public policy justification to intervene in such a voluntary transaction and second-guess the market.

b. Co-Channel Protection Criteria

359. TT&C earth stations perform a critical function in maintaining space station operations. While these operations need adequate protection, their operations will have a direct impact on the ability of mobile broadband services to operate on the same spectrum. The Commission adopted a single out-of-band emissions PFD level for protecting FSS earth stations above 4.0 GHz due to the large number of earth stations and the fact that many earth station operators lack sufficient technical skills to perform engineering analysis of potential interference sources. The PFD limit that the Commission adopted for earth stations necessarily relied on assumptions of some parameters such as noise temperature and elevation angle. TT&C operations have a wider range of variability in some of these key parameters and previous assumptions may no longer be sufficient. Given that there are few TT&C locations to be protected, it is possible to do more detailed analysis specific to each site's particular parameters. The Commission finds that a protection criteria of I/N = −6 dB is appropriate for TT&C links, as we did for the FSS earth stations described above. The 3.7 GHz Service licensee must ensure that the aggregated power from its operations will meet an I/N of −6 dB as received by the TT&C earth station. The Commission will require 3.7 GHz Service licensees to coordinate their operations within 70 km of TT&C earth stations that continue to operate in the 3.7–3.98 GHz band.

360. The Commission's decision to coordinate actual parameters for TT&C deployments is supported by many factors in the record. For example, a significant factor in the distance over which coordination is needed is the elevation angle in which the earth station is pointed. Several commenters pushed for limiting protections based upon a minimum elevation angle in order to reduce the distance from the earth station in which 3.7 GHz Service operations must coordinate. The Commission agrees that TT&C links are highly unlikely to conduct normal operations at such low elevation angles because control signals need a much higher degree of reliability than other traffic.[48] But if a low elevation angle is unavoidable, an operator may be able to use technical solutions to achieve the necessary reliability. It is understood that low elevation angles may be needed during infrequent events such as the loss of a satellite.

361. Further, because there are fewer TT&C earth stations, and they are run by highly qualified technical staff, a coordination process that takes into account terrain, shielding, polarization and other technical parameters will result in adequate earth station protection and permit terrestrial use at a closer distance. The space station operators who manage TT&C links are sophisticated users with internal engineering resources. Reliance on the Commission's typical prior coordination process would be the simplest and most thorough approach. 3.7 GHz Service licensees are expected to take all practical steps necessary to minimize the risk of harmful interference to TT&C operations. Licensees will cooperate in good faith and make reasonable efforts to anticipate and resolve technical problems that may inhibit effective and efficient use of the spectrum. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve the problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Any 3.7 GHz Service licensee with base stations located within the appropriate coordination distance is required to provide upon request an engineering analysis to the TT&C operator to demonstrate their ability to comply with the −6 dB I/N criteria. Both parties are expected to negotiate in good faith. If a dispute arises, either party can bring the issue to the FCC. Further, the Commission is only providing protection for TT&C operations. Other services or content that are capable of moving to different transponders must be moved above 4.0 GHz or other FSS bands unless parties negotiate other arrangements.

362. To minimize the impact of this coordination requirement, the Commission advises that the protection criteria will be applied only for the frequencies, bandwidths and look angles that will be in use at each TT&C site, not full band or full arc. For its purposes here, the Commission defines co-channel operations as when any of the 3.7 GHz Service licensee's authorized frequencies are separated from the center frequency of the TT&C earth station by less than 150% of the maximum emission bandwidth in use by the TT&C operation. They must continue to be protected over the bandwidth that they use. While this definition affords co-channel protection over more bandwidth than is in use, it is reasonable to allow for graduated receiver selectivity outside of the desired channel. The record is clear that the actual parameters of earth stations make a significant difference in the coordination process and the Commission does not feel it is justified to preclude 3.7 GHz Service operations by coordinating frequencies or look angles that are not being used. Unlike the typical conventional FSS earth station operator, TT&C earth station operators are aware of the precise engineering antenna patterns, look angles, noise temperature, and other specifications that allow a detailed coordination process to efficiently protect TT&C functions and allow 3.7 GHz Service operations at a safe distance, which can provide better margin for their robust operations.

363. The Commission agrees with commenters asserting that a 150 km coordination distance is overly conservative and instead, the Commission sets a co-channel coordination distance of 70 km for all TT&C operations. First, the Commission notes that it is allowing coordination based on the parameters of the TT&C's actual operations and finds it highly unlikely that the relevant TT&C locations will be pointed at the horizon presenting a burdensome coordination process with multiple terrestrial licensees for a scenario that is highly unlikely. Further, a 150 km coordination would complicate 3.7 GHz Service deployment for several licensees, many of whom would have an unlikely chance of having any impact on TT&C operations, especially due to their consolidation to areas with terrain shielding and other protective factors. Further, should any interference to a protected TT&C location occur, we require parties to act in good faith to resolve the interference.

c. Adjacent Channel Protection Criteria

364. To protect TT&C earth stations from adjacent channel interference due

[48] *See, e.g.,* Recommendation ITU–R S.1716, Performance and availability objectives for fixed-satellite service telemetry, tracking and command systems, at 1 (TT&C carriers need higher performance reliability objectives than normal traffic carriers) (2005), *https://www.itu.int/rec/R-REC-S.1716.*

to out-of-band emissions, the Commission set the same interference protection criteria of −6 dB I/N ratio. This limit will apply to all emissions removed from the TT&C's center frequency by more than 150% of the TT&C's necessary emission bandwidth. Prior coordination is not required for adjacent channel licenses. Both 3.7 GHz Service licensees and TT&C earth station operators are expected to cooperate in good faith and make reasonable efforts to anticipate and resolve technical problems that may inhibit effective and efficient use of the spectrum. The TT&C operators should make available pertinent technical information about their systems upon request by the 3.7 GHz Service licensees. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve the problem by mutually satisfactory arrangements.

365. To provide protection from potential receiver overload, the Commission will require base stations and mobiles to meet a PFD limit of −16 dBW/m²/MHz, as measured at the TT&C earth station antenna. This blocking limit applies to all emissions within the 3.7 GHz Service licensee's authorized band of operation. This is the same limit that is applied to other earth stations as described above and for the same reasons. All TT&C earth stations will be protected based on the assumption that robust filters have been installed at the facilities, like other FSS earth stations. Because the bandwidth of the TT&C emission can vary, this filter will have to be custom fit for each earth station. The quality should be just as robust, providing a minimum of 60 dB of rejection. The frequency at which the TT&C filter must meet this 60 dB of rejection will vary with the bandwidth. The Commission expects that the filter should meet 60 dB of rejection for all frequencies removed from the TT&C's center frequency by more than 150% of the TT&C's emission bandwidth, both above and below the TT&C channel. Further, the filter should provide 70 dB of rejection for all frequencies removed from the TT&C's center frequency by more than 250% of the TT&C's emission bandwidth, both above and below. Intelsat now claims that the protected bandwidth on both sides of the TT&C's telemetry signal must be at least 25 megahertz. But given that TT&Cs typically use a channel bandwidth of 400 to 800 kilohertz, the Commission finds this claim to be excessive. In the event of a claim of harmful interference, the earth station operator must demonstrate that they have installed a filter that complies with the mask described above. If they have not installed such a filter or are unable to make such a demonstration, and the 3.7 GHz Service licensee can confirm it meets the PFD, the TT&C operator will have to accept the interference.

9. Coexistence With Aeronautical Radionavigation

366. The nearby 4.2–4.4 GHz band is allocated to Aeronautical Radionavigation and aeronautical mobile (route) services worldwide.[49] This band is home to radio altimeters and Wireless Avionics Intra-Communications systems used on aircraft and helicopters worldwide. Radio altimeters are critical aeronautical safety-of-life systems primarily used at altitudes under 2500 feet above ground level (AGL) and must operate without harmful interference. Wireless Avionics Intra-Communications systems provide communications over short distances between points on a single aircraft and are not intended to provide air-to-ground communications or communications between two or more aircraft.

367. By licensing only up to 3.98 GHz as flexible-use spectrum, the Commission is providing a 220-megahertz guard band between new services in the lower C-band and radio altimeters and Wireless Avionics Intra-Communications services operating in the 4.2–4.4 GHz band. This is double the minimum guard band requirement discussed in initial comments by Boeing and ASRC.

368. A set of preliminary test results prepared by the Aerospace Vehicle Systems Institute was provided to the Commission after the comment and reply period. AVSI's study simulated an aggregate 5G emission for various amounts of allocated spectrum and measured the received power level at which the accuracy of height measurements exceeds certain criteria. In one scenario, AVSI modeled a worst-case scenario with an aircraft altimeter operating at 200 feet AGL, with numerous other altimeters nearby creating in-band interference and aggregate base station emissions across the 3.7 to 4.0 GHz band. The preliminary results show that there may be a large variation in radio altimeter receiver performance between different manufacturers. The measured PSD levels at which errors occurred ranged from −21 to −51 dBm/MHz for the various types of altimeters that were tested. AVSI concluded that ''most of the altimeters reported broadly consistent susceptibility to OoBI PSD levels until more than approximately 200 to 250 MHz of OoBI was introduced.'' AVSI noted that as the amount of active spectrum increased above 3.9 GHz, the acceptable levels of PSD began to decrease.

369. T-Mobile commissioned a study by Alion to review the AVSI report and they raised several concerns. Alion noted that AVSI's analysis identified levels of interference where performance degradation occurred, but did not investigate whether these levels would occur in any reasonable scenario. Alion questioned the interference margin assumptions, noting that two of the initial altimeters types failed due to interference from other altimeters and the scenario had to be adjusted. They also questioned the simulated waveform for the 5G emissions, which showed flat out-of-band emissions approximately 40 dB below the carrier. Alion noted that emissions naturally decrease with frequency separation and concluded that the simulated emission ''would not comply with the emission limits for virtually any services associated with a base station or fixed station governed by FCC rules: part 27 services, part 27.53 or part 96 services.''

370. The Commission agrees with T-Mobile and Alion that the AVSI study does not demonstrate that harmful interference would likely result under reasonable scenarios (or even reasonably ''foreseeable'' scenarios to use the parlance of AVSI). The Commission finds the limits it sets for the 3.7 GHz Service are sufficient to protect aeronautical services in the 4.2–4.4 GHz band. Specifically, the technical rules on power and emission limits the Commission sets for the 3.7 GHz Service and the spectral separation of 220 megahertz should offer all due protection to services in the 4.2–4.4 GHz band. The Commission nonetheless agrees with AVSI that further analysis is warranted on why there may even be a potential for some interference given that well-designed equipment should not ordinarily receive any significant interference (let alone harmful interference) given these circumstances. As such, the Commission encourages AVSI and others to participate in the multi-stakeholder group that the Commission expects industry will set up—and as requested by AVSI itself. The Commission expects the aviation industry to take account of the RF environment that is evolving below the 3980 MHz band edge and take

[49] World Radio Conference-15 added a primary aeronautical mobile (route) service (AM(R)S) allocation to the 4.2–4.4 GHz band in all ITU Regions, and adopted footnote 5.436, which reserves the use of this allocation exclusively for wireless avionics intra-communications systems.

appropriate action, if necessary, to ensure protection of such devices.

10. Coexistence With the Citizens Broadband Radio Service

371. The Commission does not require dynamic spectrum management or other protection mechanisms suggested by some to protect the Citizens Broadband Radio Service (operating below 3.7 GHz) or FSS operations (in the 4.0–4.2 GHz band) from new 3.7 GHz Service operations. Although some commenters support the use of some form of dynamic spectrum management or an automated coordination capability to mitigate interference from new 3.7 GHz Service operations into the 3.55–3.7 GHz band, the Commission finds such provisions are unwarranted in this instance and could hinder efficient 5G deployment in the band. Specifically, the Commission notes that the dynamic management approach is needed in the Citizens Broadband Radio Service to coordinate access between Priority Access Licensees and General Authorized Access users and to prevent interference to incumbent Federal and non-Federal operations. The same considerations are not present in the 3.7–4.2 GHz band and the transition and licensing approach the Commission adopts for introducing 3.7 GHz Service to the 3.7–3.98 GHz band is appropriate for the unique circumstances and anticipated use cases for the band. Further, the Commission denies requests that it require coordination between Citizens Broadband Radio Service and 3.7 GHz Service operations, but it encourages parties to explore synchronization of TDD operations to minimize interference between these adjacent services.

372. The Commission finds that 3.7 GHz Service operations above 3.7 GHz can coexist with operations below the band edge. First, the Commission notes that the emission limits it is adopting are consistent with other mobile service bands that have proven successful in coexisting with a variety of adjacent services. Further, the flexible nature of the equipment that will likely operate in the Citizens Broadband Radio Service band and the advanced spectrum management capabilities of the SAS should allow flexibility to access different channels in any location that might be near a higher-powered 3.7 GHz Service tower or make opportunistic use of different channels in different areas. Further, in some instances, operations above and below the 3.7 GHz band edge may be synchronized when they are deployed as part of a carrier's network. Synchronization of two different carriers can be implemented using traditional 3GPP methods based on an absolute timing reference.

IV. Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the Report and Order

373. In the *Report and Order and Order of Proposed Modification* (*Report and Order*), the Commission expands on its efforts to close the digital divide and secure U.S. leadership in the next generation of wireless services, including fifth-generation (5G) wireless and other advanced spectrum-based services by making the 3.7–3.98 GHz band available for flexible terrestrial wireless use. The Commission adopts new rules for this band that are designed to achieve four key goals: (1) Make a significant amount of spectrum available for flexible use, including 5G services; (2) ensure that a significant amount of that spectrum is made available quickly so it can be used in upcoming 5G deployments; (3) recover for the public a portion of the value of this public spectrum resource; and (4) ensure the continuous and uninterrupted delivery of services currently offered in the 3.7–4.2 GHz band (C-band). Specifically, the Commission makes 280 MHz of spectrum available on a national basis through an auction conducted by the Commission. Because this band is prime spectrum for next generation wireless services, this action will serve as a critical step in advancing United States leadership in 5G and in implementing the Commission's comprehensive strategy to Facilitate America's Superiority in 5G Technology (the 5G FAST Plan). At the same time, the Commission adopts rules to accommodate incumbent Fixed Satellite Service and Fixed Services operations in the band, enabling those operators to have continuous and uninterrupted delivery of the same video programming and other content that they do today.

374. The 3.7–4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. For FSS, the 3.7–4.2 GHz band (space-to-Earth or downlink) is paired with the 5.925–6.425 GHz band (Earth-to-space or uplink), and collectively these bands are known as the ''conventional C-band.'' Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. FSS operators use this band to deliver programming to television and radio broadcasters throughout the country and to provide telephone and data services to consumers. The 3.7–4.2 GHz band is also used for reception of telemetry signals transmitted by satellites, typically near the edges of the band, *i.e.,* at 3.7 GHz or 4.2 GHz.

375. The *Report and Order* expands on the Commission's efforts to open up mid-band spectrum by making the 3.7–3.98 GHz band available for flexible-use wireless services. The Commission adds a mobile, except aeronautical mobile, allocation to the 3.7–4.0 GHz band. The Commission also adopts a process to transition this 280 megahertz of spectrum from incumbent use to new flexible-use by December 5, 2025, with accelerated relocation payment options for space station operators that serve earth stations in the contiguous United States to accelerate this transition in two stages: (1) 100 megahertz (3.7–3.8 GHz) by December 5, 2021 and (2) all 280 megahertz by December 5, 2023. In both cases, the space station operators would clear an additional 20 megahertz to be used as a guard band. The Commission adopts relocation and accelerated relocation payment rules including rules establishing an independent Relocation Payment Clearinghouse to oversee the cost-related aspects of the transition, as well as a Relocation Coordinator to ensure that all incumbent space station operators are relocating in a timely manner and ensure uninterrupted service during and following the transition. The Commission adopts service and technical rules for flexible-use licensees in the 280 megahertz of spectrum designated for transition to flexible use.

376. Adopting a primary non-Federal mobile, except aeronautical mobile, allocation to the 3.7–3.98 GHz band will foster more efficient and intensive use of mid-band spectrum to facilitate and incentivize investment in next generation wireless services. Mid-band spectrum is ideal for next generation wireless broadband service due to its favorable propagation and capacity characteristics. Allocating the 3.7–3.98 GHz band for mobile services will also address the Commission's mandate under the MOBILE NOW Act to identify spectrum for mobile and fixed wireless broadband use. In addition, adopting this allocation will harmonize the Commission's allocations for the 3.7–4.0 GHz band with international allocations. The Commission's plan will ensure that content that FSS now delivers to incumbent earth stations will continue uninterrupted.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

377. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

378. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

379. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

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

381. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

382. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

383. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

384. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

385. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

386. The Commission expects the rules adopted in the *Report and Order* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other applicants and licensees. In addition to the rule changes associated with transitioning the band through the approach adopted in the *Report and Order,* there are new service rule compliance obligations. New licensees in the 3.7–3.98 GHz band will have to meet various service rules, including construction benchmarks and technical operating requirements. In the event a small entity obtains licenses through auction, the small entity licensee would be required to satisfy construction requirements, operate in compliance with technical rules (*e.g.,* power, out of band emissions, and field strength limits), and may have to coordinate with incumbent FSS operations in limited instances. Small entity licensees would be responsible for making certain construction demonstrations with the Commission through the Universal Licensing System showing that they have satisfied the relevant construction benchmarks.

387. All filing, recordkeeping and reporting requirements adopted in the *Report and Order,* including professional, accounting, engineering or survey services used in meeting these requirements will be the same for small and large entities that intend to utilize these new 3.7 GHz Service licenses. To the extent having the same requirements for all licensees results in the costs of complying with the rules being relatively greater for smaller entities than for large ones, these costs are necessary to effectuate the purpose of the Communications Act, namely to further the efficient use of spectrum, to

prevent spectrum warehousing and are necessary to promote fairness. Likewise, compliance with the service and technical rules and coordination requirements are necessary for the furtherance of the goals of protecting the public while also providing interference free services. Small entities must therefore comply with these rules and requirements. The Commission believes however, that small entities will benefit from having more information about opportunities in the 3.7–3.98 GHz band, more flexibility to provide a wider range of services, and more options for gaining access to wireless spectrum.

388. In order to comply with the rule changes adopted in the *Report and Order,* small entities may be required to hire attorneys, engineers, consultants, or other professionals. While the Commission cannot quantify the cost of compliance with the rule changes, we note that several of the rule changes are consistent with and mirror existing policies and requirements used for other part 27 flexible-use licenses. Therefore, small entities with existing licenses in other bands may already be familiar with such policies and requirements and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply with our requirements for the 3.7–4.2 GHz band. The recordkeeping, reporting and other compliance obligations for small entities and other licensees are described below.

389. *Designated Entity Provisions.* The Commission adopts the proposal to apply the two small business definitions with higher gross revenues thresholds to auctions of overlay licenses in the 3.7–3.98 GHz band. Accordingly, an entity with average annual gross revenues for the relevant preceding period not exceeding $55 million will qualify as a ''small business,'' while an entity with average annual gross revenues for the relevant preceding period not exceeding $20 million will qualify as a ''very small business.'' Since their adoption in 2015, the Commission has used these gross revenue thresholds in auctions for licenses likely to be used to provide 5G services in a variety of bands. The results in these auctions indicate that these gross revenue thresholds have provided an opportunity for bidders claiming eligibility as small businesses to win licenses to provide spectrum-based services at auction. These thresholds do not appear to be overly inclusive as a substantial number of qualified bidders in these auctions do not come within the thresholds. This helps preclude designated entity benefits from flowing to entities for which such credits are not necessary.

390. The Commission also adopts the proposal to provide qualifying ''small businesses'' with a bidding credit of 15% and qualifying ''very small businesses'' with a bidding credit of 25%, consistent with the standardized schedule in part 1 of the rules. This proposal was modeled on the small business size standards and associated bidding credits that the Commission adopted for a range of other services. The Commission believes that use of the small business tiers and associated bidding credits set forth in the part 1 bidding credit schedule will provide consistency and predictability for small businesses.

391. *Rural Service Providers.* In the *NPRM,* the Commission also sought comment on a proposal to offer a bidding credit for rural service providers. The rural service provider bidding credit awards a 15% bidding credit to those that service predominantly rural areas and that have fewer than 250,000 combined wireless, wireline, broadband and cable subscribers. As a general matter, the Commission ''has made closing the digital divide between Americans with, and without, access to modern broadband networks its top priority . . . [and is] committed to ensuring that all Americans, including those in rural areas, Tribal lands, and disaster-affected areas, have the benefits of a high-speed broadband connection.'' In this proceeding, a variety of organizations and associations that in turn represent the providers that serve the most rural and sparsely populated areas of the country have come together to stress that ''rules [for bringing this spectrum to market] should balance the competing needs of interested parties and offer meaningful opportunities for providers of all kinds and sizes to offer spectrum-based services to rural consumers.''

392. *Licensing and Operating Rules.* The Commission adopts licensing and operating rules that afford licensees the flexibility to align licenses in the 3.7–3.98 GHz band with licenses in other spectrum bands governed by part 27 of the Commission's rules and other flexible-use services. Specifically, the Commission adopts rules requiring 3.7 GHz Service licensees in the 3.7–3.98 GHz band to comply with licensing and operating rules that are similar to all part 27 services, including flexible use, regulatory status, foreign ownership reporting, compliance with construction requirements, renewal criteria, permanent discontinuance of operations, partitioning and disaggregation, and spectrum leasing.

393. *Application Requirements and Eligibility.* Licensees in the A, B, and C blocks must comply with the Commission's general application requirements. Further, the Commission adopts an open eligibility standard for licenses in the A, B, and C Blocks. The Commission has determined that eligibility restrictions on licenses may be imposed only when open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm.

394. *Mobile Spectrum Holdings.* The Commission does not impose a pre-auction bright-line limit on acquisitions of the 3.7–3.98 GHz band. Instead, the Commission will incorporate into the spectrum screen the 280 megahertz of spectrum that the Commission makes available in the 3.7–3.98 GHz band. The Commission will also perform case-by-case review of the long-form license applications filed as a result of the auction. In regard to mobile spectrum holdings, the Commission will include the A, B, and C Blocks of the 3.7–3.98 GHz band in the screen for secondary market transactions because the spectrum will become ''suitable and available in the near term for the provision of mobile telephony/broadband services.'' The Commission will add the 280 megahertz of spectrum to the screen once the auction closes.

395. *Mobile or Point-to-Multipoint Performance Requirements.* The Commission concludes that licensees in the A, B, and C Blocks offering mobile or point-to-multipoint services must provide reliable signal coverage and offer service to at least 45% of the population in each of their license areas within eight years of the license issue date (first performance benchmark), and to at least 80% of the population in each of their license areas within 12 years from the license issue date (second performance benchmark).

396. *Alternate IoT Performance Requirements.* The Commission recognized in the *NPRM* that 3.7–3.98 GHz licenses have flexibility to provide services potentially less suited to a population coverage metric. Therefore, the Commission sought comment on an alternative performance benchmark metric for licensees providing IoT-type fixed and mobile services. Based on the record evidence, the Commission will allow licenses in the A, B, and C Blocks offering IoT-type services to provide geographic area coverage of 35% of the license area at the first (eight-year) performance benchmark, and geographic area coverage of 65% of the license area at the second (12-year) performance benchmark.

397. *Fixed Point-to-Point under Flexible Use Performance Requirements.* The Commission adopts a requirement that part 27 geographic area licensees providing Fixed Service in the A, B, and C Blocks band must demonstrate within eight years of the license issue date (first performance benchmark) that they have four links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, the Commission requires a licensee relying on point-to-point service to demonstrate it has at least one link in operation and providing service, either to customers or for internal use, per every 67,000 persons within a license area. The Commission requires licensees relying on point-to-point service to demonstrate within 12 years of the license issue date (final performance benchmark) that they have eight links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, the Commission requires a licensee relying on point-to-point service to demonstrate it is providing service and has at least two links in operation per every 67,000 persons within a license area.

398. *Penalty for Failure to Meet Performance Requirements.* Along with performance benchmarks, the Commission adopts meaningful and enforceable penalties for failing to ensure timely build-out. Specifically, as proposed in the *NPRM,* the Commission adopts a rule requiring that, in the event a licensee in the A, B, or C Block fails to meet the first performance benchmark, the licensee's second benchmark and license term would be reduced by two years, thereby requiring it to meet the second performance benchmark two years sooner (at 10 years into the license term) and reducing its license term to 13 years. If a licensee fails to meet the second performance benchmark for a particular license area, its authorization for each license area in which it fails to meet the performance requirement shall terminate automatically without Commission action.

399. *Compliance Procedures.* In addition to compliance procedures applicable to all part 27 licensees, including the filing of electronic coverage maps and supporting documentation, the Commission adopts a rule requiring that such electronic coverage maps must accurately depict both the boundaries of each licensed area and the coverage boundaries of the actual areas to which the licensee provides service. As proposed in the *NPRM,* the rule the Commission is adopting requires measurements of populations served on areas no larger than the Census Tract level so a licensee deploying small cells has the option to measure its coverage using a smaller acceptable identifier such as a Census Block. Each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

400. *License Renewal.* As proposed in the *NPRM,* the Commission will apply the general renewal requirements applicable to all Wireless Radio Services (WRS) licensees to 3.7–3.98 GHz band licensees in the A, B, and C Blocks. This approach will promote consistency across services.

401. *Renewal Term Construction Obligation.* In addition to, and independent of, these general renewal provisions, the Commission finds that any additional renewal term construction obligations adopted in the *Wireless Radio Services Renewal Reform* proceeding would apply to licenses in the A, B, and C Blocks of the 3.7–3.98 GHz band.

402. *New Earth Stations.* On April 19, 2018, the staff released the *Freeze and 90-Day Earth Station Filing Window Public Notice,* which froze applications for new or modified earth stations in the 3.7–4.2 GHz band to preserve the current landscape of authorized operations pending action as part of the Commission's ongoing inquiry into the possibility of permitting mobile broadband use and more intensive fixed use of the band through this proceeding. Given the Commission's decision to limit FSS operations in the 3.7–4.0 GHz band in the contiguous United States but not elsewhere, the Commission converts the freeze for new FSS earth stations in the 3.7–4.0 GHz band in the contiguous United States into an elimination of the application process for registrations and licenses for those operations, and the Commission lifts the freeze for new FSS earth stations in the 3.7–4.2 GHz band outside of the contiguous United States as of the publication date of the Report and Order. Earth stations registered after the filing freeze is lifted will not be considered incumbent earth stations and will not qualify for reimbursement of relocation costs. Further, any new registered earth stations outside of the contiguous United States may not claim protection from harmful interference from new flexible-use licensees in the contiguous United States.

403. The Commission revises the part 25 rules such that applications for 3.7–4.0 GHz band earth station licenses or registrations in the contiguous United States will no longer be accepted. Limiting, as described, the registration of new earth stations in spectrum being transitioned to primary terrestrial use will provide a stable spectral environment for more intensive terrestrial use of 3.7–3.98 GHz and facilitate the rapid transition to terrestrial use.

404. With respect to registered incumbent earth stations that are transitioned to the 4.0–4.2 GHz band, the Commission will permit these earth stations to be renewed and/or modified to maintain their operations in the 4.0–4.2 GHz band. The Commission will not, however, accept applications for new earth stations in the 4.0–4.2 GHz portion of the band for the time being, during this transition period.

405. *Relocation and Accelerated Relocation Payments.* New overlay licensees must pay their share of relocation and accelerated relocation payments to reimburse incumbents for the reasonable costs of transitioning out of the lower 300 megahertz of the C-band in the contiguous United States. Based on the unique circumstances of the band, the Commission also finds it necessary to condition new licenses on making acceleration payments to satellite incumbents that voluntarily choose to clear the band on an expedited schedule. Like relocation payments, the Commission finds that requiring such mandatory payments is both in the public interest and within the Commission's Title III authority.

406. *Sunsetting Incumbent Point-to-Point Fixed Services.* Incumbent licensees of temporary fixed and permanent point-to-point Fixed Service links will have until December 5, 2023, to self-relocate their point-to-point links out of the 3.7–4.2 GHz band. The Commission also revises its part 101 rules to specify that no applications for new point-to-point Fixed Service will be granted in the contiguous United States.

407. *Relocation Reimbursement and Cost Sharing for Point-to-Point Fixed Services.* Incumbent licensees of permanent point-to-point Fixed Service links that self-relocate out of the band within December 5, 2023 shall be eligible for reimbursement of their reasonable costs based on the well-established ''comparable facilities''

standard used for the transition of microwave links out of other bands. Similar to the Commission's approach for earth station clearing, because fixed service relocation affects spectrum availability on a local basis, all flexible-use licensees in a PEA where an incumbent Fixed Service licensee self-relocated will share in the reimbursement of these reasonable costs on a *pro rata* basis. Incumbent Fixed Service licensees will be subject to the same demonstration requirements and reimbursement administrative provisions as those adopted above for incumbent earth station operators.

408. *Power Levels for Base Station Power.* To support robust deployment of next-generation mobile broadband services, the Commission will allow base stations in non-rural areas to operate at power levels up to 1640 watts per megahertz EIRP. In addition, consistent with other broadband mobile services in nearby bands (AWS–1, AWS–3, AWS–4 and PCS), the Commission will permit base stations in rural areas to operate with double the non-rural power limits (3280 watts per megahertz) in rural areas. The Commission extends the same power density limit to emissions with a bandwidth less than one megahertz to facilitate uniform power distribution across a licensee's authorized band regardless of whether wideband or narrowband technologies are being deployed.

409. *Power Levels for Mobile Power.* The Commission adopts a 1 Watt (30 dBm) EIRP power limit for mobile devices, as proposed in the *NPRM.*

410. *Base Station Out-of-band Emissions.* The Commission adopts base station out-of-band emission (OOBE) requirements based on the proposed limits, which are similar to other AWS services. Specifically, base stations will be required to suppress their emissions beyond the edge of their authorization to a conducted power level of −13 dBm/MHz. For base station OOBE, we apply the part 27 measurement procedures and resolution bandwidth that are used for AWS devices outlined in section 27.53(h). Specifically, a resolution bandwidth of 1 megahertz or greater will be used; except in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block where a resolution bandwidth of at least 1% of the emission bandwidth may be employed.

411. *Mobile Out-of-Band Emissions.* As with base station out-of-band emission limits, the Commission adopts mobile emission limits similar to the standard emission limits that apply to other mobile broadband services. Specifically, mobile units must suppress the conducted emissions to no more than −13 dBm/MHz outside their authorized frequency band. We adopted a relaxation of the emission limit within the first five megahertz of the channel edge by varying the resolution bandwidth used when measuring the emission. For emissions within 1 MHz from the channel edge, the minimum resolution bandwidth will be either one percent of the emission bandwidth of the fundamental emission of the transmitter or 350 kHz. In the bands between one and five megahertz removed from the licensee's authorized frequency block, the minimum resolution bandwidth will be 500 kHz. The relaxation will not affect the interference to FSS above 4.0 GHz. The relaxation will be entirely contained within the 20 MHz guard band. The effect on CBRS operations below 3.7 GHz should be minimal.

412. *Antenna Heights Limit.* The Commission adopts the proposal not to restrict antenna heights for 3.7–3.98 GHz band operations beyond any requirements necessary to ensure air navigation safety. This is consistent with part 27 AWS rules, which generally do not impose antenna height limits on antenna structures.

413. *Service Area Boundary Limit.* The Commission adopts the −76 dBm/m2/MHz power flux density (PFD) limit at a height of 1.5 meters above ground at the border of the licensees' service area boundaries as proposed in the NPRM and also permits licensees operating in adjacent geographic areas to voluntarily agree to higher levels at their common boundaries.

414. *International Boundary Requirements.* The Commission adopts the proposal to apply section 27.57(c) of the rules, which requires all part 27 operations to comply with international agreements for operations near the Mexican and Canadian borders.

415. *Other Part 27 Rules.* The Commission adopts several additional technical rules applicable to all part 27 services, including sections 27.51 (Equipment authorization), 27.52 (RF safety), 27.54 (Frequency stability), and part 1, subpart BB of the Commission's rules (Disturbance of AM Broadcast Station Antenna Patterns) for operations in the 3.7–3.98 GHz band. The Commission requires client devices to be capable of operating across the entire 3.7–3.98 GHz band. Specifically, the Commission adds the 3.7–3.98 GHz band to section 27.75, which requires mobile and portable stations operating in the 600 MHz band and certain AWS–3 bands to be capable of operating across the relevant band using the same air interfaces that the equipment uses on any frequency in the band. This requirement does not require licensees to use any particular industry standard.

416. *Protection from Out of Band Emissions.* The Commission adopts a PFD limit to protect registered FSS earth stations from out of band emissions from 3.7 GHz Service operations. For base and mobile stations operating in the 3.7–3.98 GHz band, the Commission adopts a PFD limit of −124 dBW/m²/MHz, as measured at the antenna of registered FSS earth stations. 3.7 GHz Service licensees will be obligated to ensure that the PFD limit at FSS earth stations is not exceeded by base and mobile station emissions, which may require them to limit mobile operations when in the vicinity of an earth station receiver.

417. *Protection from Receiver Blocking.* The Commission will require base stations and mobiles to meet a PFD limit of −16 dBW/m²/MHz, as measured at the earth station antenna for all registered FSS earth stations. This blocking limit applies to all emissions within the 3.7 GHz Service licensee's authorized band of operation.

418. *Co-Channel Protection Criteria for TT&C Earth Stations.* A protection criteria of I/N = −6 dB is appropriate for TT&C links. The Commission will require 3.7 GHz Service licensees to coordinate their operations within 70 km of TT&C earth stations that continue to operate in the 3.7–3.98 GHz band.

419. *Adjacent Channel Protection Criteria for TT&C Earth Stations.* To protect TT&C earth stations from adjacent channel interference due to out-of-band emissions, the Commission sets the same interference protection criteria of −6 dB I/N ratio. Prior coordination is not required for adjacent channel licenses. To provide protection from potential receiver overload, the Commission will require base stations and mobiles to meet a PFD limit of −16 dBW/m²/MHz, as measured at the TT&C earth station antenna.

420. Small entities may be required to hire attorneys, engineers, consultants, or other professionals to comply with the rule changes adopted in the *Report and Order.* Although the Commission cannot quantify the cost of compliance with the rule changes, we note that several of the rule changes are consistent with and mirror existing policies and requirements used for other part 27 flexible-use licenses. Therefore, small entities with existing licenses in other bands may already be familiar with such policies and requirements and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply

with our requirements for the 3.7–4.2 GHz band.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

422. In the *Report and Order,* the Commission has adopted a transition using a Commission-led competitive bidding process to make C-band spectrum available for next-generation terrestrial wireless use. We considered the position of the Small Satellite Operators, the C-Band Alliance, and the approaches of other commenters but believe that the Commission-led forward auction will leverage the best features of the various proposals submitted in the record and allow us to repurpose the socially efficient amount of spectrum for flexible use rapidly and transparently. It will also facilitate robust deployment of next-generation terrestrial wireless networks and ensure that qualified incumbents in the band are able to continue their operations without interruption. The advantages of the public auction approach include making a significant amount of 3.7–4.2 GHz band spectrum available quickly through a public auction of flexible use license, followed by a transition period that leverages incumbent FSS operators' expertise to achieve an effective relocation of existing services to the upper portion of the band, aligns stakeholders' incentives so as to achieve an expeditious transition, and ensures effective accommodation of incumbent users. It will also facilitate robust deployment of next generation terrestrial wireless networks and ensure that qualified incumbents in the band are able to continue their operations without interruption. We find that the public auction approach fulfills the Commission's obligations to manage spectrum in the public interest.

423. To ensure that small entities and all eligible interests are included in the Transition Plans and compensated for the transition to the upper 200 megahertz of the band, the transition obligations the Commission adopts require that, in order for a space station operator to satisfy the clearing benchmarks and become eligible for reimbursement of reasonable relocation costs and potential accelerated relocation payments, it must demonstrate that the space station transmissions and receiving earth station operations have been sufficiently cleared such that the new flexible-use licensee could begin operating without causing harmful interference to registered incumbent earth stations. We find that, if the Small Satellite Operators satisfy our definition of eligible space station operators such that they have incumbent registered earth station customers that will need to be transitioned to the upper portion of the band, then they would be entitled to reimbursement of reasonable relocation costs and potential accelerated relocation payments. This will ensure that any small space station operator incumbent affected by the transition will have the opportunity to participate.

424. The *Report and Order* adopts bidding credits for small and very small businesses. The auction of flexible-use licenses relies heavily on a competitive marketplace to set the value of spectrum and compensate incumbents for the costs of transitioning out of the lower 300 megahertz of the band. Specifically, for small entities, the Commission is focused on facilitating competition in the band and ensuring that all relevant interests, not just those of the largest companies, are represented. This will help to reduce the potential economic impact on small entities.

425. The license areas chosen in the *Report and Order* should provide spectrum access opportunities for smaller carriers by giving them access to less densely populated areas that match their footprints. While PEAs are small enough to provide spectrum access opportunities for smaller carriers and PEAs can be further disaggregated, these units of area also nest within and may be aggregated to form larger license areas. Thus, the rules should enable small entities and other providers providing service in the 3.7–3.98 GHz band to adjust their spectrum holdings more easily and build their networks pursuant to individual business plans, allowing them to manage the economic impact. We also believe this should result in small entities having an easier time acquiring or accessing spectrum.

426. Another step taken by the Commission that should help minimize the economic impact for small entities is the adoption of 15-year license terms for licenses in the 3.7–3.98 GHz band. Small entities should benefit from the opportunity for long term operational certainty and a longer period to develop, test and provision innovative services and applications. This longer licensing term should also allow small entities to curtail and spread out its costs. Lastly, as mentioned above, many of the rule changes adopted in the *Report and Order* are consistent with and mirror existing requirements for other bands. The Commission's decision to take this approach for the 3.7–3.98 GHz band should minimize the economic impact for small entities who are already obligated to comply with and have been complying with existing requirements in other bands.

V. Ordering Clauses

427. Accordingly, *It is ordered* that, pursuant to Sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309, and 316, this *Report and Order is hereby adopted.*

428. *It is further ordered* that the rules and requirements as adopted herein *are adopted,* effective sixty (60) days after publication in the **Federal Register**; and that the *Order of Proposed Modification* is effective as of the date of publication in the **Federal Register**; provided, however, that compliance will not be required for §§ 25.138(a) and (b); 25.147(a) through (c); 27.14(w)(1) through (4); 27.1412(b)(3)(i), (c) introductory text, (c)(2), (d)(1) and (2), and (f) through (h); 27.1413(a)(2) and (3), (b), and (c)(3) and (7); 27.1414(b)(3), (b)(4)(i) and (iii), (c)(1) through (3); 27.1415; 27.1416(a); 27.1417; 27.1419; 27.1421; 27.1422(c); 27.1424; and 101.101, Note (2) of the Commission's rules, which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, until the effective date for those information collections is announced in a document published in the **Federal Register** after the Commission receives OMB approval. The Commission directs the Bureau to issue such document announcing the compliance dates for §§ 25.138(a) and (b); 25.147(a) through (c); 27.14(w)(1) through (4); 27.1412(b)(3)(i), (c) introductory text, (c)(2), (d)(1) and (2), and (f) through (h); 27.1413(a)(2) and (3), (b), and (c)(3) and (7); 27.1414(b)(3), (b)(4)(i) and (iii), (c)(1) through (3); 27.1415; 27.1416(a); 27.1417; 27.1419; 27.1421; 27.1422(c);

27.1424; and 101.101, Note (2) accordingly.

429. *It is further ordered* that the freeze on applications for new FSS earth stations in the 3.7–4.2 GHz band outside of the contiguous United States and on applications for new point-to-point microwave Fixed Service sites outside of the contiguous United States will be lifted on the date of publication of this *Report and Order* in the **Federal Register**.

430. *It is further ordered* that, pursuant to Section 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 309 and 316, in the *Order of Proposed Modification* the Commission proposes that the licenses and authorizations of all 3.7–4.2 GHz FSS licensees and market access holders; all transmit-receive earth station licenses; and all Fixed Service licenses will be modified pursuant to the conditions specified in this *Report and Order* at paragraphs 123–125, 321, 323, 325, these modification conditions will be effective 60 days after publication of this *Report and Order and Order* in the **Federal Register**, provided, however, that in the event any FSS licensee, Fixed Service licensee, transmit-receive earth station licensee, or any other licensee or permittee who believes that its license or permit would be modified by this proposed action, seeks to protest this proposed modification and its accompanying timetable, the proposed license modifications specified in this *Report and Order and Order* and contested by the licensee or permittee shall not be made final as to such licensee or permittee unless and until the Commission orders otherwise. Pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 316(a)(1), publication of this *Report and Order* in the **Federal Register** shall constitute notification in writing of our *Order* proposing the modification of the 3.7–4.2 GHz FSS licenses, Fixed Service Licenses, transmit-receive earth station licenses, and of the grounds and reasons therefore, and those licensees and any other party seeking to file a protest pursuant to Section 316 shall have 30 days from the date of such publication to protest such Order.

431. *It is further ordered*, pursuant to Section 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 309 and 316, that following the final modification of each FSS license and transmit-receive earth station license, the International Bureau shall further modify such licenses as are necessary in order to implement the specific band reconfiguration in the manner specified in this *Report and Order;* and the Wireless Telecommunications Bureau shall modify each Fixed Service license as necessary in order to implement the specific band reconfiguration in the manner specified in this *Report and Order.*

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

433. *It is further ordered* that this *Report and Order* SHALL BE sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

434. It is our intention in adopting these rules that, if any provision of the *Report and Order* or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such *Report and Order* and the rules not deemed unlawful, and the application of the *Report and Order* and the rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

List of Subjects in 47 CFR Parts 1, 2, 25, 27, and 101

Administrative practice and procedures, Communications, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 25, 27, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.907 by revising the definition of ''Covered geographic licenses'' to read as follows:

§ 1.907 Definitions.

* * * * *

Covered geographic licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I, of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G, of this chapter); 218–219 MHz Service (part 95, subpart F, of this chapter); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T, of this chapter); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subpart F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); 3.7 GHz Service (part 27, subpart O); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G, of this chapter); Broadband Personal Communications Service (part 24, subpart E, of this chapter); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Citizens Broadband Radio Service (part 96, subpart C, of this chapter); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J, of this chapter); Upper Microwave Flexible Use Service (part 30 of this chapter); and Wireless Communications Service (part 27, subpart D).

* * * * *

■ 3. Amend § 1.9005 by:

■ a. Removing the word ''and'' at the end of paragraph (kk);

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

■ c. Adding paragraph (mm).

The addition reads as follows:

§ 1.9005 Included services.

* * * * *

(mm) The 3.7 GHz Service in the 3.7–3.98 GHz band.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 5. Amend § 2.106 by revising page 41 of the Table of Frequency Allocations and adding footnote NG182 and revising footnote NG457A in the list of Non-Federal Government (NG) Footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Table of Frequency Allocations			3500-5460 MHz (SHF)		Page 41
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431B Radiolocation 5.433	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.433A Radiolocation 5.433	3500-3550 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3500-3550 Radiolocation	Private Land Mobile (90)
			3550-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3550-3600 FIXED MOBILE except aeronautical mobile US105 US433	Citizens Broadband (96)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.434 Radiolocation 5.433	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.435	US105 US107 US245 US433	3600-3650 FIXED FIXED-SATELLITE (space-to-Earth) US107 US245 MOBILE except aeronautical mobile US105 US433	Satellite Communications (25) Citizens Broadband (96)
			3650-3700 US109 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4000 FIXED MOBILE except aeronautical mobile NG182 NG457A	Wireless Communications (27)
				4000-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG457A NG182	Satellite Communications (25)
4200-4400 AERONAUTICAL MOBILE (R) 5.436 AERONAUTICAL RADIONAVIGATION 5.438 5.437 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE 5.440A			4400-4940 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 5.440A				4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.440A 5.441A 5.441B 5.442 Radio astronomy 5.149 5.339 5.443			US113 US245 US342	4800-4940 US113 US342	
			4940-4990 5.339 US342 US385 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US342 US385	Public Safety Land Mobile (90Y)
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		

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Non-Federal Government (NG) Footnotes

* * * * *

NG182 In the band 3700–4200 MHz, the following provisions shall apply:

(a) Except as provided in paragraph (c)(1) of this footnote, any currently authorized space stations serving the contiguous United States may continue to operate on a primary basis, but no applications for new space station authorizations or new petitions for market access shall be accepted for filing after June 21, 2018, other than applications by existing operators in the band seeking to make more efficient use of the band 4000–4200 MHz. Applications for extension, cancellation, replacement, or modification of existing space station authorizations in the band will continue to be accepted and processed normally.

(b) In areas outside the contiguous United States, the band 3700–4000 MHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis.

(c) In the contiguous United States, *i.e.,* the contiguous 48 states and the District of Columbia as defined by Partial Economic Areas Nos. 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411, which includes areas within 12 nautical miles of the U.S. Gulf coastline (*see* § 27.6(m) of this chapter), the following provisions apply:

(1) Incumbent use of the fixed-satellite service (space-to-Earth) in the band 3700–4000 MHz is subject to the provisions of §§ 25.138, 25.147, 25.203(n) and part 27, subpart O, of this chapter;

(2) Fixed service licensees authorized as of April 19, 2018, pursuant to part 101 of this chapter, must self-relocate their point-to-point links out of the band 3700–4200 MHz by December 5, 2023;

(3) In the band 3980–4000 MHz, no new fixed or mobile operations will be permitted until specified by Commission rule, order, or notice.

* * * * *

NG457A Earth stations on vessels (ESVs), as regulated under 47 CFR part 25, are an application of the fixed-satellite service and the following provisions shall apply:

(a) In the band 3700–4200 MHz, ESVs may be authorized to receive FSS signals from geostationary satellites. ESVs in motion are subject to the condition that these earth stations may not claim protection from transmissions of non-Federal stations in the fixed and mobile except aeronautical mobile services. While docked, ESVs receiving in the band 4000–4200 MHz may be coordinated for up to 180 days, renewable. NG182 applies to incumbent licensees that provide service to ESVs in the band 3700–4000 MHz.

(b) In the band 5925–6425 MHz, ESVs may be authorized to transmit to geostationary satellites on a primary basis.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 6. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 7. Amend § 25.103 by adding the definition of ''Contiguous United States (CONUS)'' in alphabetical order to read as follows:

§ 25.103 Definitions.

* * * * *

Contiguous United States (CONUS). For purposes of subparts B and C of this part, the contiguous United States consists of the contiguous 48 states and the District of Columbia as defined by Partial Economic Areas Nos. 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411, which includes areas within 12 nautical miles of the U.S. Gulf coastline. In this context, the rest of the United States includes the Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico PEAs (Nos. 42, 212, 264, 298, 360, 412–416). *See* § 27.6(m) of this chapter.

* * * * *

■ 8. Amend § 25.109 by adding paragraph (e) to read as follows:

§ 25.109 Cross-reference.

* * * * *

(e) Space and earth stations in the 3700–4200 MHz band may be subject to transition rules in part 27 of this chapter.

■ 9. Add § 25.138 to read as follows:

§ 25.138 Earth Stations in the 3.7–4.2 GHz band.

(a) Applications for new, modified, or renewed earth station licenses and registrations in the 3.7–4.0 GHz portion of the band in CONUS are no longer accepted.

(b) Applications for new earth station licenses or registrations within CONUS in the 4.0–4.2 GHz portion of the band will not be accepted until the transition is completed and upon announcement by the International Bureau via Public Notice that applications may be filed.

(c) Fixed and temporary fixed earth stations operating in the 3.7–4.0 GHz portion of the band within CONUS will be protected from interference by licensees in the 3.7 GHz Service subject to the deadlines set forth in § 27.1412 of this chapter and are eligible for transition into the 4.0–4.2 GHz band so long as they:

(1) Were operational as of April 19, 2018 and continue to be operational;

(2) Were licensed or registered (or had a pending application for license or registration) in the IBFS database on November 7, 2018; and

(3) Timely certified the accuracy of the information on file with the Commission by May 28, 2019.

(d) Fixed and temporary earth station licenses and registrations that meet the criteria in paragraph (c) of this section may be renewed or modified to maintain operations in the 4.0–4.2 GHz band.

(e) Applications for new, modified, or renewed licenses and registrations for earth stations outside CONUS operating in the 3.7–4.2 GHz band will continue to be accepted.

■ 10. Add § 25.147 to read as follows:

§ 25.147 Space Stations in the 3.7–4.2 GHz band.

The 3.7–4.0 GHz portion of the band is being transitioned in CONUS from FSS GSO (space-to-Earth) to the 3.7 GHz Service.

(a) New applications for space station licenses and petitions for market access concerning space-to-Earth operations in the 3.7–4.0 GHz portion of the band within CONUS will no longer be accepted.

(b) Applications for new or modified space station licenses or petitions for market access in the 4.0–4.2 GHz portion of the band within CONUS will not be accepted during the transition except by existing operators in the band to implement an efficient transition.

(c) Applications for new or modified space station licenses or petitions for market access for space-to-Earth operations in the 3.7–4.2 GHz band outside CONUS will continue to be accepted.

■ 11. Amend § 25.203 by adding paragraph (n) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(n) From December 5, 2021 until December 5, 2030, consolidated telemetry, tracking, and control (TT&C) operations at no more than four locations may be authorized on a primary basis to support space station operations, and no other TT&C operations shall be entitled to interference protection in the 3.7–4.0 GHz band.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 12. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 13. Amend § 27.1 by adding paragraph (b)(15) and revising paragraph (c) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(15) 3700–3980 MHz.

(c) *Scope.* The rules in this part apply only to stations authorized under this part or authorized under another part of this chapter on frequencies or bands transitioning to authorizations under this part.

■ 14. Amend § 27.4 by adding in alphabetical order the definition for ''3.7 GHz Service'' to read as follows:

§ 27.4 Terms and definitions.

3.7 GHz Service. A radiocommunication service licensed under this part for the frequency bands specified in § 27.5(m) (3700–3980 MHz band).

* * * * *

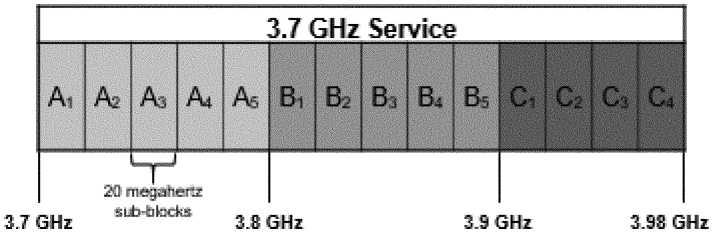
■ 15. Amend § 27.5 by adding paragraph (m) to read as follows:

§ 27.5 Frequencies.

* * * * *

(m) *3700–3980 MHz band.* The 3.7 GHz Service is comprised of Block A (3700–3800 MHz); Block B (3800–3900 MHz); and Block C (3900–3980 MHz). These blocks are licensed as 14 individual 20 megahertz sub-blocks available for assignment in the contiguous United States on a Partial Economic Area basis, *see* § 27.6(m), as follows:

Figure 1 to paragraph (m)



■ 16. Amend § 27.6 by adding paragraph (m) to read as follows:

§ 27.6 Service areas.

* * * * *

(m) *3700–3980 MHz Band.* Service areas in the 3.7 GHz Service are based on Partial Economic Areas (PEAs) as defined by appendix A to this subpart (*see Wireless Telecommunications Bureau Provides Details About Partial Economic Areas,* DA 14–759, Public Notice, released June 2, 2014, for more information). The 3.7 GHz Service will be licensed in the contiguous United States, *i.e.,* the contiguous 48 states and the District of Columbia as defined by Partial Economic Areas Nos. 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411. The service areas of PEAs that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline. The 3.7 GHz Service will not be licensed for the following PEAs:

TABLE 3 TO PARAGRAPH (m)

PEA No.	PEA name
42	Honolulu, HI.
212	Anchorage, AK.
264	Kodiak, AK.
298	Fairbanks, AK.
360	Juneau, AK.
412	Puerto Rico.
413	Guam-Northern Mariana Islands.
414	US Virgin Islands.
415	American Samoa.

■ 17. Add appendix A to subpart A of part 27 to read as follows:

Appendix A to Subpart A of Part 27—List of Partial Economic Areas With Corresponding Counties

PEA No.	Federal Information Processing System No.	County name	State
1	09001	Fairfield	CT
1	09003	Hartford	CT
1	09005	Litchfield	CT
1	09007	Middlesex	CT
1	09009	New Haven	CT
1	09011	New London	CT
1	09013	Tolland	CT
1	09015	Windham	CT
1	34003	Bergen	NJ
1	34013	Essex	NJ
1	34017	Hudson	NJ
1	34019	Hunterdon	NJ
1	34021	Mercer	NJ
1	34023	Middlesex	NJ
1	34025	Monmouth	NJ
1	34027	Morris	NJ
1	34029	Ocean	NJ
1	34031	Passaic	NJ
1	34035	Somerset	NJ
1	34037	Sussex	NJ
1	34039	Union	NJ
1	34041	Warren	NJ
1	36005	Bronx	NY
1	36027	Dutchess	NY
1	36047	Kings	NY
1	36059	Nassau	NY
1	36061	New York	NY
1	36071	Orange	NY
1	36079	Putnam	NY
1	36081	Queens	NY
1	36085	Richmond	NY
1	36087	Rockland	NY
1	36103	Suffolk	NY
1	36105	Sullivan	NY
1	36111	Ulster	NY
1	36119	Westchester	NY
1	42025	Carbon	PA
1	42069	Lackawanna	PA
1	42077	Lehigh	PA
1	42079	Luzerne	PA
1	42089	Monroe	PA
1	42095	Northampton	PA
2	06029	Kern	CA
2	06037	Los Angeles	CA
2	06059	Orange	CA
2	06065	Riverside	CA
2	06071	San Bernardino	CA
2	06079	San Luis Obispo	CA
2	06083	Santa Barbara	CA
2	06111	Ventura	CA
3	17031	Cook	IL
3	17043	DuPage	IL
3	17063	Grundy	IL
3	17089	Kane	IL
3	17091	Kankakee	IL
3	17093	Kendall	IL
3	17097	Lake	IL
3	17111	McHenry	IL
3	17197	Will	IL
3	18091	La Porte	IN
3	18089	Lake	IN
3	18127	Porter	IN
4	06001	Alameda	CA
4	06013	Contra Costa	CA
4	06041	Marin	CA
4	06053	Monterey	CA
4	06055	Napa	CA
4	06075	San Francisco	CA
4	06077	San Joaquin	CA
4	06081	San Mateo	CA
4	06085	Santa Clara	CA
4	06087	Santa Cruz	CA
4	06095	Solano	CA
4	06097	Sonoma	CA
4	06099	Stanislaus	CA

PEA No.	Federal Information Processing System No.	County name	State
5	11001	District of Columbia.	DC
5	24003	Anne Arundel	MD
5	24005	Baltimore	MD
5	24510	Baltimore City	MD
5	24009	Calvert	MD
5	24011	Caroline	MD
5	24013	Carroll	MD
5	24017	Charles	MD
5	24019	Dorchester	MD
5	24025	Harford	MD
5	24027	Howard	MD
5	24029	Kent	MD
5	24031	Montgomery	MD
5	24033	Prince George's	MD
5	24035	Queen Anne's	MD
5	24037	St. Mary's	MD
5	24041	Talbot	MD
5	51510	Alexandria City	VA
5	51013	Arlington	VA
5	51059	Fairfax	VA
5	51600	Fairfax City	VA
5	51610	Falls Church City.	VA
5	51107	Loudoun	VA
5	51683	Manassas City	VA
5	51685	Manassas Park City.	VA
5	51153	Prince William	VA
6	10001	Kent	DE
6	10003	New Castle	DE
6	24015	Cecil	MD
6	34001	Atlantic	NJ
6	34005	Burlington	NJ
6	34007	Camden	NJ
6	34009	Cape May	NJ
6	34011	Cumberland	NJ
6	34015	Gloucester	NJ
6	34033	Salem	NJ
6	42011	Berks	PA
6	42017	Bucks	PA
6	42029	Chester	PA
6	42045	Delaware	PA
6	42071	Lancaster	PA
6	42091	Montgomery	PA
6	42101	Philadelphia	PA
7	25001	Barnstable	MA
7	25005	Bristol	MA
7	25007	Dukes	MA
7	25009	Essex	MA
7	25017	Middlesex	MA
7	25019	Nantucket	MA
7	25021	Norfolk	MA
7	25023	Plymouth	MA
7	25025	Suffolk	MA
7	25027	Worcester	MA
7	44001	Bristol	RI
7	44003	Kent	RI
7	44005	Newport	RI
7	44007	Providence	RI
7	44009	Washington	RI
8	48085	Collin	TX
8	48113	Dallas	TX
8	48121	Denton	TX
8	48139	Ellis	TX
8	48181	Grayson	TX
8	48221	Hood	TX
8	48251	Johnson	TX
8	48257	Kaufman	TX
8	48367	Parker	TX
8	48397	Rockwall	TX
8	48439	Tarrant	TX
8	48497	Wise	TX
9	12011	Broward	FL
9	12043	Glades	FL
9	12051	Hendry	FL
9	12061	Indian River	FL
9	12085	Martin	FL
9	12086	Miami-Dade	FL
9	12087	Monroe	FL
9	12093	Okeechobee	FL
9	12099	Palm Beach	FL
9	12111	St. Lucie	FL
10	48039	Brazoria	TX
10	48071	Chambers	TX
10	48157	Fort Bend	TX
10	48167	Galveston	TX
10	48201	Harris	TX
10	48291	Liberty	TX
10	48339	Montgomery	TX
10	48473	Waller	TX
11	13011	Banks	GA
11	13013	Barrow	GA
11	13035	Butts	GA
11	13057	Cherokee	GA
11	13059	Clarke	GA
11	13063	Clayton	GA
11	13067	Cobb	GA
11	13085	Dawson	GA
11	13089	DeKalb	GA
11	13097	Douglas	GA
11	13105	Elbert	GA
11	13113	Fayette	GA
11	13117	Forsyth	GA
11	13119	Franklin	GA
11	13121	Fulton	GA
11	13133	Greene	GA
11	13135	Gwinnett	GA
11	13137	Habersham	GA
11	13139	Hall	GA
11	13147	Hart	GA
11	13151	Henry	GA
11	13157	Jackson	GA
11	13159	Jasper	GA
11	13187	Lumpkin	GA
11	13195	Madison	GA
11	13211	Morgan	GA
11	13217	Newton	GA
11	13219	Oconee	GA
11	13221	Oglethorpe	GA
11	13223	Paulding	GA
11	13241	Rabun	GA
11	13247	Rockdale	GA
11	13257	Stephens	GA
11	13265	Taliaferro	GA
11	13297	Walton	GA
11	13311	White	GA
12	26049	Genesee	MI
12	26087	Lapeer	MI
12	26093	Livingston	MI
12	26099	Macomb	MI
12	26125	Oakland	MI
12	26155	Shiawassee	MI
12	26147	St. Clair	MI
12	26161	Washtenaw	MI
12	26163	Wayne	MI
13	12009	Brevard	FL
13	12017	Citrus	FL
13	12035	Flagler	FL
13	12049	Hardee	FL
13	12055	Highlands	FL
13	12069	Lake	FL
13	12083	Marion	FL
13	12095	Orange	FL
13	12097	Osceola	FL
13	12105	Polk	FL
13	12117	Seminole	FL
13	12119	Sumter	FL
13	12127	Volusia	FL
14	39007	Ashtabula	OH
14	39019	Carroll	OH
14	39029	Columbiana	OH
14	39035	Cuyahoga	OH
14	39043	Erie	OH
14	39055	Geauga	OH
14	39077	Huron	OH
14	39085	Lake	OH
14	39093	Lorain	OH
14	39099	Mahoning	OH
14	39103	Medina	OH
14	39133	Portage	OH
14	39151	Stark	OH
14	39153	Summit	OH
14	39155	Trumbull	OH
14	42085	Mercer	PA
15	04013	Maricopa	AZ
16	53009	Clallam	WA
16	53031	Jefferson	WA
16	53033	King	WA
16	53035	Kitsap	WA
16	53053	Pierce	WA
16	53061	Snohomish	WA
17	27003	Anoka	MN
17	27009	Benton	MN
17	27019	Carver	MN
17	27025	Chisago	MN
17	27037	Dakota	MN
17	27053	Hennepin	MN
17	27123	Ramsey	MN
17	27139	Scott	MN
17	27141	Sherburne	MN
17	27145	Stearns	MN
17	27163	Washington	MN
17	27171	Wright	MN
17	55109	St. Croix	WI
18	06073	San Diego	CA
19	41003	Benton	OR
19	41005	Clackamas	OR
19	41007	Clatsop	OR
19	41009	Columbia	OR
19	41041	Lincoln	OR
19	41043	Linn	OR
19	41047	Marion	OR
19	41051	Multnomah	OR
19	41053	Polk	OR
19	41057	Tillamook	OR
19	41067	Washington	OR
19	41071	Yamhill	OR
19	53011	Clark	WA
19	53015	Cowlitz	WA
19	53069	Wahkiakum	WA
20	08001	Adams	CO
20	08005	Arapahoe	CO
20	08013	Boulder	CO
20	08014	Broomfield	CO
20	08031	Denver	CO
20	08035	Douglas	CO
20	08047	Gilpin	CO
20	08059	Jefferson	CO
21	12053	Hernando	FL
21	12057	Hillsborough	FL
21	12101	Pasco	FL
21	12103	Pinellas	FL

PEA No.	Federal Information Processing System No.	County name	State
22	06005	Amador	CA
22	06007	Butte	CA
22	06011	Colusa	CA
22	06017	El Dorado	CA
22	06021	Glenn	CA
22	06057	Nevada	CA
22	06061	Placer	CA
22	06067	Sacramento	CA
22	06101	Sutter	CA
22	06113	Yolo	CA
22	06115	Yuba	CA
23	42003	Allegheny	PA
23	42005	Armstrong	PA
23	42007	Beaver	PA
23	42019	Butler	PA
23	42063	Indiana	PA
23	42073	Lawrence	PA
23	42125	Washington	PA
23	42129	Westmoreland	PA
24	17005	Bond	IL
24	17027	Clinton	IL
24	17121	Marion	IL
24	17133	Monroe	IL
24	17163	St. Clair	IL
24	29071	Franklin	MO
24	29099	Jefferson	MO
24	29183	St. Charles	MO
24	29189	St. Louis	MO
24	29510	St. Louis City	MO
25	21015	Boone	KY
25	21023	Bracken	KY
25	21037	Campbell	KY
25	21077	Gallatin	KY
25	21081	Grant	KY
25	21117	Kenton	KY
25	21135	Lewis	KY
25	21161	Mason	KY
25	21191	Pendleton	KY
25	39001	Adams	OH
25	39015	Brown	OH
25	39017	Butler	OH
25	39025	Clermont	OH
25	39027	Clinton	OH
25	39061	Hamilton	OH
25	39071	Highland	OH
25	39165	Warren	OH
26	04015	Mohave	AZ
26	32003	Clark	NV
27	49011	Davis	UT
27	49035	Salt Lake	UT
27	49045	Tooele	UT
27	49049	Utah	UT
27	49057	Weber	UT
28	48013	Atascosa	TX
28	48029	Bexar	TX
28	48091	Comal	TX
28	48187	Guadalupe	TX
29	12001	Alachua	FL
29	12003	Baker	FL
29	12007	Bradford	FL
29	12019	Clay	FL
29	12023	Columbia	FL
29	12029	Dixie	FL
29	12031	Duval	FL
29	12041	Gilchrist	FL
29	12047	Hamilton	FL
29	12067	Lafayette	FL
29	12075	Levy	FL
29	12089	Nassau	FL
29	12107	Putnam	FL
29	12109	St. Johns	FL
29	12121	Suwannee	FL
29	12125	Union	FL
30	20091	Johnson	KS
30	20209	Wyandotte	KS
30	29037	Cass	MO
30	29047	Clay	MO
30	29095	Jackson	MO
30	29165	Platte	MO
30	29177	Ray	MO
31	18011	Boone	IN
31	18035	Delaware	IN
31	18057	Hamilton	IN
31	18063	Hendricks	IN
31	18081	Johnson	IN
31	18095	Madison	IN
31	18097	Marion	IN
32	21047	Christian	KY
32	47021	Cheatham	TN
32	47037	Davidson	TN
32	47043	Dickson	TN
32	47125	Montgomery	TN
32	47147	Robertson	TN
32	47149	Rutherford	TN
32	47165	Sumner	TN
32	47187	Williamson	TN
32	47189	Wilson	TN
33	37053	Currituck	NC
33	51550	Chesapeake City.	VA
33	51620	Franklin City	VA
33	51073	Gloucester	VA
33	51650	Hampton City	VA
33	51093	Isle of Wight	VA
33	51095	James City	VA
33	51115	Mathews	VA
33	51700	Newport News City.	VA
33	51710	Norfolk City	VA
33	51735	Poquoson City	VA
33	51740	Portsmouth City	VA
33	51175	Southampton	VA
33	51800	Suffolk City	VA
33	51181	Surry	VA
33	51810	Virginia Beach City.	VA
33	51830	Williamsburg City.	VA
33	51199	York	VA
34	06019	Fresno	CA
34	06031	Kings	CA
34	06039	Madera	CA
34	06107	Tulare	CA
35	48209	Hays	TX
35	48331	Milam	TX
35	48453	Travis	TX
35	48491	Williamson	TX
36	22051	Jefferson Parish	LA
36	22057	Lafourche Parish.	LA
36	22071	Orleans Parish	LA
36	22075	Plaquemines Parish.	LA
36	22087	St. Bernard Parish.	LA
36	22089	St. Charles Parish.	LA
36	22093	St. James Parish.	LA
36	22095	St. John the Baptist Parish.	LA
36	22103	St. Tammany Parish.	LA
36	22105	Tangipahoa Parish.	LA
36	22109	Terrebonne Parish.	LA
36	22117	Washington Parish.	LA
36	28109	Pearl River	MS
37	39041	Delaware	OH
37	39045	Fairfield	OH
37	39049	Franklin	OH
37	39097	Madison	OH
37	39129	Pickaway	OH
38	55079	Milwaukee	WI
38	55089	Ozaukee	WI
38	55131	Washington	WI
38	55133	Waukesha	WI
39	40017	Canadian	OK
39	40027	Cleveland	OK
39	40031	Comanche	OK
39	40051	Grady	OK
39	40081	Lincoln	OK
39	40083	Logan	OK
39	40087	McClain	OK
39	40109	Oklahoma	OK
39	40125	Pottawatomie	OK
40	01015	Calhoun	AL
40	01073	Jefferson	AL
40	01117	Shelby	AL
40	01115	St. Clair	AL
40	01121	Talladega	AL
40	01125	Tuscaloosa	AL
40	01127	Walker	AL
41	36011	Cayuga	NY
41	36017	Chenango	NY
41	36023	Cortland	NY
41	36025	Delaware	NY
41	36043	Herkimer	NY
41	36053	Madison	NY
41	36065	Oneida	NY
41	36067	Onondaga	NY
41	36075	Oswego	NY
41	36077	Otsego	NY
41	36097	Schuyler	NY
41	36109	Tompkins	NY
42	15001	Hawaii	HI
42	15003	Honolulu	HI
42	15005	Kalawao	HI
42	15007	Kauai	HI
42	15009	Maui	HI
43	37071	Gaston	NC
43	37119	Mecklenburg	NC
43	37179	Union	NC
44	36037	Genesee	NY
44	36051	Livingston	NY
44	36055	Monroe	NY
44	36069	Ontario	NY
44	36073	Orleans	NY
44	36099	Seneca	NY
44	36101	Steuben	NY
44	36117	Wayne	NY
44	36121	Wyoming	NY
44	36123	Yates	NY
45	37063	Durham	NC
45	37135	Orange	NC
45	37183	Wake	NC
46	05005	Baxter	AR
46	05009	Boone	AR
46	05015	Carroll	AR
46	05023	Cleburne	AR
46	05029	Conway	AR
46	05045	Faulkner	AR

PEA No.	Federal Information Processing System No.	County name	State
46	05049	Fulton	AR
46	05063	Independence	AR
46	05065	Izard	AR
46	05067	Jackson	AR
46	05069	Jefferson	AR
46	05071	Johnson	AR
46	05085	Lonoke	AR
46	05089	Marion	AR
46	05101	Newton	AR
46	05105	Perry	AR
46	05115	Pope	AR
46	05117	Prairie	AR
46	05119	Pulaski	AR
46	05125	Saline	AR
46	05129	Searcy	AR
46	05135	Sharp	AR
46	05137	Stone	AR
46	05141	Van Buren	AR
46	05145	White	AR
46	05147	Woodruff	AR
46	05149	Yell	AR
47	48061	Cameron	TX
47	48215	Hidalgo	TX
47	48427	Starr	TX
47	48489	Willacy	TX
48	42001	Adams	PA
48	42041	Cumberland	PA
48	42043	Dauphin	PA
48	42067	Juniata	PA
48	42075	Lebanon	PA
48	42099	Perry	PA
48	42133	York	PA
49	36001	Albany	NY
49	36021	Columbia	NY
49	36035	Fulton	NY
49	36039	Greene	NY
49	36041	Hamilton	NY
49	36057	Montgomery	NY
49	36083	Rensselaer	NY
49	36091	Saratoga	NY
49	36093	Schenectady	NY
49	36095	Schoharie	NY
49	36113	Warren	NY
49	36115	Washington	NY
50	37149	Polk	NC
50	45007	Anderson	SC
50	45021	Cherokee	SC
50	45045	Greenville	SC
50	45073	Oconee	SC
50	45077	Pickens	SC
50	45083	Spartanburg	SC
50	45087	Union	SC
51	18019	Clark	IN
51	18043	Floyd	IN
51	18077	Jefferson	IN
51	18143	Scott	IN
51	21029	Bullitt	KY
51	21041	Carroll	KY
51	21103	Henry	KY
51	21111	Jefferson	KY
51	21185	Oldham	KY
51	21211	Shelby	KY
51	21223	Trimble	KY
52	21019	Boyd	KY
52	21043	Carter	KY
52	21063	Elliott	KY
52	21089	Greenup	KY
52	39053	Gallia	OH
52	39087	Lawrence	OH
52	39105	Meigs	OH
52	39167	Washington	OH
52	54005	Boone	WV
52	54007	Braxton	WV
52	54011	Cabell	WV
52	54013	Calhoun	WV
52	54015	Clay	WV
52	54019	Fayette	WV
52	54021	Gilmer	WV
52	54035	Jackson	WV
52	54039	Kanawha	WV
52	54043	Lincoln	WV
52	54045	Logan	WV
52	54053	Mason	WV
52	54067	Nicholas	WV
52	54073	Pleasants	WV
52	54079	Putnam	WV
52	54081	Raleigh	WV
52	54085	Ritchie	WV
52	54087	Roane	WV
52	54089	Summers	WV
52	54099	Wayne	WV
52	54101	Webster	WV
52	54105	Wirt	WV
52	54107	Wood	WV
52	54109	Wyoming	WV
53	04003	Cochise	AZ
53	04019	Pima	AZ
53	04023	Santa Cruz	AZ
54	36029	Erie	NY
54	36063	Niagara	NY
55	01033	Colbert	AL
55	01049	DeKalb	AL
55	01055	Etowah	AL
55	01059	Franklin	AL
55	01071	Jackson	AL
55	01077	Lauderdale	AL
55	01079	Lawrence	AL
55	01083	Limestone	AL
55	01089	Madison	AL
55	01095	Marshall	AL
55	01103	Morgan	AL
55	47103	Lincoln	TN
56	26005	Allegan	MI
56	26015	Barry	MI
56	26023	Branch	MI
56	26025	Calhoun	MI
56	26067	Ionia	MI
56	26077	Kalamazoo	MI
56	26107	Mecosta	MI
56	26117	Montcalm	MI
56	26121	Muskegon	MI
56	26123	Newaygo	MI
56	26127	Oceana	MI
56	26159	Van Buren	MI
57	51036	Charles City	VA
57	51041	Chesterfield	VA
57	51057	Essex	VA
57	51075	Goochland	VA
57	51085	Hanover	VA
57	51087	Henrico	VA
57	51097	King and Queen	VA
57	51101	King William	VA
57	51103	Lancaster	VA
57	51119	Middlesex	VA
57	51127	New Kent	VA
57	51133	Northumberland	VA
57	51145	Powhatan	VA
57	51159	Richmond	VA
57	51760	Richmond City	VA
58	17023	Clark	IL
58	18007	Benton	IN
58	18015	Carroll	IN
58	18017	Cass	IN
58	18021	Clay	IN
58	18023	Clinton	IN
58	18045	Fountain	IN
58	18055	Greene	IN
58	18067	Howard	IN
58	18093	Lawrence	IN
58	18103	Miami	IN
58	18105	Monroe	IN
58	18107	Montgomery	IN
58	18109	Morgan	IN
58	18117	Orange	IN
58	18119	Owen	IN
58	18121	Parke	IN
58	18133	Putnam	IN
58	18153	Sullivan	IN
58	18157	Tippecanoe	IN
58	18159	Tipton	IN
58	18165	Vermillion	IN
58	18167	Vigo	IN
58	18171	Warren	IN
58	18181	White	IN
59	05035	Crittenden	AR
59	47157	Shelby	TN
59	47167	Tipton	TN
60	33001	Belknap	NH
60	33011	Hillsborough	NH
60	33013	Merrimack	NH
60	33015	Rockingham	NH
60	33017	Strafford	NH
61	39039	Defiance	OH
61	39051	Fulton	OH
61	39063	Hancock	OH
61	39065	Hardin	OH
61	39069	Henry	OH
61	39095	Lucas	OH
61	39123	Ottawa	OH
61	39125	Paulding	OH
61	39143	Sandusky	OH
61	39147	Seneca	OH
61	39171	Williams	OH
61	39173	Wood	OH
61	39175	Wyandot	OH
62	39021	Champaign	OH
62	39023	Clark	OH
62	39057	Greene	OH
62	39109	Miami	OH
62	39113	Montgomery	OH
62	39135	Preble	OH
63	40021	Cherokee	OK
63	40037	Creek	OK
63	40097	Mayes	OK
63	40113	Osage	OK
63	40131	Rogers	OK
63	40143	Tulsa	OK
63	40145	Wagoner	OK
64	18039	Elkhart	IN
64	18049	Fulton	IN
64	18085	Kosciusko	IN
64	18087	Lagrange	IN
64	18099	Marshall	IN
64	18131	Pulaski	IN
64	18141	St. Joseph	IN
64	18149	Starke	IN
64	26021	Berrien	MI
64	26027	Cass	MI
64	26149	St. Joseph	MI
65	12021	Collier	FL
65	12071	Lee	FL
66	26037	Clinton	MI
66	26045	Eaton	MI

PEA No.	Federal Information Processing System No.	County name	State
66	26059	Hillsdale	MI
66	26065	Ingham	MI
66	26075	Jackson	MI
66	26091	Lenawee	MI
66	26115	Monroe	MI
67	12015	Charlotte	FL
67	12027	DeSoto	FL
67	12081	Manatee	FL
67	12115	Sarasota	FL
68	26081	Kent	MI
68	26139	Ottawa	MI
69	25003	Berkshire	MA
69	25011	Franklin	MA
69	25013	Hampden	MA
69	25015	Hampshire	MA
69	50003	Bennington	VT
70	06015	Del Norte	CA
70	41011	Coos	OR
70	41015	Curry	OR
70	41019	Douglas	OR
70	41029	Jackson	OR
70	41033	Josephine	OR
70	41039	Lane	OR
71	47001	Anderson	TN
71	47009	Blount	TN
71	47013	Campbell	TN
71	47093	Knox	TN
71	47105	Loudon	TN
71	47129	Morgan	TN
71	47145	Roane	TN
71	47151	Scott	TN
71	47173	Union	TN
72	12005	Bay	FL
72	12013	Calhoun	FL
72	12037	Franklin	FL
72	12039	Gadsden	FL
72	12045	Gulf	FL
72	12063	Jackson	FL
72	12065	Jefferson	FL
72	12073	Leon	FL
72	12077	Liberty	FL
72	12079	Madison	FL
72	12123	Taylor	FL
72	12129	Wakulla	FL
72	13087	Decatur	GA
72	13099	Early	GA
72	13131	Grady	GA
72	13201	Miller	GA
72	13253	Seminole	GA
72	13275	Thomas	GA
73	48141	El Paso	TX
74	13047	Catoosa	GA
74	13083	Dade	GA
74	13295	Walker	GA
74	47007	Bledsoe	TN
74	47011	Bradley	TN
74	47065	Hamilton	TN
74	47115	Marion	TN
74	47107	McMinn	TN
74	47121	Meigs	TN
74	47123	Monroe	TN
74	47139	Polk	TN
74	47143	Rhea	TN
74	47153	Sequatchie	TN
75	35001	Bernalillo	NM
75	35043	Sandoval	NM
76	06003	Alpine	CA
76	06027	Inyo	CA
76	06035	Lassen	CA
76	06051	Mono	CA
76	06063	Plumas	CA
76	06091	Sierra	CA
76	32510	Carson City	NV
76	32001	Churchill	NV
76	32005	Douglas	NV
76	32007	Elko	NV
76	32011	Eureka	NV
76	32013	Humboldt	NV
76	32015	Lander	NV
76	32019	Lyon	NV
76	32027	Pershing	NV
76	32029	Storey	NV
76	32031	Washoe	NV
76	32033	White Pine	NV
77	23001	Androscoggin	ME
77	23005	Cumberland	ME
77	23007	Franklin	ME
77	23013	Knox	ME
77	23015	Lincoln	ME
77	23017	Oxford	ME
77	23023	Sagadahoc	ME
77	23031	York	ME
78	37001	Alamance	NC
78	37081	Guilford	NC
78	37151	Randolph	NC
79	28001	Adams	MS
79	28005	Amite	MS
79	28021	Claiborne	MS
79	28023	Clarke	MS
79	28029	Copiah	MS
79	28031	Covington	MS
79	28035	Forrest	MS
79	28037	Franklin	MS
79	28041	Greene	MS
79	28061	Jasper	MS
79	28063	Jefferson	MS
79	28065	Jefferson Davis	MS
79	28067	Jones	MS
79	28069	Kemper	MS
79	28073	Lamar	MS
79	28075	Lauderdale	MS
79	28077	Lawrence	MS
79	28079	Leake	MS
79	28085	Lincoln	MS
79	28091	Marion	MS
79	28099	Neshoba	MS
79	28101	Newton	MS
79	28111	Perry	MS
79	28113	Pike	MS
79	28123	Scott	MS
79	28127	Simpson	MS
79	28129	Smith	MS
79	28147	Walthall	MS
79	28153	Wayne	MS
80	19155	Pottawattamie	IA
80	31055	Douglas	NE
80	31153	Sarpy	NE
81	26001	Alcona	MI
81	26011	Arenac	MI
81	26017	Bay	MI
81	26035	Clare	MI
81	26051	Gladwin	MI
81	26057	Gratiot	MI
81	26063	Huron	MI
81	26069	Iosco	MI
81	26073	Isabella	MI
81	26111	Midland	MI
81	26129	Ogemaw	MI
81	26145	Saginaw	MI
81	26151	Sanilac	MI
81	26157	Tuscola	MI
82	22005	Ascension Parish.	LA
82	22007	Assumption Parish.	LA
82	22033	East Baton Rouge Parish.	LA
82	22047	Iberville Parish	LA
82	22063	Livingston Parish.	LA
82	22121	West Baton Rouge Parish.	LA
83	18001	Adams	IN
83	18003	Allen	IN
83	18009	Blackford	IN
83	18033	De Kalb	IN
83	18053	Grant	IN
83	18069	Huntington	IN
83	18075	Jay	IN
83	18113	Noble	IN
83	18151	Steuben	IN
83	18169	Wabash	IN
83	18179	Wells	IN
83	18183	Whitley	IN
84	01003	Baldwin	AL
84	01025	Clarke	AL
84	01035	Conecuh	AL
84	01053	Escambia	AL
84	01097	Mobile	AL
84	01099	Monroe	AL
84	01129	Washington	AL
84	01131	Wilcox	AL
85	45015	Berkeley	SC
85	45019	Charleston	SC
85	45029	Colleton	SC
85	45035	Dorchester	SC
86	21005	Anderson	KY
86	21011	Bath	KY
86	21017	Bourbon	KY
86	21049	Clark	KY
86	21067	Fayette	KY
86	21069	Fleming	KY
86	21073	Franklin	KY
86	21097	Harrison	KY
86	21113	Jessamine	KY
86	21165	Menifee	KY
86	21167	Mercer	KY
86	21173	Montgomery	KY
86	21181	Nicholas	KY
86	21187	Owen	KY
86	21201	Robertson	KY
86	21205	Rowan	KY
86	21209	Scott	KY
86	21239	Woodford	KY
87	12033	Escambia	FL
87	12091	Okaloosa	FL
87	12113	Santa Rosa	FL
87	12131	Walton	FL
88	24001	Allegany	MD
88	24021	Frederick	MD
88	24023	Garrett	MD
88	24043	Washington	MD
88	42055	Franklin	PA
88	42057	Fulton	PA
88	54057	Mineral	WV
89	45063	Lexington	SC
89	45079	Richland	SC
90	22025	Catahoula Parish.	LA
90	22029	Concordia Parish.	LA
90	22065	Madison Parish	LA
90	22107	Tensas Parish	LA
90	28007	Attala	MS

PEA No.	Federal Information Processing System No.	County name	State
90	28049	Hinds	MS
90	28051	Holmes	MS
90	28089	Madison	MS
90	28121	Rankin	MS
90	28149	Warren	MS
90	28163	Yazoo	MS
91	08041	El Paso	CO
91	08119	Teller	CO
92	17019	Champaign	IL
92	17025	Clay	IL
92	17029	Coles	IL
92	17035	Cumberland	IL
92	17041	Douglas	IL
92	17045	Edgar	IL
92	17049	Effingham	IL
92	17051	Fayette	IL
92	17053	Ford	IL
92	17079	Jasper	IL
92	17115	Macon	IL
92	17139	Moultrie	IL
92	17147	Piatt	IL
92	17173	Shelby	IL
92	17183	Vermilion	IL
93	22001	Acadia Parish	LA
93	22039	Evangeline Parish.	LA
93	22045	Iberia Parish	LA
93	22055	Lafayette Parish	LA
93	22097	St. Landry Parish.	LA
93	22099	St. Martin Parish	LA
93	22101	St. Mary Parish	LA
93	22113	Vermilion Parish	LA
94	48027	Bell	TX
94	48099	Coryell	TX
94	48145	Falls	TX
94	48309	McLennan	TX
95	21025	Breathitt	KY
95	21065	Estill	KY
95	21071	Floyd	KY
95	21109	Jackson	KY
95	21115	Johnson	KY
95	21119	Knott	KY
95	21127	Lawrence	KY
95	21129	Lee	KY
95	21133	Letcher	KY
95	21153	Magoffin	KY
95	21159	Martin	KY
95	21175	Morgan	KY
95	21189	Owsley	KY
95	21193	Perry	KY
95	21195	Pike	KY
95	21197	Powell	KY
95	21237	Wolfe	KY
95	51021	Bland	VA
95	51027	Buchanan	VA
95	51051	Dickenson	VA
95	51105	Lee	VA
95	51720	Norton City	VA
95	51167	Russell	VA
95	51185	Tazewell	VA
95	51195	Wise	VA
95	54047	McDowell	WV
95	54055	Mercer	WV
95	54059	Mingo	WV
96	21001	Adair	KY
96	21013	Bell	KY
96	21021	Boyle	KY
96	21045	Casey	KY
96	21051	Clay	KY
96	21053	Clinton	KY
96	21079	Garrard	KY
96	21087	Green	KY
96	21095	Harlan	KY
96	21121	Knox	KY
96	21125	Laurel	KY
96	21131	Leslie	KY
96	21137	Lincoln	KY
96	21151	Madison	KY
96	21147	McCreary	KY
96	21199	Pulaski	KY
96	21203	Rockcastle	KY
96	21207	Russell	KY
96	21217	Taylor	KY
96	21231	Wayne	KY
96	21235	Whitley	KY
96	47025	Claiborne	TN
97	19143	Osceola	IA
97	27013	Blue Earth	MN
97	27015	Brown	MN
97	27023	Chippewa	MN
97	27033	Cottonwood	MN
97	27043	Faribault	MN
97	27047	Freeborn	MN
97	27063	Jackson	MN
97	27067	Kandiyohi	MN
97	27073	Lac qui Parle	MN
97	27079	Le Sueur	MN
97	27081	Lincoln	MN
97	27083	Lyon	MN
97	27091	Martin	MN
97	27085	McLeod	MN
97	27093	Meeker	MN
97	27101	Murray	MN
97	27103	Nicollet	MN
97	27105	Nobles	MN
97	27127	Redwood	MN
97	27129	Renville	MN
97	27131	Rice	MN
97	27143	Sibley	MN
97	27147	Steele	MN
97	27161	Waseca	MN
97	27165	Watonwan	MN
97	27173	Yellow Medicine	MN
98	47019	Carter	TN
98	47059	Greene	TN
98	47073	Hawkins	TN
98	47163	Sullivan	TN
98	47171	Unicoi	TN
98	47179	Washington	TN
98	51520	Bristol City	VA
98	51169	Scott	VA
98	51173	Smyth	VA
98	51191	Washington	VA
99	28003	Alcorn	MS
99	28013	Calhoun	MS
99	28017	Chickasaw	MS
99	28019	Choctaw	MS
99	28025	Clay	MS
99	28043	Grenada	MS
99	28057	Itawamba	MS
99	28081	Lee	MS
99	28087	Lowndes	MS
99	28095	Monroe	MS
99	28097	Montgomery	MS
99	28103	Noxubee	MS
99	28105	Oktibbeha	MS
99	28115	Pontotoc	MS
99	28117	Prentiss	MS
99	28139	Tippah	MS
99	28141	Tishomingo	MS
99	28145	Union	MS
99	28155	Webster	MS
99	28159	Winston	MS
99	47071	Hardin	TN
99	47109	McNairy	TN
100	37013	Beaufort	NC
100	37031	Carteret	NC
100	37049	Craven	NC
100	37055	Dare	NC
100	37079	Greene	NC
100	37095	Hyde	NC
100	37103	Jones	NC
100	37107	Lenoir	NC
100	37117	Martin	NC
100	37137	Pamlico	NC
100	37147	Pitt	NC
100	37177	Tyrrell	NC
100	37187	Washington	NC
101	20015	Butler	KS
101	20173	Sedgwick	KS
102	08015	Chaffee	CO
102	08019	Clear Creek	CO
102	08027	Custer	CO
102	08029	Delta	CO
102	08037	Eagle	CO
102	08043	Fremont	CO
102	08045	Garfield	CO
102	08049	Grand	CO
102	08051	Gunnison	CO
102	08053	Hinsdale	CO
102	08057	Jackson	CO
102	08065	Lake	CO
102	08077	Mesa	CO
102	08081	Moffat	CO
102	08085	Montrose	CO
102	08091	Ouray	CO
102	08093	Park	CO
102	08097	Pitkin	CO
102	08103	Rio Blanco	CO
102	08107	Routt	CO
102	08113	San Miguel	CO
102	08117	Summit	CO
103	51043	Clarke	VA
103	51061	Fauquier	VA
103	51069	Frederick	VA
103	51139	Page	VA
103	51157	Rappahannock	VA
103	51171	Shenandoah	VA
103	51187	Warren	VA
103	51840	Winchester City	VA
103	54003	Berkeley	WV
103	54023	Grant	WV
103	54027	Hampshire	WV
103	54031	Hardy	WV
103	54037	Jefferson	WV
103	54065	Morgan	WV
103	54083	Randolph	WV
103	54093	Tucker	WV
104	08069	Larimer	CO
104	08123	Weld	CO
105	13073	Columbia	GA
105	13181	Lincoln	GA
105	13189	McDuffie	GA
105	13245	Richmond	GA
105	13317	Wilkes	GA
105	45003	Aiken	SC
105	45037	Edgefield	SC
106	39009	Athens	OH
106	39047	Fayette	OH
106	39059	Guernsey	OH
106	39073	Hocking	OH
106	39079	Jackson	OH

PEA No.	Federal Information Processing System No.	County name	State
106	39115	Morgan	OH
106	39119	Muskingum	OH
106	39121	Noble	OH
106	39127	Perry	OH
106	39131	Pike	OH
106	39141	Ross	OH
106	39145	Scioto	OH
106	39163	Vinton	OH
107	23003	Aroostook	ME
107	23009	Hancock	ME
107	23011	Kennebec	ME
107	23019	Penobscot	ME
107	23021	Piscataquis	ME
107	23025	Somerset	ME
107	23027	Waldo	ME
107	23029	Washington	ME
108	19049	Dallas	IA
108	19153	Polk	IA
108	19181	Warren	IA
109	37065	Edgecombe	NC
109	37069	Franklin	NC
109	37077	Granville	NC
109	37083	Halifax	NC
109	37127	Nash	NC
109	37131	Northampton	NC
109	37145	Person	NC
109	37181	Vance	NC
109	37185	Warren	NC
109	37195	Wilson	NC
110	21075	Fulton	KY
110	21105	Hickman	KY
110	47005	Benton	TN
110	47017	Carroll	TN
110	47023	Chester	TN
110	47033	Crockett	TN
110	47039	Decatur	TN
110	47045	Dyer	TN
110	47047	Fayette	TN
110	47053	Gibson	TN
110	47069	Hardeman	TN
110	47075	Haywood	TN
110	47077	Henderson	TN
110	47079	Henry	TN
110	47095	Lake	TN
110	47097	Lauderdale	TN
110	47113	Madison	TN
110	47131	Obion	TN
110	47183	Weakley	TN
111	05007	Benton	AR
111	05087	Madison	AR
111	05143	Washington	AR
111	29119	McDonald	MO
111	40001	Adair	OK
111	40041	Delaware	OK
112	21003	Allen	KY
112	21009	Barren	KY
112	21031	Butler	KY
112	21057	Cumberland	KY
112	21061	Edmonson	KY
112	21099	Hart	KY
112	21141	Logan	KY
112	21169	Metcalfe	KY
112	21171	Monroe	KY
112	21213	Simpson	KY
112	21219	Todd	KY
112	21227	Warren	KY
112	47027	Clay	TN
112	47035	Cumberland	TN
112	47049	Fentress	TN
112	47087	Jackson	TN
112	47111	Macon	TN
112	47133	Overton	TN
112	47137	Pickett	TN
112	47141	Putnam	TN
112	47169	Trousdale	TN
113	42031	Clarion	PA
113	42039	Crawford	PA
113	42049	Erie	PA
113	42053	Forest	PA
113	42121	Venango	PA
113	42123	Warren	PA
114	42051	Fayette	PA
114	42059	Greene	PA
114	54001	Barbour	WV
114	54017	Doddridge	WV
114	54033	Harrison	WV
114	54041	Lewis	WV
114	54049	Marion	WV
114	54061	Monongalia	WV
114	54077	Preston	WV
114	54091	Taylor	WV
114	54097	Upshur	WV
115	37021	Buncombe	NC
115	37087	Haywood	NC
115	37089	Henderson	NC
115	37099	Jackson	NC
115	37115	Madison	NC
115	37173	Swain	NC
115	37175	Transylvania	NC
116	17007	Boone	IL
116	17201	Winnebago	IL
116	55105	Rock	WI
117	13045	Carroll	GA
117	13077	Coweta	GA
117	13143	Haralson	GA
117	13149	Heard	GA
117	13171	Lamar	GA
117	13199	Meriwether	GA
117	13231	Pike	GA
117	13255	Spalding	GA
117	13263	Talbot	GA
117	13285	Troup	GA
117	13293	Upson	GA
118	18005	Bartholomew	IN
118	18013	Brown	IN
118	18031	Decatur	IN
118	18041	Fayette	IN
118	18059	Hancock	IN
118	18065	Henry	IN
118	18071	Jackson	IN
118	18079	Jennings	IN
118	18135	Randolph	IN
118	18139	Rush	IN
118	18145	Shelby	IN
118	18161	Union	IN
118	18177	Wayne	IN
119	53005	Benton	WA
119	53021	Franklin	WA
119	53077	Yakima	WA
120	05027	Columbia	AR
120	05073	Lafayette	AR
120	22013	Bienville Parish	LA
120	22015	Bossier Parish	LA
120	22017	Caddo Parish	LA
120	22027	Claiborne Parish	LA
120	22119	Webster Parish	LA
120	22127	Winn Parish	LA
121	42009	Bedford	PA
121	42013	Blair	PA
121	42021	Cambria	PA
121	42061	Huntingdon	PA
121	42087	Mifflin	PA
121	42111	Somerset	PA
122	55025	Dane	WI
123	39005	Ashland	OH
123	39033	Crawford	OH
123	39067	Harrison	OH
123	39075	Holmes	OH
123	39139	Richland	OH
123	39157	Tuscarawas	OH
123	39169	Wayne	OH
124	53027	Grays Harbor	WA
124	53041	Lewis	WA
124	53045	Mason	WA
124	53049	Pacific	WA
124	53067	Thurston	WA
125	17013	Calhoun	IL
125	17083	Jersey	IL
125	17117	Macoupin	IL
125	17119	Madison	IL
125	29073	Gasconade	MO
125	29113	Lincoln	MO
125	29139	Montgomery	MO
125	29163	Pike	MO
125	29219	Warren	MO
126	04007	Gila	AZ
126	04009	Graham	AZ
126	04011	Greenlee	AZ
126	04021	Pinal	AZ
127	18027	Daviess	IN
127	18037	Dubois	IN
127	18051	Gibson	IN
127	18083	Knox	IN
127	18101	Martin	IN
127	18123	Perry	IN
127	18125	Pike	IN
127	18129	Posey	IN
127	18147	Spencer	IN
127	18163	Vanderburgh	IN
127	18173	Warrick	IN
128	13009	Baldwin	GA
128	13021	Bibb	GA
128	13023	Bleckley	GA
128	13091	Dodge	GA
128	13153	Houston	GA
128	13169	Jones	GA
128	13225	Peach	GA
128	13235	Pulaski	GA
128	13289	Twiggs	GA
128	13315	Wilcox	GA
128	13319	Wilkinson	GA
129	17001	Adams	IL
129	17009	Brown	IL
129	17017	Cass	IL
129	17021	Christian	IL
129	17061	Greene	IL
129	17107	Logan	IL
129	17129	Menard	IL
129	17135	Montgomery	IL
129	17137	Morgan	IL
129	17149	Pike	IL
129	17167	Sangamon	IL
129	17169	Schuyler	IL
129	17171	Scott	IL
130	53063	Spokane	WA
131	37037	Chatham	NC
131	37085	Harnett	NC
131	37101	Johnston	NC
131	37105	Lee	NC
131	37163	Sampson	NC
132	48007	Aransas	TX
132	48025	Bee	TX
132	48355	Nueces	TX

PEA No.	Federal Information Processing System No.	County name	State
132	48391	Refugio	TX
132	48409	San Patricio	TX
133	48005	Angelina	TX
133	48161	Freestone	TX
133	48225	Houston	TX
133	48289	Leon	TX
133	48293	Limestone	TX
133	48313	Madison	TX
133	48347	Nacogdoches	TX
133	48373	Polk	TX
133	48395	Robertson	TX
133	48403	Sabine	TX
133	48405	San Augustine	TX
133	48407	San Jacinto	TX
133	48419	Shelby	TX
133	48455	Trinity	TX
133	48471	Walker	TX
134	39031	Coshocton	OH
134	39083	Knox	OH
134	39089	Licking	OH
134	39091	Logan	OH
134	39101	Marion	OH
134	39117	Morrow	OH
134	39159	Union	OH
135	48199	Hardin	TX
135	48241	Jasper	TX
135	48245	Jefferson	TX
135	48351	Newton	TX
135	48361	Orange	TX
135	48457	Tyler	TX
136	42035	Clinton	PA
136	42037	Columbia	PA
136	42081	Lycoming	PA
136	42093	Montour	PA
136	42097	Northumberland	PA
136	42109	Snyder	PA
136	42113	Sullivan	PA
136	42119	Union	PA
136	42131	Wyoming	PA
137	27049	Goodhue	MN
137	55005	Barron	WI
137	55013	Burnett	WI
137	55017	Chippewa	WI
137	55033	Dunn	WI
137	55035	Eau Claire	WI
137	55091	Pepin	WI
137	55093	Pierce	WI
137	55095	Polk	WI
137	55107	Rusk	WI
137	55113	Sawyer	WI
137	55129	Washburn	WI
138	50001	Addison	VT
138	50005	Caledonia	VT
138	50007	Chittenden	VT
138	50011	Franklin	VT
138	50013	Grand Isle	VT
138	50015	Lamoille	VT
138	50019	Orleans	VT
138	50021	Rutland	VT
138	50023	Washington	VT
139	05001	Arkansas	AR
139	05003	Ashley	AR
139	05011	Bradley	AR
139	05013	Calhoun	AR
139	05017	Chicot	AR
139	05019	Clark	AR
139	05025	Cleveland	AR
139	05039	Dallas	AR
139	05041	Desha	AR
139	05043	Drew	AR
139	05051	Garland	AR
139	05053	Grant	AR
139	05057	Hempstead	AR
139	05059	Hot Spring	AR
139	05061	Howard	AR
139	05079	Lincoln	AR
139	05095	Monroe	AR
139	05097	Montgomery	AR
139	05099	Nevada	AR
139	05103	Ouachita	AR
139	05109	Pike	AR
139	05139	Union	AR
140	51033	Caroline	VA
140	51047	Culpeper	VA
140	51630	Fredericksburg City.	VA
140	51099	King George	VA
140	51113	Madison	VA
140	51137	Orange	VA
140	51177	Spotsylvania	VA
140	51179	Stafford	VA
140	51193	Westmoreland	VA
141	27001	Aitkin	MN
141	27007	Beltrami	MN
141	27021	Cass	MN
141	27029	Clearwater	MN
141	27035	Crow Wing	MN
141	27041	Douglas	MN
141	27051	Grant	MN
141	27057	Hubbard	MN
141	27059	Isanti	MN
141	27065	Kanabec	MN
141	27095	Mille Lacs	MN
141	27097	Morrison	MN
141	27115	Pine	MN
141	27121	Pope	MN
141	27149	Stevens	MN
141	27151	Swift	MN
141	27153	Todd	MN
141	27159	Wadena	MN
142	06009	Calaveras	CA
142	06043	Mariposa	CA
142	06047	Merced	CA
142	06069	San Benito	CA
142	06109	Tuolumne	CA
143	33003	Carroll	NH
143	33005	Cheshire	NH
143	33007	Coos	NH
143	33009	Grafton	NH
143	33019	Sullivan	NH
143	50009	Essex	VT
143	50017	Orange	VT
143	50025	Windham	VT
143	50027	Windsor	VT
144	48063	Camp	TX
144	48119	Delta	TX
144	48147	Fannin	TX
144	48159	Franklin	TX
144	48223	Hopkins	TX
144	48231	Hunt	TX
144	48277	Lamar	TX
144	48379	Rains	TX
144	48387	Red River	TX
144	48449	Titus	TX
144	48459	Upshur	TX
144	48467	Van Zandt	TX
144	48499	Wood	TX
145	47003	Bedford	TN
145	47015	Cannon	TN
145	47031	Coffee	TN
145	47041	DeKalb	TN
145	47051	Franklin	TN
145	47055	Giles	TN
145	47061	Grundy	TN
145	47117	Marshall	TN
145	47119	Maury	TN
145	47127	Moore	TN
145	47159	Smith	TN
145	47175	Van Buren	TN
145	47177	Warren	TN
145	47185	White	TN
146	37019	Brunswick	NC
146	37047	Columbus	NC
146	37129	New Hanover	NC
146	37141	Pender	NC
147	10005	Sussex	DE
147	24039	Somerset	MD
147	24045	Wicomico	MD
147	24047	Worcester	MD
147	51001	Accomack	VA
147	51131	Northampton	VA
148	53029	Island	WA
148	53055	San Juan	WA
148	53057	Skagit	WA
148	53073	Whatcom	WA
149	28039	George	MS
149	28045	Hancock	MS
149	28047	Harrison	MS
149	28059	Jackson	MS
149	28131	Stone	MS
150	29029	Camden	MO
150	29059	Dallas	MO
150	29065	Dent	MO
150	29085	Hickory	MO
150	29105	Laclede	MO
150	29125	Maries	MO
150	29131	Miller	MO
150	29141	Morgan	MO
150	29149	Oregon	MO
150	29161	Phelps	MO
150	29167	Polk	MO
150	29169	Pulaski	MO
150	29203	Shannon	MO
150	29215	Texas	MO
150	29225	Webster	MO
150	29229	Wright	MO
151	37067	Forsyth	NC
151	37169	Stokes	NC
152	48183	Gregg	TX
152	48203	Harrison	TX
152	48423	Smith	TX
153	55027	Dodge	WI
153	55039	Fond du Lac	WI
153	55047	Green Lake	WI
153	55055	Jefferson	WI
153	55127	Walworth	WI
154	45033	Dillon	SC
154	45043	Georgetown	SC
154	45051	Horry	SC
154	45067	Marion	SC
155	55015	Calumet	WI
155	55087	Outagamie	WI
155	55139	Winnebago	WI
156	16001	Ada	ID
157	04012	La Paz	AZ
157	04027	Yuma	AZ
157	06025	Imperial	CA
158	30029	Flathead	MT
158	30039	Granite	MT
158	30047	Lake	MT
158	30049	Lewis and Clark	MT
158	30053	Lincoln	MT
158	30061	Mineral	MT

PEA No.	Federal Information Processing System No.	County name	State
158	30063	Missoula	MT
158	30077	Powell	MT
158	30081	Ravalli	MT
158	30089	Sanders	MT
159	13007	Baker	GA
159	13017	Ben Hill	GA
159	13019	Berrien	GA
159	13027	Brooks	GA
159	13037	Calhoun	GA
159	13061	Clay	GA
159	13071	Colquitt	GA
159	13075	Cook	GA
159	13101	Echols	GA
159	13155	Irwin	GA
159	13173	Lanier	GA
159	13185	Lowndes	GA
159	13205	Mitchell	GA
159	13243	Randolph	GA
159	13273	Terrell	GA
159	13277	Tift	GA
159	13287	Turner	GA
159	13321	Worth	GA
160	48015	Austin	TX
160	48051	Burleson	TX
160	48057	Calhoun	TX
160	48089	Colorado	TX
160	48123	DeWitt	TX
160	48149	Fayette	TX
160	48175	Goliad	TX
160	48239	Jackson	TX
160	48285	Lavaca	TX
160	48321	Matagorda	TX
160	48469	Victoria	TX
160	48477	Washington	TX
160	48481	Wharton	TX
161	17003	Alexander	IL
161	17055	Franklin	IL
161	17059	Gallatin	IL
161	17065	Hamilton	IL
161	17069	Hardin	IL
161	17077	Jackson	IL
161	17081	Jefferson	IL
161	17087	Johnson	IL
161	17145	Perry	IL
161	17151	Pope	IL
161	17153	Pulaski	IL
161	17157	Randolph	IL
161	17165	Saline	IL
161	17181	Union	IL
161	17189	Washington	IL
161	17199	Williamson	IL
162	18025	Crawford	IN
162	18061	Harrison	IN
162	18175	Washington	IN
162	21027	Breckinridge	KY
162	21085	Grayson	KY
162	21093	Hardin	KY
162	21123	Larue	KY
162	21155	Marion	KY
162	21163	Meade	KY
162	21179	Nelson	KY
162	21215	Spencer	KY
162	21229	Washington	KY
163	19163	Scott	IA
163	17073	Henry	IL
163	17161	Rock Island	IL
164	01001	Autauga	AL
164	01051	Elmore	AL
164	01101	Montgomery	AL
165	01017	Chambers	AL
165	01019	Cherokee	AL
165	01029	Cleburne	AL
165	01111	Randolph	AL
165	13015	Bartow	GA
165	13055	Chattooga	GA
165	13115	Floyd	GA
165	13233	Polk	GA
166	06049	Modoc	CA
166	06089	Shasta	CA
166	06093	Siskiyou	CA
166	06103	Tehama	CA
166	41035	Klamath	OR
167	51005	Alleghany	VA
167	51015	Augusta	VA
167	51017	Bath	VA
167	51530	Buena Vista City	VA
167	51580	Covington City	VA
167	51660	Harrisonburg City.	VA
167	51091	Highland	VA
167	51678	Lexington City	VA
167	51163	Rockbridge	VA
167	51165	Rockingham	VA
167	51790	Staunton City	VA
167	51820	Waynesboro City.	VA
167	54025	Greenbrier	WV
167	54071	Pendleton	WV
167	54075	Pocahontas	WV
168	17143	Peoria	IL
168	17179	Tazewell	IL
168	17203	Woodford	IL
169	37061	Duplin	NC
169	37133	Onslow	NC
169	37191	Wayne	NC
170	01005	Barbour	AL
170	01031	Coffee	AL
170	01039	Covington	AL
170	01045	Dale	AL
170	01061	Geneva	AL
170	01067	Henry	AL
170	01069	Houston	AL
170	12059	Holmes	FL
170	12133	Washington	FL
170	13239	Quitman	GA
171	05033	Crawford	AR
171	05047	Franklin	AR
171	05083	Logan	AR
171	05127	Scott	AR
171	05131	Sebastian	AR
171	40061	Haskell	OK
171	40077	Latimer	OK
171	40079	Le Flore	OK
171	40135	Sequoyah	OK
172	27017	Carlton	MN
172	27031	Cook	MN
172	27061	Itasca	MN
172	27071	Koochiching	MN
172	27075	Lake	MN
172	27137	St. Louis	MN
172	55031	Douglas	WI
173	51019	Bedford	VA
173	51515	Bedford City	VA
173	51035	Carroll	VA
173	51063	Floyd	VA
173	51067	Franklin	VA
173	51071	Giles	VA
173	51121	Montgomery	VA
173	51155	Pulaski	VA
173	51750	Radford City	VA
173	54063	Monroe	WV
174	29043	Christian	MO
174	29077	Greene	MO
175	28009	Benton	MS
175	28033	DeSoto	MS
175	28071	Lafayette	MS
175	28093	Marshall	MS
175	28107	Panola	MS
175	28119	Quitman	MS
175	28137	Tate	MS
175	28143	Tunica	MS
175	28161	Yalobusha	MS
176	19015	Boone	IA
176	19025	Calhoun	IA
176	19027	Carroll	IA
176	19047	Crawford	IA
176	19073	Greene	IA
176	19075	Grundy	IA
176	19079	Hamilton	IA
176	19083	Hardin	IA
176	19091	Humboldt	IA
176	19127	Marshall	IA
176	19161	Sac	IA
176	19169	Story	IA
176	19171	Tama	IA
176	19187	Webster	IA
176	19197	Wright	IA
177	13029	Bryan	GA
177	13051	Chatham	GA
177	13103	Effingham	GA
178	20003	Anderson	KS
178	20011	Bourbon	KS
178	20059	Franklin	KS
178	20107	Linn	KS
178	20121	Miami	KS
178	29013	Bates	MO
178	29015	Benton	MO
178	29039	Cedar	MO
178	29083	Henry	MO
178	29101	Johnson	MO
178	29107	Lafayette	MO
178	29159	Pettis	MO
178	29195	Saline	MO
178	29185	St. Clair	MO
178	29217	Vernon	MO
179	19007	Appanoose	IA
179	19051	Davis	IA
179	19057	Des Moines	IA
179	19087	Henry	IA
179	19099	Jasper	IA
179	19101	Jefferson	IA
179	19107	Keokuk	IA
179	19111	Lee	IA
179	19123	Mahaska	IA
179	19125	Marion	IA
179	19135	Monroe	IA
179	19157	Poweshiek	IA
179	19177	Van Buren	IA
179	19179	Wapello	IA
179	17067	Hancock	IL
179	17071	Henderson	IL
179	29045	Clark	MO
179	29199	Scotland	MO
180	04005	Coconino	AZ
180	04025	Yavapai	AZ
181	05081	Little River	AR
181	05091	Miller	AR
181	05113	Polk	AR
181	05133	Sevier	AR
181	40013	Bryan	OK
181	40023	Choctaw	OK
181	40089	McCurtain	OK
181	40127	Pushmataha	OK

PEA No.	Federal Information Processing System No.	County name	State
181	48037	Bowie	TX
181	48067	Cass	TX
181	48315	Marion	TX
181	48343	Morris	TX
182	19103	Johnson	IA
182	19113	Linn	IA
183	29019	Boone	MO
183	29027	Callaway	MO
183	29051	Cole	MO
183	29053	Cooper	MO
183	29089	Howard	MO
183	29135	Moniteau	MO
183	29151	Osage	MO
184	22021	Caldwell Parish	LA
184	22035	East Carroll Parish.	LA
184	22041	Franklin Parish	LA
184	22049	Jackson Parish	LA
184	22061	Lincoln Parish	LA
184	22067	Morehouse Parish.	LA
184	22073	Ouachita Parish	LA
184	22083	Richland Parish	LA
184	22111	Union Parish	LA
184	22123	West Carroll Parish.	LA
185	26013	Baraga	MI
185	26043	Dickinson	MI
185	26053	Gogebic	MI
185	26061	Houghton	MI
185	26071	Iron	MI
185	26083	Keweenaw	MI
185	26103	Marquette	MI
185	26109	Menominee	MI
185	26131	Ontonagon	MI
185	55037	Florence	WI
185	55051	Iron	WI
185	55075	Marinette	WI
185	55078	Menominee	WI
185	55083	Oconto	WI
185	55115	Shawano	WI
186	45023	Chester	SC
186	45057	Lancaster	SC
186	45091	York	SC
187	16005	Bannock	ID
187	16011	Bingham	ID
187	16019	Bonneville	ID
187	16033	Clark	ID
187	16043	Fremont	ID
187	16051	Jefferson	ID
187	16065	Madison	ID
187	16077	Power	ID
187	16081	Teton	ID
188	36003	Allegany	NY
188	36009	Cattaraugus	NY
188	36013	Chautauqua	NY
188	42083	McKean	PA
188	42105	Potter	PA
189	22003	Allen Parish	LA
189	22009	Avoyelles Parish	LA
189	22011	Beauregard Parish.	LA
189	22043	Grant Parish	LA
189	22059	La Salle Parish	LA
189	22079	Rapides Parish	LA
189	22115	Vernon Parish	LA
190	30019	Daniels	MT
190	30021	Dawson	MT
190	30031	Gallatin	MT
190	30033	Garfield	MT
190	30037	Golden Valley	MT
190	30057	Madison	MT
190	30055	McCone	MT
190	30065	Musselshell	MT
190	30067	Park	MT
190	30069	Petroleum	MT
190	30083	Richland	MT
190	30085	Roosevelt	MT
190	30091	Sheridan	MT
190	30095	Stillwater	MT
190	30097	Sweet Grass	MT
190	30105	Valley	MT
190	30111	Yellowstone	MT
191	51007	Amelia	VA
191	51025	Brunswick	VA
191	51029	Buckingham	VA
191	51037	Charlotte	VA
191	51570	Colonial Heights City.	VA
191	51049	Cumberland	VA
191	51053	Dinwiddie	VA
191	51595	Emporia City	VA
191	51081	Greensville	VA
191	51670	Hopewell City	VA
191	51111	Lunenburg	VA
191	51117	Mecklenburg	VA
191	51135	Nottoway	VA
191	51730	Petersburg City	VA
191	51147	Prince Edward	VA
191	51149	Prince George	VA
191	51183	Sussex	VA
192	37051	Cumberland	NC
193	20005	Atchison	KS
193	20043	Doniphan	KS
193	20045	Douglas	KS
193	20103	Leavenworth	KS
193	29003	Andrew	MO
193	29021	Buchanan	MO
194	42023	Cameron	PA
194	42027	Centre	PA
194	42033	Clearfield	PA
194	42047	Elk	PA
194	42065	Jefferson	PA
195	16009	Benewah	ID
195	16017	Bonner	ID
195	16021	Boundary	ID
195	16035	Clearwater	ID
195	16049	Idaho	ID
195	16055	Kootenai	ID
195	16057	Latah	ID
195	16061	Lewis	ID
195	16069	Nez Perce	ID
195	16079	Shoshone	ID
196	29017	Bollinger	MO
196	29023	Butler	MO
196	29031	Cape Girardeau	MO
196	29035	Carter	MO
196	29093	Iron	MO
196	29123	Madison	MO
196	29133	Mississippi	MO
196	29143	New Madrid	MO
196	29157	Perry	MO
196	29179	Reynolds	MO
196	29181	Ripley	MO
196	29201	Scott	MO
196	29207	Stoddard	MO
196	29223	Wayne	MO
197	39013	Belmont	OH
197	39081	Jefferson	OH
197	39111	Monroe	OH
197	54009	Brooke	WV
197	54029	Hancock	WV
197	54051	Marshall	WV
197	54069	Ohio	WV
197	54095	Tyler	WV
197	54103	Wetzel	WV
198	05021	Clay	AR
198	05031	Craighead	AR
198	05055	Greene	AR
198	05075	Lawrence	AR
198	05093	Mississippi	AR
198	05111	Poinsett	AR
198	05121	Randolph	AR
198	29069	Dunklin	MO
198	29155	Pemiscot	MO
199	13111	Fannin	GA
199	13123	Gilmer	GA
199	13129	Gordon	GA
199	13213	Murray	GA
199	13227	Pickens	GA
199	13281	Towns	GA
199	13291	Union	GA
199	13313	Whitfield	GA
200	37033	Caswell	NC
200	37157	Rockingham	NC
200	51590	Danville City	VA
200	51089	Henry	VA
200	51690	Martinsville City	VA
200	51141	Patrick	VA
200	51143	Pittsylvania	VA
201	48019	Bandera	TX
201	48127	Dimmit	TX
201	48163	Frio	TX
201	48171	Gillespie	TX
201	48259	Kendall	TX
201	48265	Kerr	TX
201	48283	La Salle	TX
201	48323	Maverick	TX
201	48325	Medina	TX
201	48385	Real	TX
201	48463	Uvalde	TX
201	48507	Zavala	TX
202	01113	Russell	AL
202	13053	Chattahoochee	GA
202	13145	Harris	GA
202	13197	Marion	GA
202	13215	Muscogee	GA
202	13259	Stewart	GA
202	13307	Webster	GA
203	26009	Antrim	MI
203	26019	Benzie	MI
203	26055	Grand Traverse	MI
203	26079	Kalkaska	MI
203	26085	Lake	MI
203	26089	Leelanau	MI
203	26101	Manistee	MI
203	26105	Mason	MI
203	26113	Missaukee	MI
203	26133	Osceola	MI
203	26165	Wexford	MI
204	21055	Crittenden	KY
204	21059	Daviess	KY
204	21091	Hancock	KY
204	21101	Henderson	KY
204	21107	Hopkins	KY
204	21149	McLean	KY
204	21177	Muhlenberg	KY
204	21183	Ohio	KY
204	21225	Union	KY
204	21233	Webster	KY
205	06023	Humboldt	CA
205	06033	Lake	CA
205	06045	Mendocino	CA

PEA No.	Federal Information Processing System No.	County name	State
205	06105	Trinity	CA
206	53001	Adams	WA
206	53007	Chelan	WA
206	53017	Douglas	WA
206	53025	Grant	WA
206	53037	Kittitas	WA
206	53047	Okanogan	WA
207	13003	Atkinson	GA
207	13005	Bacon	GA
207	13025	Brantley	GA
207	13039	Camden	GA
207	13049	Charlton	GA
207	13065	Clinch	GA
207	13069	Coffee	GA
207	13127	Glynn	GA
207	13191	McIntosh	GA
207	13229	Pierce	GA
207	13299	Ware	GA
208	37097	Iredell	NC
208	37159	Rowan	NC
209	55009	Brown	WI
209	55029	Door	WI
209	55061	Kewaunee	WI
210	36007	Broome	NY
210	36107	Tioga	NY
210	42115	Susquehanna	PA
211	40005	Atoka	OK
211	40019	Carter	OK
211	40029	Coal	OK
211	40033	Cotton	OK
211	40049	Garvin	OK
211	40063	Hughes	OK
211	40067	Jefferson	OK
211	40069	Johnston	OK
211	40085	Love	OK
211	40095	Marshall	OK
211	40099	Murray	OK
211	40107	Okfuskee	OK
211	40123	Pontotoc	OK
211	40133	Seminole	OK
211	40137	Stephens	OK
212	02020	Anchorage Borough.	AK
213	41013	Crook	OR
213	41017	Deschutes	OR
213	41027	Hood River	OR
213	41031	Jefferson	OR
213	41037	Lake	OR
213	41055	Sherman	OR
213	41065	Wasco	OR
213	53039	Klickitat	WA
213	53059	Skamania	WA
214	31109	Lancaster	NE
215	37003	Alexander	NC
215	37023	Burke	NC
215	37035	Catawba	NC
216	20021	Cherokee	KS
216	20037	Crawford	KS
216	29011	Barton	MO
216	29097	Jasper	MO
216	29145	Newton	MO
216	40115	Ottawa	OK
217	48303	Lubbock	TX
218	55073	Marathon	WI
218	55097	Portage	WI
218	55141	Wood	WI
219	19019	Buchanan	IA
219	19021	Buena Vista	IA
219	19023	Butler	IA
219	19033	Cerro Gordo	IA
219	19037	Chickasaw	IA
219	19041	Clay	IA
219	19059	Dickinson	IA
219	19063	Emmet	IA
219	19065	Fayette	IA
219	19067	Floyd	IA
219	19069	Franklin	IA
219	19081	Hancock	IA
219	19109	Kossuth	IA
219	19131	Mitchell	IA
219	19147	Palo Alto	IA
219	19151	Pocahontas	IA
219	19189	Winnebago	IA
219	19195	Worth	IA
220	48135	Ector	TX
220	48329	Midland	TX
221	48247	Jim Hogg	TX
221	48479	Webb	TX
221	48505	Zapata	TX
222	47029	Cocke	TN
222	47057	Grainger	TN
222	47063	Hamblen	TN
222	47067	Hancock	TN
222	47089	Jefferson	TN
222	47155	Sevier	TN
223	19061	Dubuque	IA
223	19097	Jackson	IA
223	17085	Jo Daviess	IL
223	55043	Grant	WI
223	55045	Green	WI
223	55049	Iowa	WI
223	55065	Lafayette	WI
224	17015	Carroll	IL
224	17037	DeKalb	IL
224	17103	Lee	IL
224	17141	Ogle	IL
224	17177	Stephenson	IL
225	27055	Houston	MN
225	55053	Jackson	WI
225	55063	La Crosse	WI
225	55081	Monroe	WI
225	55121	Trempealeau	WI
225	55123	Vernon	WI
226	39003	Allen	OH
226	39011	Auglaize	OH
226	39107	Mercer	OH
226	39137	Putnam	OH
226	39161	Van Wert	OH
227	36045	Jefferson	NY
227	36049	Lewis	NY
227	36089	St. Lawrence	NY
228	51023	Botetourt	VA
228	51045	Craig	VA
228	51161	Roanoke	VA
228	51770	Roanoke City	VA
228	51775	Salem City	VA
229	32009	Esmeralda	NV
229	32017	Lincoln	NV
229	32021	Mineral	NV
229	32023	Nye	NV
229	49001	Beaver	UT
229	49017	Garfield	UT
229	49021	Iron	UT
229	49031	Piute	UT
229	49053	Washington	UT
230	37017	Bladen	NC
230	37093	Hoke	NC
230	37155	Robeson	NC
230	37165	Scotland	NC
231	31003	Antelope	NE
231	31011	Boone	NE
231	31021	Burt	NE
231	31023	Butler	NE
231	31025	Cass	NE
231	31037	Colfax	NE
231	31039	Cuming	NE
231	31053	Dodge	NE
231	31119	Madison	NE
231	31125	Nance	NE
231	31139	Pierce	NE
231	31141	Platte	NE
231	31143	Polk	NE
231	31155	Saunders	NE
231	31167	Stanton	NE
231	31177	Washington	NE
231	31179	Wayne	NE
232	20013	Brown	KS
232	20031	Coffey	KS
232	20085	Jackson	KS
232	20087	Jefferson	KS
232	20139	Osage	KS
232	20177	Shawnee	KS
233	37045	Cleveland	NC
233	37109	Lincoln	NC
233	37161	Rutherford	NC
234	37057	Davidson	NC
234	37059	Davie	NC
234	37197	Yadkin	NC
235	48375	Potter	TX
235	48381	Randall	TX
236	31001	Adams	NE
236	31015	Boyd	NE
236	31017	Brown	NE
236	31019	Buffalo	NE
236	31035	Clay	NE
236	31041	Custer	NE
236	31047	Dawson	NE
236	31071	Garfield	NE
236	31077	Greeley	NE
236	31079	Hall	NE
236	31081	Hamilton	NE
236	31089	Holt	NE
236	31093	Howard	NE
236	31103	Keya Paha	NE
236	31115	Loup	NE
236	31121	Merrick	NE
236	31129	Nuckolls	NE
236	31149	Rock	NE
236	31163	Sherman	NE
236	31175	Valley	NE
236	31181	Webster	NE
236	31183	Wheeler	NE
237	13031	Bulloch	GA
237	13043	Candler	GA
237	13109	Evans	GA
237	13179	Liberty	GA
237	13183	Long	GA
237	13251	Screven	GA
237	13267	Tattnall	GA
237	13305	Wayne	GA
238	45031	Darlington	SC
238	45041	Florence	SC
238	45089	Williamsburg	SC
239	37025	Cabarrus	NC
239	37167	Stanly	NC
240	51003	Albemarle	VA
240	51540	Charlottesville City.	VA
240	51065	Fluvanna	VA
240	51079	Greene	VA
240	51109	Louisa	VA
240	51125	Nelson	VA
241	13001	Appling	GA

PEA No.	Federal Information Processing System No.	County name	State
241	13107	Emanuel	GA
241	13141	Hancock	GA
241	13161	Jeff Davis	GA
241	13167	Johnson	GA
241	13175	Laurens	GA
241	13209	Montgomery	GA
241	13237	Putnam	GA
241	13271	Telfair	GA
241	13279	Toombs	GA
241	13283	Treutlen	GA
241	13303	Washington	GA
241	13309	Wheeler	GA
242	22019	Calcasieu Parish	LA
242	22023	Cameron Parish	LA
242	22053	Jefferson Davis Parish.	LA
243	17127	Massac	IL
243	21007	Ballard	KY
243	21033	Caldwell	KY
243	21035	Calloway	KY
243	21039	Carlisle	KY
243	21083	Graves	KY
243	21139	Livingston	KY
243	21143	Lyon	KY
243	21157	Marshall	KY
243	21145	McCracken	KY
244	20017	Chase	KS
244	20027	Clay	KS
244	20041	Dickinson	KS
244	20061	Geary	KS
244	20111	Lyon	KS
244	20117	Marshall	KS
244	20127	Morris	KS
244	20131	Nemaha	KS
244	20149	Pottawatomie	KS
244	20161	Riley	KS
244	20197	Wabaunsee	KS
244	20201	Washington	KS
245	29009	Barry	MO
245	29057	Dade	MO
245	29067	Douglas	MO
245	29091	Howell	MO
245	29109	Lawrence	MO
245	29153	Ozark	MO
245	29209	Stone	MO
245	29213	Taney	MO
246	01027	Clay	AL
246	01037	Coosa	AL
246	01081	Lee	AL
246	01087	Macon	AL
246	01123	Tallapoosa	AL
247	16027	Canyon	ID
247	16039	Elmore	ID
247	16073	Owyhee	ID
248	45027	Clarendon	SC
248	45055	Kershaw	SC
248	45061	Lee	SC
248	45085	Sumter	SC
249	48041	Brazos	TX
249	48185	Grimes	TX
250	35013	Dona Ana	NM
250	35051	Sierra	NM
251	20007	Barber	KS
251	20009	Barton	KS
251	20033	Comanche	KS
251	20047	Edwards	KS
251	20051	Ellis	KS
251	20053	Ellsworth	KS
251	20097	Kiowa	KS
251	20115	Marion	KS
251	20113	McPherson	KS
251	20135	Ness	KS
251	20145	Pawnee	KS
251	20151	Pratt	KS
251	20159	Rice	KS
251	20165	Rush	KS
251	20167	Russell	KS
251	20169	Saline	KS
251	20185	Stafford	KS
251	20195	Trego	KS
252	19035	Cherokee	IA
252	19093	Ida	IA
252	19133	Monona	IA
252	19141	O'Brien	IA
252	19149	Plymouth	IA
252	19167	Sioux	IA
252	19193	Woodbury	IA
252	46127	Union	SD
253	55001	Adams	WI
253	55021	Columbia	WI
253	55023	Crawford	WI
253	55057	Juneau	WI
253	55077	Marquette	WI
253	55103	Richland	WI
253	55111	Sauk	WI
254	55003	Ashland	WI
254	55007	Bayfield	WI
254	55019	Clark	WI
254	55041	Forest	WI
254	55067	Langlade	WI
254	55069	Lincoln	WI
254	55085	Oneida	WI
254	55099	Price	WI
254	55119	Taylor	WI
254	55125	Vilas	WI
255	28011	Bolivar	MS
255	28015	Carroll	MS
255	28027	Coahoma	MS
255	28053	Humphreys	MS
255	28055	Issaquena	MS
255	28083	Leflore	MS
255	28125	Sharkey	MS
255	28133	Sunflower	MS
255	28135	Tallahatchie	MS
255	28151	Washington	MS
256	51009	Amherst	VA
256	51011	Appomattox	VA
256	51031	Campbell	VA
256	51083	Halifax	VA
256	51680	Lynchburg City	VA
257	56001	Albany	WY
257	56005	Campbell	WY
257	56009	Converse	WY
257	56011	Crook	WY
257	56021	Laramie	WY
257	56027	Niobrara	WY
257	56031	Platte	WY
257	56045	Weston	WY
258	01009	Blount	AL
258	01043	Cullman	AL
258	01057	Fayette	AL
258	01093	Marion	AL
258	01133	Winston	AL
259	35005	Chaves	NM
259	35015	Eddy	NM
259	35025	Lea	NM
259	48165	Gaines	TX
259	48501	Yoakum	TX
260	26007	Alpena	MI
260	26029	Charlevoix	MI
260	26031	Cheboygan	MI
260	26039	Crawford	MI
260	26047	Emmet	MI
260	26119	Montmorency	MI
260	26135	Oscoda	MI
260	26137	Otsego	MI
260	26141	Presque Isle	MI
260	26143	Roscommon	MI
261	27027	Clay	MN
261	38017	Cass	ND
262	45013	Beaufort	SC
262	45049	Hampton	SC
262	45053	Jasper	SC
263	35019	Guadalupe	NM
263	35028	Los Alamos	NM
263	35033	Mora	NM
263	35047	San Miguel	NM
263	35049	Santa Fe	NM
264	02013	Aleutians East Borough.	AK
264	02016	Aleutians West Census Area.	AK
264	02050	Bethel Census Area.	AK
264	02060	Bristol Bay Borough.	AK
264	02070	Dillingham Census Area.	AK
264	02122	Kenai Peninsula Borough.	AK
264	02150	Kodiak Island Borough.	AK
264	02164	Lake and Peninsula Borough.	AK
264	02170	Matanuska-Susitna Borough.	AK
264	02261	Valdez-Cordova Census Area.	AK
265	19089	Howard	IA
265	19191	Winneshiek	IA
265	27039	Dodge	MN
265	27045	Fillmore	MN
265	27099	Mower	MN
265	27157	Wabasha	MN
265	27169	Winona	MN
265	55011	Buffalo	WI
266	37009	Ashe	NC
266	37011	Avery	NC
266	37027	Caldwell	NC
266	37189	Watauga	NC
266	47091	Johnson	TN
267	55071	Manitowoc	WI
267	55117	Sheboygan	WI
268	19031	Cedar	IA
268	19045	Clinton	IA
268	19115	Louisa	IA
268	19139	Muscatine	IA
268	17131	Mercer	IL
268	17195	Whiteside	IL
269	55101	Racine	WI
270	17011	Bureau	IL
270	17099	La Salle	IL
270	17105	Livingston	IL
270	17155	Putnam	IL
271	36015	Chemung	NY
271	42015	Bradford	PA
271	42117	Tioga	PA
272	48035	Bosque	TX
272	48049	Brown	TX
272	48083	Coleman	TX
272	48093	Comanche	TX
272	48133	Eastland	TX

PEA No.	Federal Information Processing System No.	County name	State
272	48143	Erath	TX
272	48193	Hamilton	TX
272	48217	Hill	TX
272	48333	Mills	TX
272	48425	Somervell	TX
273	17039	De Witt	IL
273	17113	McLean	IL
274	16013	Blaine	ID
274	16025	Camas	ID
274	16031	Cassia	ID
274	16047	Gooding	ID
274	16053	Jerome	ID
274	16063	Lincoln	ID
274	16067	Minidoka	ID
274	16083	Twin Falls	ID
275	48001	Anderson	TX
275	48213	Henderson	TX
275	48349	Navarro	TX
276	30011	Carter	MT
276	38001	Adams	ND
276	46019	Butte	SD
276	46033	Custer	SD
276	46047	Fall River	SD
276	46063	Harding	SD
276	46081	Lawrence	SD
276	46093	Meade	SD
276	46103	Pennington	SD
276	46105	Perkins	SD
277	20035	Cowley	KS
277	20049	Elk	KS
277	20073	Greenwood	KS
277	20077	Harper	KS
277	20079	Harvey	KS
277	20095	Kingman	KS
277	20155	Reno	KS
277	20191	Sumner	KS
278	20001	Allen	KS
278	20019	Chautauqua	KS
278	20099	Labette	KS
278	20125	Montgomery	KS
278	20133	Neosho	KS
278	20205	Wilson	KS
278	20207	Woodson	KS
278	40035	Craig	OK
278	40105	Nowata	OK
278	40147	Washington	OK
279	16041	Franklin	ID
279	16071	Oneida	ID
279	49003	Box Elder	UT
279	49005	Cache	UT
280	20025	Clark	KS
280	20055	Finney	KS
280	20057	Ford	KS
280	20067	Grant	KS
280	20069	Gray	KS
280	20071	Greeley	KS
280	20075	Hamilton	KS
280	20081	Haskell	KS
280	20083	Hodgeman	KS
280	20093	Kearny	KS
280	20101	Lane	KS
280	20119	Meade	KS
280	20129	Morton	KS
280	20171	Scott	KS
280	20175	Seward	KS
280	20187	Stanton	KS
280	20189	Stevens	KS
280	20203	Wichita	KS
280	40007	Beaver	OK
280	40025	Cimarron	OK
280	40139	Texas	OK
281	40091	McIntosh	OK
281	40101	Muskogee	OK
281	40111	Okmulgee	OK
281	40121	Pittsburg	OK
282	17057	Fulton	IL
282	17095	Knox	IL
282	17123	Marshall	IL
282	17125	Mason	IL
282	17109	McDonough	IL
282	17175	Stark	IL
282	17187	Warren	IL
283	36019	Clinton	NY
283	36031	Essex	NY
283	36033	Franklin	NY
284	45001	Abbeville	SC
284	45047	Greenwood	SC
284	45059	Laurens	SC
284	45065	McCormick	SC
285	04001	Apache	AZ
285	35006	Cibola	NM
285	35031	McKinley	NM
286	46099	Minnehaha	SD
287	55059	Kenosha	WI
288	48059	Callahan	TX
288	48253	Jones	TX
288	48441	Taylor	TX
289	49007	Carbon	UT
289	49013	Duchesne	UT
289	49015	Emery	UT
289	49019	Grand	UT
289	49029	Morgan	UT
289	49043	Summit	UT
289	49047	Uintah	UT
289	49051	Wasatch	UT
289	49055	Wayne	UT
290	27011	Big Stone	MN
290	27117	Pipestone	MN
290	27133	Rock	MN
290	27155	Traverse	MN
290	46005	Beadle	SD
290	46011	Brookings	SD
290	46025	Clark	SD
290	46029	Codington	SD
290	46039	Deuel	SD
290	46051	Grant	SD
290	46057	Hamlin	SD
290	46077	Kingsbury	SD
290	46079	Lake	SD
290	46097	Miner	SD
290	46101	Moody	SD
290	46109	Roberts	SD
290	46111	Sanborn	SD
291	37123	Montgomery	NC
291	37125	Moore	NC
291	37153	Richmond	NC
292	08101	Pueblo	CO
293	21221	Trigg	KY
293	47081	Hickman	TN
293	47083	Houston	TN
293	47085	Humphreys	TN
293	47099	Lawrence	TN
293	47101	Lewis	TN
293	47135	Perry	TN
293	47161	Stewart	TN
293	47181	Wayne	TN
294	19013	Black Hawk	IA
294	19017	Bremer	IA
295	40071	Kay	OK
295	40103	Noble	OK
295	40117	Pawnee	OK
295	40119	Payne	OK
296	42107	Schuylkill	PA
297	41001	Baker	OR
297	41021	Gilliam	OR
297	41023	Grant	OR
297	41049	Morrow	OR
297	41059	Umatilla	OR
297	41061	Union	OR
297	41063	Wallowa	OR
297	41069	Wheeler	OR
298	02068	Denali Borough	AK
298	02090	Fairbanks North Star Borough.	AK
298	02180	Nome Census Area.	AK
298	02185	North Slope Borough.	AK
298	02188	Northwest Arctic Borough.	AK
298	02240	Southeast Fairbanks Census Area.	AK
298	02270	Wade Hampton Census Area.	AK
298	02290	Yukon-Koyukuk Census Area.	AK
299	29001	Adair	MO
299	29025	Caldwell	MO
299	29033	Carroll	MO
299	29049	Clinton	MO
299	29061	Daviess	MO
299	29063	DeKalb	MO
299	29079	Grundy	MO
299	29081	Harrison	MO
299	29103	Knox	MO
299	29117	Livingston	MO
299	29129	Mercer	MO
299	29171	Putnam	MO
299	29197	Schuyler	MO
299	29211	Sullivan	MO
300	01011	Bullock	AL
300	01013	Butler	AL
300	01041	Crenshaw	AL
300	01047	Dallas	AL
300	01085	Lowndes	AL
300	01105	Perry	AL
300	01109	Pike	AL
301	27109	Olmsted	MN
302	40003	Alfalfa	OK
302	40011	Blaine	OK
302	40015	Caddo	OK
302	40047	Garfield	OK
302	40053	Grant	OK
302	40073	Kingfisher	OK
302	40093	Major	OK
302	40151	Woods	OK
303	30005	Blaine	MT
303	30013	Cascade	MT
303	30015	Chouteau	MT
303	30035	Glacier	MT
303	30041	Hill	MT
303	30051	Liberty	MT
303	30073	Pondera	MT
303	30099	Teton	MT
303	30101	Toole	MT
304	37171	Surry	NC
304	37193	Wilkes	NC
305	40009	Beckham	OK
305	40039	Custer	OK
305	40043	Dewey	OK
305	40045	Ellis	OK
305	40055	Greer	OK

PEA No.	Federal Information Processing System No.	County name	State
305	40057	Harmon	OK
305	40059	Harper	OK
305	40065	Jackson	OK
305	40075	Kiowa	OK
305	40129	Roger Mills	OK
305	40149	Washita	OK
305	40153	Woodward	OK
306	48077	Clay	TX
306	48485	Wichita	TX
307	19119	Lyon	IA
307	31027	Cedar	NE
307	31107	Knox	NE
307	46009	Bon Homme	SD
307	46027	Clay	SD
307	46061	Hanson	SD
307	46067	Hutchinson	SD
307	46083	Lincoln	SD
307	46087	McCook	SD
307	46125	Turner	SD
307	46135	Yankton	SD
308	13079	Crawford	GA
308	13081	Crisp	GA
308	13093	Dooly	GA
308	13193	Macon	GA
308	13207	Monroe	GA
308	13249	Schley	GA
308	13261	Sumter	GA
308	13269	Taylor	GA
309	37015	Bertie	NC
309	37029	Camden	NC
309	37041	Chowan	NC
309	37073	Gates	NC
309	37091	Hertford	NC
309	37139	Pasquotank	NC
309	37143	Perquimans	NC
310	29055	Crawford	MO
310	29187	St. Francois	MO
310	29186	Ste. Genevieve	MO
310	29221	Washington	MO
311	08003	Alamosa	CO
311	08009	Baca	CO
311	08011	Bent	CO
311	08017	Cheyenne	CO
311	08021	Conejos	CO
311	08023	Costilla	CO
311	08025	Crowley	CO
311	08055	Huerfano	CO
311	08061	Kiowa	CO
311	08071	Las Animas	CO
311	08079	Mineral	CO
311	08089	Otero	CO
311	08099	Prowers	CO
311	08105	Rio Grande	CO
311	08109	Saguache	CO
311	35007	Colfax	NM
312	35045	San Juan	NM
313	48021	Bastrop	TX
313	48055	Caldwell	TX
313	48287	Lee	TX
314	48073	Cherokee	TX
314	48365	Panola	TX
314	48401	Rusk	TX
315	30003	Big Horn	MT
315	30009	Carbon	MT
315	30017	Custer	MT
315	30025	Fallon	MT
315	30075	Powder River	MT
315	30079	Prairie	MT
315	30087	Rosebud	MT
315	30103	Treasure	MT
315	56003	Big Horn	WY
315	56019	Johnson	WY
315	56029	Park	WY
315	56033	Sheridan	WY
316	16007	Bear Lake	ID
316	16029	Caribou	ID
316	49009	Daggett	UT
316	49033	Rich	UT
316	56007	Carbon	WY
316	56023	Lincoln	WY
316	56035	Sublette	WY
316	56037	Sweetwater	WY
316	56041	Uinta	WY
317	31059	Fillmore	NE
317	31067	Gage	NE
317	31095	Jefferson	NE
317	31097	Johnson	NE
317	31127	Nemaha	NE
317	31131	Otoe	NE
317	31133	Pawnee	NE
317	31147	Richardson	NE
317	31151	Saline	NE
317	31159	Seward	NE
317	31169	Thayer	NE
317	31185	York	NE
318	27069	Kittson	MN
318	27077	Lake of the Woods.	MN
318	27089	Marshall	MN
318	27113	Pennington	MN
318	27125	Red Lake	MN
318	27135	Roseau	MN
318	38005	Benson	ND
318	38019	Cavalier	ND
318	38027	Eddy	ND
318	38063	Nelson	ND
318	38067	Pembina	ND
318	38071	Ramsey	ND
318	38079	Rolette	ND
318	38091	Steele	ND
318	38095	Towner	ND
318	38097	Traill	ND
318	38099	Walsh	ND
319	13095	Dougherty	GA
319	13177	Lee	GA
320	48235	Irion	TX
320	48413	Schleicher	TX
320	48435	Sutton	TX
320	48451	Tom Green	TX
321	18029	Dearborn	IN
321	18047	Franklin	IN
321	18115	Ohio	IN
321	18137	Ripley	IN
321	18155	Switzerland	IN
322	38009	Bottineau	ND
322	38013	Burke	ND
322	38023	Divide	ND
322	38049	McHenry	ND
322	38053	McKenzie	ND
322	38061	Mountrail	ND
322	38075	Renville	ND
322	38101	Ward	ND
322	38105	Williams	ND
323	35003	Catron	NM
323	35053	Socorro	NM
323	35057	Torrance	NM
323	35061	Valencia	NM
324	42103	Pike	PA
324	42127	Wayne	PA
325	38015	Burleigh	ND
325	38059	Morton	ND
326	27005	Becker	MN
326	27087	Mahnomen	MN
326	27107	Norman	MN
326	27111	Otter Tail	MN
326	27167	Wilkin	MN
327	45017	Calhoun	SC
327	45075	Orangeburg	SC
328	04017	Navajo	AZ
329	48047	Brooks	TX
329	48131	Duval	TX
329	48249	Jim Wells	TX
329	48261	Kenedy	TX
329	48273	Kleberg	TX
329	48297	Live Oak	TX
329	48311	McMullen	TX
330	17033	Crawford	IL
330	17047	Edwards	IL
330	17101	Lawrence	IL
330	17159	Richland	IL
330	17185	Wabash	IL
330	17191	Wayne	IL
330	17193	White	IL
331	48079	Cochran	TX
331	48189	Hale	TX
331	48219	Hockley	TX
331	48279	Lamb	TX
331	48305	Lynn	TX
331	48437	Swisher	TX
331	48445	Terry	TX
332	37007	Anson	NC
332	45025	Chesterfield	SC
332	45069	Marlboro	SC
333	39037	Darke	OH
333	39149	Shelby	OH
334	48011	Armstrong	TX
334	48065	Carson	TX
334	48075	Childress	TX
334	48087	Collingsworth	TX
334	48101	Cottle	TX
334	48129	Donley	TX
334	48179	Gray	TX
334	48191	Hall	TX
334	48195	Hansford	TX
334	48211	Hemphill	TX
334	48233	Hutchinson	TX
334	48295	Lipscomb	TX
334	48357	Ochiltree	TX
334	48393	Roberts	TX
334	48483	Wheeler	TX
335	22031	De Soto Parish	LA
335	22069	Natchitoches Parish.	LA
335	22081	Red River Parish.	LA
335	22085	Sabine Parish	LA
336	27119	Polk	MN
336	38035	Grand Forks	ND
337	48097	Cooke	TX
337	48237	Jack	TX
337	48337	Montague	TX
337	48363	Palo Pinto	TX
338	08007	Archuleta	CO
338	08033	Dolores	CO
338	08067	La Plata	CO
338	08083	Montezuma	CO
338	08111	San Juan	CO
339	31007	Banner	NE
339	31013	Box Butte	NE
339	31033	Cheyenne	NE
339	31045	Dawes	NE
339	31105	Kimball	NE
339	31123	Morrill	NE

PEA No.	Federal Information Processing System No.	County name	State
339	31157	Scotts Bluff	NE
339	31165	Sioux	NE
339	56015	Goshen	WY
340	35009	Curry	NM
340	35011	DeBaca	NM
340	35021	Harding	NM
340	35037	Quay	NM
340	35041	Roosevelt	NM
340	35059	Union	NM
341	35027	Lincoln	NM
341	35035	Otero	NM
342	46003	Aurora	SD
342	46015	Brule	SD
342	46017	Buffalo	SD
342	46023	Charles Mix	SD
342	46035	Davison	SD
342	46043	Douglas	SD
342	46053	Gregory	SD
342	46059	Hand	SD
342	46065	Hughes	SD
342	46069	Hyde	SD
342	46073	Jerauld	SD
342	46085	Lyman	SD
342	46117	Stanley	SD
342	46119	Sully	SD
342	46123	Tripp	SD
343	48043	Brewster	TX
343	48103	Crane	TX
343	48105	Crockett	TX
343	48243	Jeff Davis	TX
343	48301	Loving	TX
343	48371	Pecos	TX
343	48377	Presidio	TX
343	48383	Reagan	TX
343	48389	Reeves	TX
343	48443	Terrell	TX
343	48461	Upton	TX
343	48475	Ward	TX
343	48495	Winkler	TX
344	01007	Bibb	AL
344	01021	Chilton	AL
344	01065	Hale	AL
345	45039	Fairfield	SC
345	45071	Newberry	SC
345	45081	Saluda	SC
346	37039	Cherokee	NC
346	37043	Clay	NC
346	37075	Graham	NC
346	37113	Macon	NC
347	22037	East Feliciana Parish.	LA
347	22077	Pointe Coupee Parish.	LA
347	22091	St. Helena Parish.	LA
347	22125	West Feliciana Parish.	LA
347	28157	Wilkinson	MS
348	46013	Brown	SD
348	46021	Campbell	SD
348	46037	Day	SD
348	46041	Dewey	SD
348	46045	Edmunds	SD
348	46049	Faulk	SD
348	46091	Marshall	SD
348	46089	McPherson	SD
348	46107	Potter	SD
348	46115	Spink	SD
348	46129	Walworth	SD
348	46137	Ziebach	SD
349	37111	McDowell	NC
349	37121	Mitchell	NC
349	37199	Yancey	NC
350	05037	Cross	AR
350	05077	Lee	AR
350	05107	Phillips	AR
350	05123	St. Francis	AR
351	30109	Wibaux	MT
351	38007	Billings	ND
351	38011	Bowman	ND
351	38025	Dunn	ND
351	38029	Emmons	ND
351	38033	Golden Valley	ND
351	38037	Grant	ND
351	38041	Hettinger	ND
351	38043	Kidder	ND
351	38047	Logan	ND
351	38051	McIntosh	ND
351	38055	McLean	ND
351	38057	Mercer	ND
351	38065	Oliver	ND
351	38085	Sioux	ND
351	38087	Slope	ND
351	38089	Stark	ND
351	46031	Corson	SD
352	48177	Gonzales	TX
352	48255	Karnes	TX
352	48493	Wilson	TX
353	17075	Iroquois	IL
353	18073	Jasper	IN
353	18111	Newton	IN
354	55135	Waupaca	WI
354	55137	Waushara	WI
355	56025	Natrona	WY
356	53019	Ferry	WA
356	53043	Lincoln	WA
356	53051	Pend Oreille	WA
356	53065	Stevens	WA
357	35039	Rio Arriba	NM
357	35055	Taos	NM
358	48031	Blanco	TX
358	48053	Burnet	TX
358	48299	Llano	TX
359	08075	Logan	CO
359	08087	Morgan	CO
359	08095	Phillips	CO
359	08121	Washington	CO
359	08125	Yuma	CO
359	31057	Dundy	NE
360	02100	Haines Borough	AK
360	02105	Hoonah-Angoon Census Area.	AK
360	02110	Juneau Borough	AK
360	02130	Ketchikan Gateway Borough.	AK
360	02195	Petersburg	AK
360	02198	Prince of Wales-Hyder.	AK
360	02220	Sitka Borough	AK
360	02230	Skagway Municipality.	AK
360	02275	Wrangell	AK
360	02282	Yakutat Borough	AK
361	49023	Juab	UT
361	49027	Millard	UT
361	49039	Sanpete	UT
361	49041	Sevier	UT
362	16003	Adams	ID
362	16015	Boise	ID
362	16045	Gem	ID
362	16075	Payette	ID
362	16085	Valley	ID
362	16087	Washington	ID
363	48003	Andrews	TX
363	48033	Borden	TX
363	48115	Dawson	TX
363	48173	Glasscock	TX
363	48227	Howard	TX
363	48317	Martin	TX
364	30001	Beaverhead	MT
364	30007	Broadwater	MT
364	30023	Deer Lodge	MT
364	30043	Jefferson	MT
364	30093	Silver Bow	MT
365	40141	Tillman	OK
365	48009	Archer	TX
365	48023	Baylor	TX
365	48155	Foard	TX
365	48197	Hardeman	TX
365	48429	Stephens	TX
365	48447	Throckmorton	TX
365	48487	Wilbarger	TX
365	48503	Young	TX
366	53003	Asotin	WA
366	53023	Garfield	WA
366	53075	Whitman	WA
367	29007	Audrain	MO
367	29137	Monroe	MO
367	29175	Randolph	MO
367	29205	Shelby	MO
368	20029	Cloud	KS
368	20039	Decatur	KS
368	20065	Graham	KS
368	20089	Jewell	KS
368	20105	Lincoln	KS
368	20123	Mitchell	KS
368	20137	Norton	KS
368	20141	Osborne	KS
368	20143	Ottawa	KS
368	20147	Phillips	KS
368	20153	Rawlins	KS
368	20157	Republic	KS
368	20163	Rooks	KS
368	20183	Smith	KS
369	19003	Adams	IA
369	19071	Fremont	IA
369	19129	Mills	IA
369	19137	Montgomery	IA
369	19145	Page	IA
369	19173	Taylor	IA
369	29005	Atchison	MO
370	19011	Benton	IA
370	19095	Iowa	IA
370	19183	Washington	IA
371	37005	Alleghany	NC
371	51640	Galax City	VA
371	51077	Grayson	VA
371	51197	Wythe	VA
372	08039	Elbert	CO
372	08063	Kit Carson	CO
372	08073	Lincoln	CO
372	20023	Cheyenne	KS
372	20063	Gove	KS
372	20109	Logan	KS
372	20179	Sheridan	KS
372	20181	Sherman	KS
372	20193	Thomas	KS
372	20199	Wallace	KS
373	53013	Columbia	WA
373	53071	Walla Walla	WA
374	08115	Sedgwick	CO
374	31005	Arthur	NE
374	31009	Blaine	NE

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374	31029	Chase	NE
374	31049	Deuel	NE
374	31069	Garden	NE
374	31091	Hooker	NE
374	31101	Keith	NE
374	31111	Lincoln	NE
374	31113	Logan	NE
374	31117	McPherson	NE
374	31135	Perkins	NE
374	31171	Thomas	NE
375	35017	Grant	NM
375	35023	Hidalgo	NM
375	35029	Luna	NM
376	48111	Dallam	TX
376	48117	Deaf Smith	TX
376	48205	Hartley	TX
376	48341	Moore	TX
376	48359	Oldham	TX
376	48421	Sherman	TX
377	01023	Choctaw	AL
377	01063	Greene	AL
377	01091	Marengo	AL
377	01119	Sumter	AL
378	13033	Burke	GA
378	13125	Glascock	GA
378	13163	Jefferson	GA
378	13165	Jenkins	GA
378	13301	Warren	GA
379	26033	Chippewa	MI
379	26095	Luce	MI
379	26097	Mackinac	MI
380	26003	Alger	MI
380	26041	Delta	MI
380	26153	Schoolcraft	MI
381	48137	Edwards	TX
381	48271	Kinney	TX
381	48465	Val Verde	TX
382	56013	Fremont	WY
382	56017	Hot Springs	WY
382	56043	Washakie	WY
383	19039	Clarke	IA
383	19053	Decatur	IA
383	19117	Lucas	IA
383	19159	Ringgold	IA
383	19175	Union	IA
383	19185	Wayne	IA
384	19005	Allamakee	IA
384	19043	Clayton	IA
384	19055	Delaware	IA
385	29111	Lewis	MO
385	29127	Marion	MO
385	29173	Ralls	MO
386	45005	Allendale	SC
386	45009	Bamberg	SC
386	45011	Barnwell	SC
387	38003	Barnes	ND
387	38021	Dickey	ND
387	38039	Griggs	ND
387	38045	LaMoure	ND
387	38073	Ransom	ND
387	38077	Richland	ND
387	38081	Sargent	ND
388	19009	Audubon	IA
388	19029	Cass	IA
388	19085	Harrison	IA
388	19165	Shelby	IA
389	31061	Franklin	NE
389	31063	Frontier	NE
389	31065	Furnas	NE
389	31073	Gosper	NE
389	31083	Harlan	NE
389	31085	Hayes	NE
389	31087	Hitchcock	NE
389	31099	Kearney	NE
389	31137	Phelps	NE
389	31145	Red Willow	NE
390	48151	Fisher	TX
390	48335	Mitchell	TX
390	48353	Nolan	TX
390	48415	Scurry	TX
391	41025	Harney	OR
391	41045	Malheur	OR
392	29075	Gentry	MO
392	29087	Holt	MO
392	29147	Nodaway	MO
392	29227	Worth	MO
393	29041	Chariton	MO
393	29115	Linn	MO
393	29121	Macon	MO
394	46007	Bennett	SD
394	46055	Haakon	SD
394	46071	Jackson	SD
394	46075	Jones	SD
394	46095	Mellette	SD
394	46113	Shannon	SD
394	46121	Todd	SD
395	38031	Foster	ND
395	38069	Pierce	ND
395	38083	Sheridan	ND
395	38093	Stutsman	ND
395	38103	Wells	ND
396	19001	Adair	IA
396	19077	Guthrie	IA
396	19121	Madison	IA
397	01075	Lamar	AL
397	01107	Pickens	AL
398	31043	Dakota	NE
398	31051	Dixon	NE
398	31173	Thurston	NE
399	48281	Lampasas	TX
399	48411	San Saba	TX
400	48017	Bailey	TX
400	48069	Castro	TX
400	48369	Parmer	TX
401	48045	Briscoe	TX
401	48107	Crosby	TX
401	48125	Dickens	TX
401	48153	Floyd	TX
401	48169	Garza	TX
401	48263	Kent	TX
401	48345	Motley	TX
402	48095	Concho	TX
402	48267	Kimble	TX
402	48319	Mason	TX
402	48307	McCulloch	TX
402	48327	Menard	TX
403	30027	Fergus	MT
403	30045	Judith Basin	MT
403	30059	Meagher	MT
403	30071	Phillips	MT
403	30107	Wheatland	MT
404	49025	Kane	UT
404	49037	San Juan	UT
405	56039	Teton	WY
406	19105	Jones	IA
407	16023	Butte	ID
407	16037	Custer	ID
407	16059	Lemhi	ID
408	48081	Coke	TX
408	48399	Runnels	TX
408	48431	Sterling	TX
409	48207	Haskell	TX
409	48269	King	TX
409	48275	Knox	TX
409	48417	Shackelford	TX
409	48433	Stonewall	TX
410	31031	Cherry	NE
410	31075	Grant	NE
410	31161	Sheridan	NE
411	48109	Culberson	TX
411	48229	Hudspeth	TX
412	72001	Adjuntas	PR
412	72003	Aguada	PR
412	72005	Aguadilla	PR
412	72007	Aguas Buenas	PR
412	72009	Aibonito	PR
412	72011	Anasco	PR
412	72013	Arecibo	PR
412	72015	Arroyo	PR
412	72017	Barceloneta	PR
412	72019	Barranquitas	PR
412	72021	Bayamon	PR
412	72023	Cabo Rojo	PR
412	72025	Caguas	PR
412	72027	Camuy	PR
412	72029	Canovanas	PR
412	72031	Carolina	PR
412	72033	Catano	PR
412	72035	Cayey	PR
412	72037	Ceiba	PR
412	72039	Ciales	PR
412	72041	Cidra	PR
412	72043	Coamo	PR
412	72045	Comerio	PR
412	72047	Corozal	PR
412	72049	Culebra	PR
412	72051	Dorado	PR
412	72053	Fajardo	PR
412	72054	Florida	PR
412	72055	Guanica	PR
412	72057	Guayama	PR
412	72059	Guayanilla	PR
412	72061	Guaynabo	PR
412	72063	Gurabo	PR
412	72065	Hatillo	PR
412	72067	Hormigueros	PR
412	72069	Humacao	PR
412	72071	Isabela	PR
412	72073	Jayuya	PR
412	72075	Juana Diaz	PR
412	72077	Juncos	PR
412	72079	Lajas	PR
412	72081	Lares	PR
412	72083	Las Marias	PR
412	72085	Las Piedras	PR
412	72087	Loiza	PR
412	72089	Luquillo	PR
412	72091	Manati	PR
412	72093	Maricao	PR
412	72095	Maunabo	PR
412	72097	Mayaguez	PR
412	72099	Moca	PR
412	72101	Morovis	PR
412	72103	Naguabo	PR
412	72105	Naranjito	PR
412	72107	Orocovis	PR
412	72109	Patillas	PR
412	72111	Penuelas	PR
412	72113	Ponce	PR
412	72115	Quebradillas	PR
412	72117	Rincon	PR
412	72119	Rio Grande	PR
412	72121	Sabana Grande	PR

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412	72123	Salinas	PR
412	72125	San German	PR
412	72127	San Juan	PR
412	72129	San Lorenzo	PR
412	72131	San Sebastian	PR
412	72133	Santa Isabel	PR
412	72135	Toa Alta	PR
412	72137	Toa Baja	PR
412	72139	Trujillo Alto	PR
412	72141	Utuado	PR
412	72143	Vega Alta	PR
412	72145	Vega Baja	PR
412	72147	Vieques	PR
412	72149	Villalba	PR
412	72151	Yabucoa	PR
412	72153	Yauco	PR
413	66010	Guam	GU.
413	69085	Northern Islands	MP
413	69100	Rota	MP
413	69110	Saipan	MP
413	69120	Tinian	MP
414	78010	St. Croix	VI
414	78020	St. John	VI
414	78030	St. Thomas	VI
415	60010	Eastern District	AS
415	60020	Manu'a District	AS
415	60030	Rose Island	AS
415	60040	Swains Island	AS
415	60050	Western District	AS
416	99023	Gulf of Mexico Central and East.	GM
416	99001	Gulf of Mexico West.	GM

■ 18. Amend § 27.11 by adding paragraph (l) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(l) *3700–3980 MHz band.* Authorizations for licenses in the 3.7 GHz Service will be based on Partial Economic Areas (PEAs), as specified in § 27.6(m), and the frequency sub-blocks specified in § 27.5(m).

■ 19. Amend § 27.13 by adding paragraph (m) to read as follows:

§ 27.13 License period.

* * * * *

(m) *3700–3980 MHz band.* Authorizations for licenses in the 3.7 GHz Service in the 3700–3980 MHz band will have a term not to exceed 15 years from the date of issuance or renewal.

■ 20. Amend § 27.14 by revising the first sentence of paragraphs (a) and (k) and adding paragraph (v) to read as follows:

§ 27.14 Construction requirements.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1 or C2 in the 746–757 MHz and 776–787 MHz bands, Block A in the 2305–2310 MHz and 2350–2355 MHz bands, Block B in the 2310–2315 MHz and 2355–2360 MHz bands, Block C in the 2315–2320 MHz band, Block D in the 2345–2350 MHz band, and in the 3700–3980 MHz band, and with the exception of licensees holding AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–2200 MHz bands, or 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. * * *

* * * * *

(k) Licensees holding WCS or AWS authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), (q), (r), (s), (t), and (v) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. * * *

* * * * *

(v) The following provisions apply to any licensee holding an authorization in the 3700–3980 MHz band:

(1) Licensees relying on mobile or point-to-multipoint service shall provide reliable signal coverage and offer service within eight (8) years from the date of the initial license to at least forty-five (45) percent of the population in each of its license areas (''First Buildout Requirement''). Licensee shall provide reliable signal coverage and offer service within twelve (12) years from the date of the initial license to at least eighty (80) percent of the population in each of its license areas (''Second Buildout Requirement''). Licensees relying on point-to-point service shall demonstrate within eight years of the license issue date that they have four links operating and providing service to customers or for internal use if the population within the license area is equal to or less than 268,000 and, if the population is greater than 268,000, that they have at least one link in operation and providing service to customers, or for internal use, per every 67,000 persons within a license area (''First Buildout Requirement''). Licensees relying on point-to-point service shall demonstrate within 12 years of the license issue date that they have eight links operating and providing service to customers or for internal use if the population within the license area is equal to or less than 268,000 and, if the population within the license area is greater than 268,000, shall demonstrate they are providing service and have at least two links in operation per every 67,000 persons within a license area (''Second Buildout Requirement'').

(2) In the alternative, a licensee offering Internet of Things-type services shall provide geographic area coverage within eight (8) years from the date of the initial license to thirty-five (35) percent of the license (''First Buildout Requirement''). A licensee offering Internet of Things-type services shall provide geographic area coverage within twelve (12) years from the date of the initial license to sixty-five (65) percent of the license (''Second Buildout Requirement'').

(3) If a licensee fails to establish that it meets the First Buildout Requirement for a particular license area, the licensee's Second Buildout Requirement deadline and license term will be reduced by two years. If a licensee fails to establish that it meets the Second Buildout Requirement for a particular license area, its authorization for each license area in which it fails to meet the Second Buildout Requirement shall terminate automatically without Commission action, and the licensee will be ineligible to regain it if the Commission makes the license available at a later date.

(4) To demonstrate compliance with these performance requirements, licensees shall use the most recently available decennial U.S. Census Data at the time of measurement and shall base their measurements of population or geographic area served on areas no larger than the Census Tract level. The population or area within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population or geographic area within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license. If a licensee does not provide reliable signal coverage to an entire license area, the license must provide a map that accurately depicts the boundaries of the area or areas within each license area not being served. Each

licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

■ 21. Amend § 27.50 by adding paragraph (j) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(j) The following power requirements apply to stations transmitting in the 3700–3980 MHz band:

(1) The power of each fixed or base station transmitting in the 3700–3980 MHz band and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to an equivalent isotropically radiated power (EIRP) of 3280 Watts/MHz. This limit applies to the aggregate power of all antenna elements in any given sector of a base station.

(2) The power of each fixed or base station transmitting in the 3700–3980 MHz band and situated in any geographic location other than that described in paragraph (j)(1) of this section is limited to an EIRP of 1640 Watts/MHz. This limit applies to the aggregate power of all antenna elements in any given sector of a base station.

(3) Mobile and portable stations are limited to 1 Watt EIRP. Mobile and portable stations operating in these bands must employ a means for limiting power to the minimum necessary for successful communications.

(4) Equipment employed must be authorized in accordance with the provisions of § 27.51. Power measurements for transmissions by stations authorized under this section may be made either in accordance with a Commission-approved average power technique or in compliance with paragraph (j)(5) of this section. In measuring transmissions in this band using an average power technique, the peak-to-average ratio (PAR) of the transmission may not exceed 13 dB.

(5) Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, and any other relevant factors, so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

■ 22. Amend § 27.53 by adding paragraph (l) to read as follows:

§ 27.53 Emission limits.

* * * * *

(l) *3.7 GHz Service.* The following emission limits apply to stations transmitting in the 3700–3980 MHz band:

(1) For base station operations in the 3700–3980 MHz band, the conducted power of any emission outside the licensee's authorized bandwidth shall not exceed −13 dBm/MHz. Compliance with this paragraph (l)(1) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(2) For mobile operations in the 3700–3980 MHz band, the conducted power of any emission outside the licensee's authorized bandwidth shall not exceed −13 dBm/MHz. Compliance with this paragraph (l)(2) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, the minimum resolution bandwidth for the measurement shall be either one percent of the emission bandwidth of the fundamental emission of the transmitter or 350 kHz. In the bands between 1 and 5 MHz removed from the licensee's frequency block, the minimum resolution bandwidth for the measurement shall be 500 kHz. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

* * * * *

■ 23. Amend § 27.55 by adding paragraph (d) to read as follows:

§ 27.55 Power strength limits.

* * * * *

(d) *Power flux density for stations operating in the 3700–3980 MHz band.* For base and fixed stations operation in the 3700–3980 MHz band in accordance with the provisions of § 27.50(j), the power flux density (PFD) at any location on the geographical border of a licensee's service area shall not exceed −76 dBm/m²/MHz. This power flux density will be measured at 1.5 meters above ground. Licensees in adjacent geographic areas may voluntarily agree to operate under a higher PFD at their common boundary.

■ 24. Amend § 27.57 by revising paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz, and 3700–3980 MHz bands is subject to international agreements with Mexico and Canada.

■ 25. Amend § 27.75 by adding paragraph (a)(3) to read as follows:

§ 27.75 Basic interoperability requirement.

(a) * * *

(3) Mobile and portable stations that operate on any portion of frequencies in the 3700–3980 MHz band must be capable of operating on all frequencies in the 3700–3980 MHz band using the same air interfaces that the equipment utilizes on any frequencies in the 3700–3980 MHz band.

* * * * *

■ 26. Add subpart O to read as follows:

Subpart O—3.7 GHz Service (3700–3980 MHz)

Sec.

§ 27.1401 Licenses in the 3.7 GHz Service are subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 3.7 GHz Service are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q, will apply unless otherwise provided in this subpart.

§ 27.1402 Designated entities in the 3.7 GHz Service.

(a) *Eligibility for small business provisions*—(1) *Definitions*—(i) *Small business.* A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding $55 million for the preceding five (5) years.

(ii) *Very small business.* A very small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding $20 million for the preceding five (5) years.

(2) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this section, or a consortium of such small businesses as provided in § 1.2110(c)(6) of this chapter, may use a bidding credit of 15 percent, subject to the cap specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of such very small businesses as provided in § 1.2110(c)(6) of this chapter, may use a bidding credit of 25 percent, subject to the cap specified in § 1.2110(f)(2)(ii) of this chapter.

(b) *Eligibility for rural service provider bidding credit.* A rural service provider, as defined in § 1.2110(f)(4)(i) of this chapter, that has not claimed a small business bidding credit may use the bidding credit of 15 percent specified in § 1.2110(f)(4) of this chapter.

§ 27.1411 Transition of the 3700–3980 MHz band to the 3.7 GHz Service.

(a) *Transition of the 3700–3798 MHz Band.* The 3700–3980 MHz band is being transitioned in the lower 48 contiguous states and the District of Columbia from geostationary satellite orbit (GSO) fixed-satellite service (space-to-Earth) and fixed service operations to the 3.7 GHz Service.

(b) *Definitions*—(1) *Incumbent space station operator.* An incumbent space station operator is defined as a space station operator authorized to provide C-band service to any part of the contiguous United States pursuant to an FCC-issued license or grant of market access as of June 21, 2018.

(2) *Eligible space station operator.* For purposes of determining eligibility to receive reimbursement for relocation costs incurred as a result of the transition of FSS operations to the 4000–4200 MHz band, an eligible space station operators may receive reimbursement for relocation costs incurred as a result of the transition of FSS operations to the 4000–4200 MHz band. An eligible space station operator is defined as an incumbent space station operator that has demonstrated as of February 1, 2020, that it has an existing relationship to provide service via C-band satellite transmission to one or more incumbent earth stations in the contiguous United States. Such existing relationships may be directly with the incumbent earth station, or indirectly through content distributors or other entities, so long as the relationship requires the provision of C-band satellite services to one or more specific incumbent earth stations in the contiguous United States.

(3) *Incumbent earth station.* An incumbent earth station for this subpart is defined as an earth station that is entitled to interference protection pursuant to § 25.138(c) of this chapter. An incumbent earth station must transition above 4000 MHz pursuant to this subpart. An incumbent earth station will be able to continue receiving uninterrupted service both during and after the transition.

(4) *Earth station migration.* Earth station migration includes any necessary changes that allow the uninterrupted reception of service by an incumbent earth station on new frequencies in the upper portion of the band, including, but not limited to retuning and repointing antennas, ''dual illumination'' during which the same programming is simultaneously downlinked over the original and new frequencies, and the installation of new equipment or software at earth station uplink and/or downlink locations for customers identified for technology upgrades necessary to facilitate the repack, such as compression technology or modulation.

(5) *Earth station filtering.* A passband filter must be installed at the site of each incumbent earth station at the same time or after it has been migrated to new frequencies to block signals from adjacent channels and to prevent harmful interference from licensees in the 3.7 GHz Service. Earth station filtering can occur either simultaneously with, or after, the earth station migration, or can occur at any point after the earth station migration so long as all affected earth stations in a given Partial Economic Area and surrounding areas are filtered prior to a licensee in the 3.7 GHz Service commencing operations.

(6) *Contiguous United States* (CONUS). For the purposes of the rules established in this subpart, contiguous United States consists of the contiguous 48 states and the District of Columbia as defined by Partial Economic Areas Nos. 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411, which includes areas within 12 nautical miles of the U.S. Gulf coastline (*see* § 27.6(m)). In this context, the rest of the United States includes the Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico PEAs.

(7) *Relocation Payment Clearinghouse.* A Relocation Payment Clearinghouse is a neutral, independent third-party to administer the cost management for the transition of the 3700–4000 MHz band from the Fixed Satellite Service and Fixed Service to the 3.7 GHz Service.

(8) *Relocation Coordinator.* A Relocation Coordinator is a third party that will ensure that all incumbent space station operators are relocating in a timely matter, and that is selected consistent with § 27.1413. The Relocation Coordinator will have technical experience in understanding and working on earth stations and will manage the migration and filtering of incumbent earth stations of eligible space station operators that decline accelerated relocation payment.

§ 27.1412 Transition Plan.

(a) *Relocation deadlines.* Eligible space station operators are responsible for all necessary actions to clear their transponders from the 3700–4000 MHz band (*e.g.,* launching new satellites, reprogramming transponders, exchanging customers) and to migrate the existing services of incumbent earth stations in CONUS to the 4000–4200 MHz band (unless the incumbent earth station opts out of the formal relocation process, per paragraph (e) of this section), as of December 5, 2025. Eligible space station operators that fail to do so will be in violation of the conditions of their license authorization and potentially subject to forfeitures and other sanctions.

(b) *Accelerated relocation deadlines.* An eligible space station operator shall qualify for accelerated relocation payments by completing an early transition of the band to the 3.7 GHz Service.

(1) *Phase I deadline.* An eligible space station operator shall receive an accelerated relocation payment if it clears its transponders from the 3700–

3820 MHz band and migrates all associated incumbent earth stations in CONUS above 3820 MHz no later than December 5, 2021 (Phase I deadline). To satisfy the Phase I deadline, an eligible space station operator must also provide passband filters to block signals from the 3700–3820 MHz band on all associated incumbent earth stations in PEAs 1–4, 6–10, 12–19, 21–41, and 43–50 no later than December 5, 2021 (see § 27.6(m)). If an eligible space station operator receives an accelerated relocation payment for meeting this deadline, it must also satisfy the second early clearing deadline of December 5, 2023.

(2) *Phase II deadline.* An eligible space station operator shall receive an accelerated relocation payment if it clears its transponders from the 3700–4000 MHz band and migrates incumbent earth stations in CONUS above 4000 MHz no later than December 5, 2023 (Phase II deadline). To satisfy the Phase II deadline, an eligible space station operator must also provide passband filters on all associated incumbent earth stations in CONUS no later than December 5, 2023.

(3) *Transition delays.* An eligible space station operator shall not be held responsible for circumstances beyond their control related to earth station migration or filtering.

(i) An eligible space station operator must submit a notice of any incumbent earth station transition delays to the Wireless Telecommunications Bureau within 7 days of discovering an inability to accomplish the assigned earth station transition task. Such a request must include supporting documentation to allow for resolution as soon as practicable and must be submitted before the accelerated relocation deadlines.

(4) *Responsibility for meeting accelerated relocation deadlines.* An eligible space station operator's satisfaction of the accelerated relocation deadlines shall be determined on an individual basis.

(c) *Accelerated relocation election.* An eligible space station operator may elect to receive accelerated relocation payments to transition the 3700–4000 MHz band to the 3.7 GHz Service according to the Phase I and Phase II deadlines via a written commitment by filing an accelerated relocation election in GN Docket No. 18–122 no later than May 29, 2020.

(1) The Wireless Telecommunications Bureau will prescribe the precise form of such election via Public Notice no later than May 12, 2020.

(2) Each eligible space station operator that that makes an accelerated relocation election will be required, as part of its filing of this accelerated relocation election, to commit to paying the administrative costs of the Clearinghouse until the Commission awards licenses to the winning bidders in the auction, at which time those administrative costs will be repaid to those space station operators.

(d) *Transition Plan.* Eligible space station operators must file with the Commission in GN Docket No. 18–122 no later than June 12, 2020, a Transition Plan that describes the actions that must be taken to clear transponders on space stations and to migrate and filter earth stations. Eligible space station operators must make any necessary updates or resolve any deficiencies in their individual Transition Plans by August 14, 2020.

(1) The Transition Plan must detail the eligible space station operator's individual timeline and necessary actions for clearing its transponders from the 3700–4000 MHz band, including:

(i) All existing space stations with operations that will need to be transitioned to operations above 4000 MHz;

(ii) The number of new satellites, if any, that the space station operator will need to launch in order to maintain sufficient capacity post-transition, including detailed descriptions of why such new satellites are necessary;

(iii) The specific grooming plan for migrating existing services above 4000 MHz, including the pre- and post-transition frequencies that each customer will occupy;

(iv) Any necessary technology upgrades or other solutions, such as video compression or modulation, that the space station operator intends to implement;

(v) The number and location of incumbent earth stations antennas currently receiving the space station operator's transmissions that will need to be transitioned above 4000 MHz;

(vi) An estimate of the number and location of incumbent earth station antennas that will require retuning and/or repointing in order to receive content on new transponder frequencies post-transition; and

(vii) The specific timeline by which the space station operator will implement the actions described in its plan including any commitments to satisfy an early clearing.

(2) To the extent that incumbent earth stations are not accounted for in eligible space station operators' Transition Plans, the Relocation Coordinator must prepare an Earth Station Transition Plan for such incumbent earth stations and may require each associated space station operator to file the information needed for such a plan with the Relocation Coordinator.

(i) Where space station operators do not elect to clear by the accelerated relocation deadlines and therefore are not responsible for earth station relocation, the Earth Station Transition Plan must provide timelines that ensure all earth station relocation is completed no later than the relocation deadline.

(ii) The Relocation Coordinator will describe and recommend the respective responsibility of each party for earth station migration and filtering obligations in the Earth Station Transition Plan and assist incumbent earth stations in transitioning including, for example, by installing filters or hiring a third party to install such filters to the extent necessary.

(e) *Incumbent earth station opt-out.* An incumbent earth station within the contiguous United States may opt out of the formal relocation process and accept a lump sum payment equal to the estimated reasonable transition costs of earth station migration and filtering, as determined by the Wireless Telecommunications Bureau, in lieu of actual relocation costs. Such an incumbent earth station is responsible for coordinating with the relevant space station operator as necessary and performing all relocation actions on its own, including switching to alternative transmission mechanisms such as fiber, and it will not receive further reimbursement for any costs exceeding the lump sum payment. An incumbent earth station electing to opt out must inform the appropriate space station operator(s) and the Relocation Coordinator that earth station migration and filtering will not be necessary for the relevant earth station site and must coordinate with operators to avoid any disruption of video and radio programming.

(f) *Space station status reports.* On a quarterly basis, beginning December 31, 2020: Each eligible space station operator must provide a status report of its clearing efforts. Eligible space station operators may file joint status reports.

(g) *Certification of accelerated relocation.* Each eligible space station operator must file a timely certification that it has completed the necessary clearing actions to satisfy each accelerated relocation deadline. The certification must be filed once the eligible space station operator completes its obligations but no later than the applicable accelerated relocation deadline. The Wireless Telecommunication Bureau will prescribe the form of such certification.

(1) The Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the certification of accelerated relocation and identify potential deficiencies. The Wireless Telecommunications Bureau will prescribe the form of any challenges by relevant stakeholders as to the validity of the certification and will establish the process for how such challenges will impact the incremental decreases in the accelerated relocation payment as set-forth in § 27.1422(d).

(2) If credible challenges as to the space station operator's satisfaction of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges and will render a final decision as to the validity of the certification no later than 60 days from its filing. Absent notice from the Bureau of any such deficiencies within 30 days of the filing of the certification, the certification of accelerated relocation will be deemed validated.

(h) *Delegated authority.* The Wireless Telecommunications Bureau is delegated the role of providing clarifications or interpretations to eligible space station operators of the Commission's orders for all aspects of the transition.

§ 27.1413 Relocation Coordinator.

(a) *Search committee.* If eligible space station operators elect to receive accelerated relocation payments no later than May 29, 2020, so that a supermajority (80%) of accelerated relocation payments are accepted, each such electing eligible space station operator shall be eligible to appoint one member to a search committee that will seek proposals for a third-party with technical experience in understanding and working on earth stations to serve as a Relocation Coordinator and to manage the migration and filtering of incumbent earth stations of eligible space station operators that decline accelerated relocation payment.

(1) The search committee should proceed by consensus; however, if a vote on selection of a Relocation Coordinator is required, it shall be by a supermajority (80%).

(i) The search committee shall notify the Commission of its choice of Relocation Coordinator.

(ii) The Wireless Telecommunications Bureau shall issue a Public Notice inviting comment on whether the entity selected satisfies the criteria established in paragraph (b) of this section and issue a final order announcing whether the criteria has been satisfied;

(iii) Should the Wireless Telecommunications Bureau be unable to find the criteria have been satisfied, the selection process will start over and the search committee will submit a new proposed entity.

(2) If eligible space station operators select a Relocation Coordinator, they shall be responsible for paying its costs.

(3) In the event that the search committee fails to select a Relocation Coordinator and to notify the Commission by July 31, 2020, or in the case that at least 80% of accelerated relocation payments are not accepted (and thus accelerated relocation is not triggered):

(i) The search committee will be dissolved without further action by the Commission.

(ii) The Commission will initiate a procurement of a Relocation Coordinator to facilitate the transition. Specifically, the Office of the Managing Director will initiate the procurement, and the Wireless Telecommunications Bureau will take all other necessary actions to meet the accelerated relocation deadlines (to the extent applicable to any given operator) and the relocation deadline.

(iii) In the case that the Wireless Telecommunications Bureau selects the Relocation Coordinator, overlay licensees will, collectively, pay for the services of the Relocation Coordinator and staff. The Relocation Coordinator shall submit its own reasonable costs to the Relocation Clearinghouse, who will then collect payments from overlay licensees. It shall also provide additional financial information as requested by the Bureau to satisfy the Commission's oversight responsibilities and/or agency specific/government-wide reporting obligations.

(b) *Relocation Coordinator criteria.* The Relocation Coordinator must be able to demonstrate that it has the requisite expertise to perform the duties required, which will include:

(1) Coordinating the schedule for clearing the band;

(2) Performing engineering analysis, as necessary to determine necessary earth station migration actions;

(3) Assigning obligations, as necessary, for earth station migrations and filtering;

(4) Coordinating with overlay licensees throughout the transition process;

(5) Assessing the completion of the transition in each PEA and determining overlay licensees' ability to commence operations; and

(6) Mediating scheduling disputes.

(c) *Relocation Coordinator duties.* The Relocation Coordinator shall:

(1) Establish a timeline and take actions necessary to migrate and filter incumbent earth stations to ensure uninterrupted service during and following the transition.

(2) Review the Transition Plans filed by all eligible space station operators and recommend any changes to those plans to the Commission to the extent needed to ensure a timely transition.

(3) To the extent that incumbent earth stations are not accounted for in eligible space station operators' Transition Plans, the Relocation Coordinator must include those incumbent earth stations in an Earth Station Transition Plan.

(i) May require each associated space station operator to file the information needed for such a plan with the Relocation Coordinator.

(ii) Will describe and recommend the respective responsibility of each party for earth station migration obligations in the Earth Station Transition Plan and assist incumbent earth stations in transitioning including, for example, by installing filters or hiring a third party to install such filters to the extent necessary.

(4) Coordinate its operations with overlay licensees.

(5) Be responsible for receiving notice from earth station operators or other satellite customers of any disputes related to comparability of facilities, workmanship, or preservation of service during the transition and shall subsequently notify the Wireless Telecommunications Bureau of the dispute and provide recommendations for resolution.

(6) Must make real time disclosures of the content and timing of and the parties to communications, if any, from or to applicants to participate in the competitive bidding, as defined by § 1.2105(c)(5)(i) of this chapter whenever the prohibition in § 1.2105(c) of this chapter applies to competitive bidding for licenses in the 3.7 GHz Service.

(7) Incumbent space station operators must cooperate in good faith with the Relocation Coordinator throughout the transition.

(d) *Status reports.* On a quarterly basis, beginning December 31, 2020, the Relocation Coordinator must provide a report on the overall status of clearing efforts.

(e) *Document requests.* The Wireless Telecommunications Bureau, in consultation with the Office of Managing Director, may request any documentation from the Relocation Coordinator necessary to provide guidance or carry out oversight.

§ 27.1414 Relocation Payment Clearinghouse.

A Relocation Payment Clearinghouse shall be selected and serve to administer

the cost-related aspects of the transition in a fair, transparent manner, pursuant to Commission rules and oversight, to mitigate financial disputes among stakeholders, and to collect and distribute payments in a timely manner for the transition of the 3700–4000 MHz band to the 3.7 GHz Service.

(a) *Selection process.* (1) A search committee will select the Relocation Payment Clearinghouse. The search committee shall consist of member appointed by each of following nine entities: ACA Connects, Intelsat, SES, Eutelsat S.A., National Association Broadcasters, National Cable Television Association, CTIA, Competitive Carriers Association, and WISPA.

(2) The search committee shall convene no later than June 22, 2020 and shall notify the Commission of the detailed selection criteria for the position of Relocation Payment Clearinghouse no later than June 1, 2020. Such criteria must be consistent with the qualifications, roles, and duties of the Relocation Payment Clearinghouse specified in this subpart. The Wireless Telecommunications Bureau (Bureau) is directed, on delegated authority, to issue a Public Notice notifying the public that the search committee has published criteria, outlining submission requirements, and providing the closing dates for the selection of the Relocation Payment Clearinghouse and source (*i.e.,* web page).

(3) The search committee should proceed by consensus; however, if a vote on selection of a Relocation Payment Clearinghouse is required, it shall be by a majority.

(4) In the event that the search committee fails to select a Relocation Payment Clearinghouse and to notify the Commission by July 31, 2020, the search committee will be dissolved without further action by the Commission. In the event that the search committee fails to select a Clearinghouse and to notify the Commission by July 31, 2020, two of the nine members of the search committee will be dropped therefrom by lot, and the remaining seven members of the search committee shall select a Clearinghouse by majority vote by August 14, 2020.

(5) During the course of the Relocation Payment Clearinghouse's tenure, the Commission will take such measures as are necessary to ensure timely compliance, including, should it become necessary, issuing subsequent public notices to select new Relocation Payment Clearinghouses(s).

(b) *Selection criteria.* (1) The Relocation Payment Clearinghouse must be a neutral, independent entity with no conflicts of interest (organizational or personal) on the part of the organization or its officers, directors, employees, contractors, or significant subcontractors.

(i) Organizational conflicts of interest means that because of other activities or relationships with other entities, the Relocation Payment Clearinghouse, its contractors, or significant subcontractors are unable or potentially unable to render impartial services, assistance or advice; the Relocation Payment Clearinghouse's objectivity in performing its function is or might be otherwise impaired; or the Relocation Payment Clearinghouse might gain an unfair competitive advantage.

(ii) Personal conflict of interest means a situation in which an employee, officer, or director of the Relocation Payment Clearinghouse, the Relocation Payment Clearinghouse's contractors or significant subcontractors has a financial interest, personal activity, or relationship that could impair that person's ability to act impartially and in the best interest of the transition when performing their assigned role, or is engaged in self-dealing.

(2) The Relocation Payment Clearinghouse must be able to demonstrate that it has the requisite expertise to perform the duties required, which will include collecting and distributing relocation and accelerated relocation payments, auditing incoming and outgoing estimates, mitigating cost disputes among parties, and generally acting as clearinghouse.

(3) The search committee should ensure that the Relocation Payment Clearinghouse meets relevant best practices and standards in its operation to ensure an effective and efficient transition. First, the Relocation Payment Clearinghouse should be required, in administering the transition, to:

(i) Engage in strategic planning and adopt goals and metrics to evaluate its performance;

(ii) Adopt internal controls for its operations;

(iii) Utilize enterprise risk management practices; and

(iv) Use best practices to protect against improper payments and to prevent fraud, waste and abuse in its handling of funds. The Relocation Payment Clearinghouse must be required to create written procedures for its operations, using the Government Accountability Office's Green Book to serve as a guide in satisfying such requirements.

(4) The search committee must also ensure that the Relocation Payment Clearinghouse adopts robust privacy and data security best practices in its operations, given that it will receive and process information critical to ensuring a successful and expeditious transition.

(i) When the prohibition in § 1.2105(c) of this chapter applies to competitive bidding for licenses in the 3.7 GHz service, the Relocation Payment Clearinghouse must make real time disclosures of the content and timing of and the parties to communications, if any, from or to applicants to participate in the competitive bidding, as defined by § 1.2105(c)(5)(i) of this chapter.

(ii) The Relocation Payment Clearinghouse should also comply with, on an ongoing basis, all applicable laws and Federal Government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act, National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

(iii) The Relocation Payment Clearinghouse must hire a third-party firm to independently audit and verify, on an annual basis, the Relocation Payment Clearinghouse's compliance with privacy and information security requirements and to provide recommendations based on any audit findings; to correct any negative audit findings and adopt any additional practices suggested by the auditor; and to report the results to the Bureau.

(c) *Reports and information.* (1) The Relocation Payment Clearinghouse must provide quarterly reports that detail the status of reimbursement funds available for clearing obligations, the relocation and accelerated relocation payments issued, the amounts collected from overlay licensees, and any certifications filed by incumbents. The reports must account for all funds spent to transition the 3.7 GHz Service Band, including the Relocation Payment Clearinghouse's own expenses, *e.g.,* salaries and fees paid to law firms, accounting firms, and other consultants. The report shall include descriptions of any disputes and the manner in which they were resolved.

(2) The Relocation Payment Clearinghouse shall provide to the Office of the Managing Director and the Wireless Telecommunications Bureau, by March 1 of each year, an audited statement of funds expended to date, including salaries and expenses of the Clearinghouse.

(3) The Relocation Clearing House shall provide to the Wireless Telecommunications Bureau additional information upon request.

§ 27.1415 Documentation of expenses.

Parties seeking reimbursement of compensable relocation costs must document their actual expenses and the Relocation Payment Clearinghouse, or a third-party on behalf of the Relocation Payment Clearinghouse, may conduct audits of entities that receive reimbursements. Entities receiving reimbursements must make available all relevant documentation upon request from the Relocation Payment Clearinghouse or its contractor.

§ 27.1416 Reimbursable costs.

(a) *Determining reimbursable costs.* The Relocation Payment Clearinghouse shall review reimbursement requests to determine whether they are reasonable and to ensure they comply with the requirements adopted in this sub-part. The Relocation Payment Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Relocation Payment Clearinghouse deems deficient. Reimbursement submissions that fall within the estimated range of costs in the cost category schedule issued by the Wireless Telecommunications Bureau shall be presumed reasonable. If the Relocation Payment Clearinghouse determines that the amount sought for reimbursement is unreasonable, it shall notify the party of the amount it deems eligible for reimbursement. The Wireless Telecommunications Bureau shall make further determinations related to reimbursable costs, as necessary, throughout the transition process.

(b) *Payment procedures.* Following a determination of the reimbursable amount, the Relocation Payment Clearinghouse shall incorporate approved claims into invoices, which it shall issue to each licensee indicating the amount to be paid. The Relocation Payment Clearinghouse shall pay approved claims within 30 days of invoice submission. The Relocation Payment Clearinghouse shall also include its own reasonable costs in the invoices.

§ 27.1417 Reimbursement fund.

The Relocation Payment Clearinghouse will establish and administer an account that will fund the costs for the transition of this band to the 3.7 GHz Service after an auction for the 3.7 GHz Service concludes. Licensees in the 3.7 GHz Service shall pay their *pro rata* share of six months' worth of estimated transition costs into a reimbursement fund, administered by the Relocation Payment Clearinghouse, shortly after the auction and then every six months until the transition is complete. The Relocation Payment Clearinghouse shall draw from the reimbursement fund to pay approved, invoiced claims, consistent with § 27.1418. If the reimbursement fund does not have sufficient funds to pay approved claims before a six-month replenishment, the Relocation Payment Clearinghouse shall provide 3.7 GHz Service licensees with 30 days' notice of the additional *pro rata* shares they must contribute. At the end of the transition, the Relocation Payment Clearinghouse shall refund any unused amounts to 3.7 GHz Service licensees according to their *pro rata* shares.

§ 27.1418 Payment obligations.

(a) Each eligible space station operator is responsible for the payment of its own satellite transition costs until the auction winners have been announced.

(b) Licensees in the 3.7 GHz Service shall pay their *pro rata* share of:

(1) The reasonable costs of the Relocation Payment Clearinghouse and, in the event the Wireless Telecommunications Bureau selects the Relocation Coordinator, the services of the Relocation Coordinator and its staff;

(2) The actual relocation costs, provided that they are not unreasonable, for eligible space station operators and incumbent fixed service licensees; the actual transition costs, provided they are not unreasonable, associated with the necessary migration and filtering of incumbent earth stations;

(3) Any lump sum payments, if elected by incumbent earth station operators in lieu of actual relocation costs; and

(4) Specified accelerated relocation payments for space station operators that clear on an accelerated timeframe. Licensees in the 3.7 GHz Service shall be responsible for the full costs of space station transition, the Relocation Payment Clearinghouse, and, if selected and established by the Wireless Telecommunications Bureau, the Relocation Coordinator, based on their *pro rata* share of the total auction bids of each licensee's gross winning bids in the auction overall; they shall be responsible for incumbent earth station and incumbent fixed service transition costs in a Partial Economic Area based on their *pro rata* share of the total gross bids for that Partial Economic Area.

(c) Following the auction, and every six months until the close of the transition, licensees in the 3.7 GHz Service shall submit their portion of estimated transition costs to a reimbursement fund, and the Relocation Payment Clearinghouse will reimburse parties incurring transition costs. If actual costs exceed estimated costs, the Relocation Payment Clearinghouse shall perform a true-up for additional funds from 3.7 GHz Service licensees.

(d) If 3.7 GHz band license is relinquished to the Commission prior to all relocation cost reimbursements and accelerated relocation payments being paid, the remaining payments will be distributed among other similarly situated 3.7 GHz band licensees. If a new license is issued for the previously relinquished rights prior to final payments becoming due, the new 3.7 GHz band licensee will be responsible for the same *pro rata* share of relocation costs and accelerated relocation payments as the initial 3.7 GHz band license. If a 3.7 GHz band licensee sells its rights on the secondary market, the new 3.7 GHz band licensee will be obligated to fulfill all payment obligations associated with the license.

§ 27.1419 Lump sum payment for earth station opt out.

The Wireless Telecommunications Bureau shall announce a lump sum that will be available per each incumbent earth station that elects to opt out from the formal relocation process, per § 27.1412(e), as well as the process for electing lump sum payments. Incumbent earth station owners must make the lump sum payment election no later than 30 days after the Bureau announces the lump sum payment amounts, and must indicate whether each incumbent earth station for which it elects the lump sum payment will be transitioned to the upper 200 megahertz in order to maintain C-band services or will discontinue C-band services.

§ 27.1420 Cost-sharing formula.

(a) For space station transition and Relocation Payment Clearinghouse costs, and in the event the Wireless Telecommunications Bureau selects a Relocation Coordinator pursuant to § 27.1413(a), Relocation Coordinator costs, the *pro rata* share of each flexible-use licensee will be the sum of the final clock phase prices (*P*) for the set of all license blocks that a bidder wins divided by the total final clock phase prices for all *N* license blocks sold in the auction. To determine a licensee's reimbursement obligation (*RO*), that *pro rata* share would then be multiplied by the total eligible reimbursement costs (*RC*). Mathematically, this is represented as:

$$RO = \left(\frac{\sum_{i \in I} P_i}{\sum_{j=1}^{N} P_j} \right) \times RC$$

(b) For incumbent earth stations and fixed service incumbent licensee transition costs, a flexible-use licensee's

pro rata share will be determined on a PEA-specific basis, based on the final clock phase prices for the license blocks it won in each PEA. To calculate the *pro rata* share for incumbent earth station transition costs in a given PEA, the same formula identified in § 27.1412(a) will be used, except *I* is the set of licenses a bidder won in the PEA, *N* is the total blocks sold in the PEA and *RC* is the PEA-specific earth station and fixed service relocation costs.

(c) For the Phase I accelerated relocation payments, the *pro rata* share of each flexible use licensee of the 3.7 to 3.8 MHz in the 46 PEAs that are cleared by December 5, 2021, will be the sum of the final clock phase prices (*P*) that the licensee won divided by the total final clock phase prices for all *M* license blocks sold in those 46 PEAs. To determine a licensee's *RO* the *pro rata* share would then be multiplied by the total accelerated relocation payment due for Phase I, *A1.* Mathematically, this is represented as:

$$RO = \left(\frac{\sum_{i \in I} P_i}{\sum_{j=1}^{M} P_j}\right) \times A1$$

(d) For Phase II accelerated relocation payments, the *pro rata* share of each flexible use licensee will be the sum of the final clock phase prices (*P*) that the licensee won in the entire auction, divided by the total final clock phase prices for all *N* license blocks sold in the auction. To determine a licensee's *RO* the *pro rata* share would then be multiplied by the total accelerated relocation payment due for Phase II, *A2.* Mathematically, this is represented as:

$$RO = \left(\frac{\sum_{i \in I} P_i}{\sum_{j=1}^{N} P_j}\right) \times A2$$

§ 27.1421 Disputes over costs and cost-sharing.

(a) Parties disputing a cost estimate, cost invoice, or payment or cost-sharing obligation must file an objection with the Relocation Payment Clearinghouse.

(b) The Relocation Payment Clearinghouse may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora.

(1) Any dispute submitted to the Relocation Payment Clearinghouse, or other mediator, shall be decided within 30 days after the Relocation Payment Clearinghouse has received a submission by one party and a response from the other party.

(2) Thereafter, any party may seek expedited non-binding arbitration, which must be completed within 30 days of the recommended decision or advice of the Relocation Payment Clearinghouse or other mediator.

(3) The parties will share the cost of this arbitration if it is before the Relocation Payment Clearinghouse.

(c) Should any issues still remain unresolved, they may be referred to the Bureau within ten days of recommended decision or advice of the Relocation Payment Clearinghouse or other mediator and any decision of the Relocation Payment Clearinghouse can be appealed to the Chief of the Bureau.

(1) When referring an unresolved matter, the Relocation Payment Clearinghouse shall forward the entire record on any disputed issues, including such dispositions thereof that the Relocation Payment Clearinghouse has considered.

(2) Upon receipt of such record and advice, the Bureau will decide the disputed issues based on the record submitted. The Bureau is directed to resolve such disputed issues or designate them for an evidentiary hearing before an Administrative Law Judge. If the Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.

(3) Parties seeking *de novo* review of a decision by the Bureau are advised that, in the course of the evidentiary hearing, the Commission may require complete documentation relevant to any disputed matters; and, where necessary, and at the presiding judge's discretion, require expert engineering, economic or other reports or testimony. Parties may therefore wish to consider possibly less burdensome and expensive resolution of their disputes through means of alternative dispute resolution.

§ 27.1422 Accelerated relocation payment.

(a) Eligible space station operators that meet the applicable early-clearing benchmark(s), as confirmed in their Certification of Accelerated Relocation set-forth in § 27.1412(g), will be eligible for their respective accelerated relocation payment.

(b) The Relocation Payment Clearinghouse will distribute the accelerated relocation payments accordingly:

TABLE 1 TO PARAGRAPH (b)—ACCLERATED RELOCATION PAYMENT BY OPERATOR

	Payment	Phase I payment	Phase II payment
Intelsat	$4,865,366,000	$1,197,842,000	$3,667,524,000
SES	3,968,133,000	976,945,000	2,991,188,000
Eutelsat	506,978,000	124,817,000	382,161,000
Telesat	344,400,000	84,790,000	259,610,000
Star One	15,124,000	3,723,000	11,401,000
Totals	9,700,001,000	2,388,117,000	7,311,884,000

(c) The Relocation Payment Clearinghouse shall promptly notify 3.7 GHz Service licensees following validation of the certification of accelerated relocations as set-forth in Section 27.1412(g). 3.7 GHz Service licensees shall pay the accelerated relocation payments to the Clearinghouse within 60 days of the notice that eligible space station operators have met their respective accelerated clearing benchmark. The Clearinghouse shall disburse accelerated relocation payments to relevant space station operators within seven days of receiving the payment from overlay licensees.

(d) For eligible space station operators that fail to meet either the Phase I or Phase II benchmarks as of the relevant accelerated relocation deadline, the accelerated relocation payment will be reduced according to the following schedule of declining accelerated relocation payments for the six months following the relevant deadline:

TABLE 2 TO PARAGRAPH (d)

Date of completion	Incremental reduction (percent)	Accelerated relocation payment (percent)
By Deadline		100
1–30 Days Late	5	95
31–60 Days Late	5	90
61–90 Days Late	10	80
91–120 Days Late	10	70
121–150 Days Late	20	50
151–180 Days Late	20	30
181+ Days Late	30	0

§ 27.1423 Protection of incumbent operations.

(a) To protect incumbent earth stations from out-of-band emissions from fixed stations, base stations and mobiles, the power flux density (PFD) of any emissions within the 4000–4200 MHz band must not exceed −124 dBW/m²/MHz as measured at the earth station antenna.

(b) To protect incumbent earth stations from blocking, the power flux density (PFD) of any emissions within the 3700–3980 MHz band must not exceed −16 dBW/m²/MHz as measured at the earth station antenna.

(c) All 3.7 GHz Service licensees, prior to initiating operations from any base or fixed station, must coordinate cochannel frequency usage with all incumbent Telemetry, Tracking, and Command (TT&C) earth stations within a 70 km radius. The licensee must ensure that the aggregated power from its operations meets an interference to noise ratio (I/N) of −6 dB to the TT&C earth station receiver. A base station's operation will be defined as cochannel when any of the 3.7 GHz Service licensee's authorized frequencies are separated from the center frequency of the TT&C earth station by less than 150% of the maximum emission bandwidth in use by the TT&C earth station.

(d) All 3.7 GHz Service licensees operating on an adjacent channel to an incumbent TT&C earth station must ensure that the aggregated power from its operations meets an interference to noise ratio (I/N) of −6 dB to the TT&C earth station receiver.

(e) To protect incumbent TT&C earth stations from blocking, the power flux density (PFD) of any emissions within the 3700–3980 MHz band must not exceed −16 dBW/m²/MHz as measured at the TT&C earth station antenna.

§ 27.1424 Agreements between 3.7 GHz Service licensees and C-Band earth station operators.

The PFD limits in § 27.1423 may be modified by the private agreement of licensees of 3.7 GHz Service and entities operating earth stations in the 4000–4200 MHz band or TT&C operations in the 3700–3980 MHz band. A licensee of the 3.7 GHz Service who is a party to such an agreement must maintain a copy of the agreement in its station files and disclose it, upon request, to prospective license assignees, transferees, or spectrum lessees, and to the Commission.

PART 101—FIXED MICROWAVE SERVICES

■ 27. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 28. Amend § 101.3 by adding a definition for ''Contiguous United States'' in alphabetical order to read as follows:

§ 101.3 Definitions.

* * * * *

Contiguous United States. For the 3700–4200 MHz band, the contiguous United States consists of the contiguous 48 states and the District of Columbia as defined by Partial Economic Areas Nos. 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411, which includes areas within 12 nautical miles of the U.S. Gulf coastline (*see* § 27.6(m) of this chapter). In this context, the rest of the United States includes the Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico PEAs (Nos. 42, 212, 264, 298, 360, 412–416).

* * * * *

■ 29. Amend § 101.101 by revising the table heading ''Other'' and the entry ''3700–4200'' and adding Note 2 to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				
	Common carrier (part 101)	Private radio (part 101)	Broadcast auxiliary (part 74)	Other (parts 15, 21, 22, 24, 25, 27, 74, 78 & 100)	Notes
* *	*	*	*	*	*
3700–4200	CC LTTS	OFS		SAT, ET	(2).
* *	*	*	*	*	*

* * * * *

Notes

* * * * *

(2) Frequencies in this band are shared with stations in the fixed satellite service outside the contiguous United States. Applications for new permanent or temporary facilities in these bands will not be accepted for locations in the contiguous United States. Licensees, as of April 19, 2018, of existing permanent and temporary point-to-point Fixed Service links in the contiguous United States have until

December 5, 2023, to self-relocate their point-to-point links out of the 3,700–4,200 MHz band. Such licensees may seek reimbursement of their reasonable costs based on the ''comparable facilities'' standard used for the transition of microwave links out of other bands, *see* § 101.73(d) of this chapter (defining comparable facilities as facilities possessing certain characteristics in terms of throughput, reliability and operating costs) subject to the demonstration requirements and reimbursement administrative provisions administrative provisions in part 27, subpart O, of this chapter.

■ 30. Amend § 101.147 by revising Notes 8, 14, and 25 to paragraph (a) and the heading of paragraph (h) to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

Notes

* * * * *

(8) This frequency band is shared with station(s) in the Local Television Transmission Service for locations outside the contiguous United States and applications for new permanent or temporary facilities in this band will not be accepted for locations in the contiguous United States. Existing licensees as of April 19, 2018, for permanent and temporary point-to-point Fixed Service links in the contiguous United States have until December 5, 2023, to self-relocate their point-to-point links out of the 3,700–4,200 MHz band. This frequency band is also shared in the U.S. Possessions in the Caribbean area, with stations in the International Fixed Public Radiocommunications Services.

* * * * *

(14) Frequencies in this band are shared with stations in the fixed satellite service. For 3,700–4,200 MHz, frequencies are only available for locations outside the contiguous United States and applications for new permanent or temporary facilities in this band will not be accepted for locations in the contiguous United States. Existing licensees as of April 19, 2018, of permanent and temporary point-to-point Fixed Service links in the contiguous United States have until December 5, 2023, to self-relocate their point-to-point links out of the 3,700–4,200 MHz.

* * * * *

(25) Frequencies in these bands are available for assignment to television STL stations. For 3,700–4,200 MHz, frequencies are only available for locations outside the contiguous United States and applications for new permanent or temporary facilities in this band will not be accepted for locations in the contiguous United States. Existing licensees as of April 19, 2018, of permanent and temporary point-to-point Fixed Service links in the contiguous United States have until December 5, 2023, to self-relocate their point-to-point links out of the 3,700–4,200 MHz band.

* * * * *

(h) *3,700 to 4,200 MHz outside the contiguous United States.* * * *

* * * * *

■ 31. Amend § 101.803 by revising Note 1 to paragraph (d) to read as follows:

§ 101.803 Frequencies.

* * * * *

(d) * * *

Notes

(1) This frequency band is shared with stations in the Point to Point Microwave Radio Service and, in United States Possessions in the Caribbean area, with stations in the International Fixed Radiocommunications Services. For 3,700–4,200 MHz frequencies are only available for locations outside the contiguous United States and applications for new permanent or temporary facilities in this band will not be accepted for locations in the contiguous United States. In the contiguous United States, licensees of existing licenses, as of April 19, 2018, for permanent point-to-point Fixed Service links have until December 5, 2023, to self-relocate their point-to-point links out of the 3,700–4,200 MHz band.

* * * * *

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Rules and Procedures; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88665; File No. SR–ICEEU–2020–003]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Rules and Procedures

April 16, 2020.

I. Introduction

On February 18, 2020, ICE Clear Europe Limited (''ICE Clear Europe''), 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 revise its Clearing Rules (the ''Rules''),[3] the Standard Terms contained in the annexes to the Rules, the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, FX Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures, and General Contract Terms (collectively, the ''Amended Documents'') to make various updates and enhancements. The proposed rule change was published for comment in the **Federal Register** on March 6, 2020.[4] The Commission did not receive comments on the proposed rule change. On April 15, 2020, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and, for the reasons discussed below, is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the ''proposed rule change'') on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

The proposed rule change would modify the Amended Documents to make a variety of improvements and updates to reflect current operational practice at ICE Clear Europe. For purposes of discussing these changes and considering their consistency with the Act and the Rules, these changes have been categorized below according to the aspects of Rule 17Ad–22(e)[6] and the Exchange Act[7] which apply to ICE Clear Europe as a covered clearing agency.

B. 17Ad–22(e)(1)

As discussed in this section, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents. ICE Clear Europe is making these changes to ensure that its Rules and Procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of ICE Clear Europe's activities in all relevant jurisdictions, in accordance with the requirement of Rule 17Ad–22(e)(1).[8] These changes are discussed below, organized by the nature of each change.

i. Definition of Capital

Currently, the definition of the term ''Capital'' in Rule 101 references the Banking Consolidation Directive. This directive, which set out the capital requirements framework for EU banks and broker-dealers, was replaced and superseded by the Capital Requirements Regulation and Capital Requirements Directive. The proposed rule change would replace references to the Banking Consolidation Directive in the defined term Capital with references to the Capital Requirements Regulation and Capital Requirements Directive. The proposed rule change would also delete from Rule 101 the definition for the Banking Consolidation Directive and provide definitions for the terms Capital Requirements Regulation and Capital Requirements Directive.

ii. Definition of Failure to Pay

Currently, Rule 101 defines a ''Failure to Pay'' as the failure of ICE Clear Europe to make any payment when due if such failure is not remedied on or before the date falling three business days after notice of such failure is given to ICE Clear Europe. Under Rule 110(b), however, ICE Clear Europe may extend the time for making payments whenever in its discretion it considers that such extension is necessary or in the best interests of ICE Clear Europe but may not extend for longer than three business days after such payment is due unless such extension is approved by ICE Clear Europe's Board. Currently, the definition of ''Failure to Pay'' provides that where ICE Clear Europe makes such an extension, a Failure to Pay shall occur if ICE Clear Europe does not remedy the failure by 10 a.m. on the next Business Day after service of a notice of that failure to ICE Clear Europe by the Clearing Member or Sponsored Principal to whom such payment or return is due, provided that such notice is given no earlier than the final day of the extended period. The proposed rule change would clarify this provision to provide that where ICE Clear Europe makes such extension, a Failure to Pay shall not occur until after the three business day period and the extended period have cumulatively elapsed. This proposed change would help to clarify an important point that is assumed in the current definition of ''Failure to Pay,'' namely that if ICE Clear Europe makes an extension, the Failure to Pay does not occur after the end of such extended period and the normal three business day period.

iii. Use of Guaranty Fund in Part 9 of the Rules

Rule 906(a) defines how ICE Clear Europe calculates the net sum payable by or to a defaulting Clearing Member. Among other things, this calculation includes the value of the defaulting Clearing Member's contributions to the Guaranty Fund. The proposed rule change would amend this calculation to provide that Guaranty Fund contributions must be applied for this purpose ''in accordance with Rules 906(b) and (c).'' Those provisions set out restrictions on the setting off or aggregation of assets attributable to different accounts of a defaulting Clearing Member for the purposes of the net sum calculation. Thus, this proposed change would not change current practice but rather would help to resolve a potential conflict by clarifying in Rule 906(a) that these limitations apply to the use of the Guaranty Fund contributions in determining the net sum calculations under Rule 906(a).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] Securities Exchange Act Release No. 88308 (Mar. 2, 2020), 85 FR 13200 (Mar. 6, 2020) (SR–ICEEU–2020–003) (''Notice'').

[5] ICE Clear Europe filed Partial Amendment No. 1 to update Exhibit 5C, the Finance Procedures, to reflect changes made to the Finance Procedures by filing SR–ICEEU–2020–004 subsequent to the initial filing of this proposed rule change. *See* Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Finance Procedures, Securities Exchange Act Release No. 88433 (Mar. 20, 2020), 85 FR 17139 (Mar. 26, 2020) (SR–ICEEU–2020–004). Partial Amendment No. 1 also corrects a typographical error in the amendment to Rule 1005(d) by restoring the requirement in Rule 1005(d) that no person shall serve on or sit with an Appeal Panel if that person has certain specified conflicts of interests, which had unintentionally been deleted. Finally, Partial Amendment No. 1 makes minor typographical corrections in relation to both of those changes.

[6] 17 CFR 240.17Ad–22(e).

[7] 15 U.S.C. 78q–1(b)(3).

[8] 17 CFR 240.17Ad–22(e)(1).

The proposed rule change would make a similar change to the final subparagraph of Rule 906(b). As discussed above, Rule 906(b) sets out restrictions on the setting off or aggregation of assets attributable to different accounts of a defaulting Clearing Member. The final paragraph of Rule 906(b) provides that a defaulting Clearing Member's Guaranty Fund contributions may be used for the purpose of calculating any net sum on any Account relating to that defaulting Clearing Member in accordance with Rule 906(a) and subject to the restrictions in Rule 908, Rule 102(q), and Rule 906(b). For the sake of clarity, the proposed rule change add to this list of restrictions a reference to Rule 906(c), in addition to the existing rules that are referenced. Thus, this proposed change would not change current practice but rather would clarify that the limitation in 906(c) also applies in 906(b).

iv. Set Off Under Rule 906(a)

Rule 906(c) provides that ICE Clear Europe may aggregate, set off or apply any Margin, Surplus Collateral or other surplus assets available to it in relation to a defaulting Clearing Member's house account to meet a shortfall on any one or more of that defaulting Clearing Member's customer accounts or Individually Segregated Sponsored Accounts which the defaulting Clearing Member sponsored. The proposed rule change would amend this provision to provide that ICE Clear Europe ''shall'' aggregate, set off, or apply surplus assets, rather than ''may.'' ICE Clear Europe represents that this proposed change would not change its default management practices, as in practice it has treated this provision as mandatory.[9] Rather, the proposed rule change would clarify the operation of Rule 906(a) by eliminating what could appear to be discretion granted to ICE Clear Europe in whether to aggregate, set off, or apply surplus assets.

v. Liability for an Individually Segregated Sponsored Account

The proposed rule change would clarify Rule 912(b)(iv). Rule 912(b)(iv) provides that both the Sponsor and Sponsored Principal remain jointly liability in respect of any liability on an Individually Segregated Sponsored Account, in the event of certain terminations of a Clearing Member's membership at ICE Clear Europe. The proposed rule change would clarify this provision to provide that the Sponsor and Sponsored Principal remain ''jointly and severally'' liable, rather than just ''jointly'' liable. According to ICE Clear Europe, counsel to an industry association suggested this change to ensure that the liabilities and assets on sponsored accounts have mutuality.[10] ICE Clear Europe also represents that the change would fix a drafting error as the revised language would be consistent with other provisions in Part 19, and ICE Clear Europe inadvertently omitted the ''and severally'' language when adopting Rule 912(b)(iv).[11]

vi. Transfer Orders

a. Changes To Ensure an Enforceable Legal Basis

The proposed rule change would make a number of amendments to Part 12 of the Rules, regarding ICE Clear Europe's use of Transfer Orders, a term which is defined in Rule 1201(r) to mean a Payment Transfer Order and a Securities Transfer Order. As discussed in the preamble to Part 12 of the Rules, ICE Clear Europe uses Transfer Orders, including Payment Transfer Orders and Securities Transfer Orders, pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (''Settlement Finality Regulations''). The changes described below would make a number of updates and clarifications to Part 12 in order to help ensure that there is a sound and legally enforceable basis for ICE Clear Europe's use of Transfer Orders pursuant to the Settlement Finality Regulations. Because the Settlement Finality Regulations exclude Transfer Orders from certain provisions of insolvency law, like disclaimer and rescission of contracts, and also protect against application of national EU insolvency laws, the changes described below would help ensure the finality of such orders and thereby help to ensure that ICE Clear Europe's payments and transfers have a well-founded and enforceable legal basis.[12]

The proposed rule change first would amend Rule 1202(b)(i). Rule 1202(b)(i) defines the circumstances under which a Securities Transfer Order automatically arises, subject to Regulation 20 of the Settlement Finality Regulations. The proposed rule change would add a new paragraph (B) to provide that a Securities Transfer Order would be deemed to arise in the event one Clearing Member (or Sponsored Principal) allocated an F&O Contract to another Clearing Member (or Sponsored Principal) under Rule 401(a)(viii) and Rule 401(e) (both of which explain when an F&O contract is deemed to have arisen upon allocation). In providing that a Securities Transfer Order would arise in such a circumstance, ICE Clear Europe is in effect extending the protections provided by the Settlement Finality Regulations because, as discussed above, under Part 12 of the Rules, a Securities Transfer Order is covered by the Settlement Finality Regulations. Thus, ICE Clear Europe believes that this aspect of the proposed rule change would extend the protections against insolvency regimes to the allocation of F&O contracts.[13]

To further effectuate this change, the proposed rule change would make two additional clarifications to Rule 1202. Under Rule 1202(b), a Securities Transfer Order is further defined as a Position Transfer Order, and, under Rule 1202(f), each Position Transfer Order applies and has effect in respect of the Contracts to be transferred, assigned or novated. The proposed rule change would amend Rule 1202(b) and 1202(f), with respect to a Position Transfer Order, to further refer to Contracts that are ''allocated.'' ICE Clear Europe is making this change to be consistent with the change to 1202(b)(i) discussed above, which treats the allocation of an F&O contract as a Securities Transfer Order.[14]

Along the same line of these changes to Part 12, the proposed rule change would add to Rule 902 a new paragraph (d). New paragraph (d) would state that ''Transfer Orders shall be legally enforceable, irrevocable and binding on third parties in accordance with Part 12, even on the occurrence of an Event of Default.'' Thus, proposed paragraph 902(d) would bolster the protections provided by Part 12 and the Settlement Finality Regulations by further confirming that a Transfer Order, including one used to transfer contracts following a Clearing Member's default, is legally enforceable, irrevocable, and binding on third parties.

b. Clarifications Related to the Use of Transfer Orders

In addition to the changes described above, the proposed rule change would also make a number of clarifications to Part 12 to ensure that Part 12 is consistent with the rest of ICE Clear Europe's Rules.

First, the proposed rule change would amend Rule 1202(m)(iv)(A), which refers to a Clearing Member whose rights, liabilities, and obligations are novated pursuant to a Position Transfer Order, to also refer to the Clearing Member's rights, liabilities, and

[9] Notice, 85 FR at 13210.

[10] Notice, 85 FR at 13210.

[11] Notice, 85 FR at 13210.

[12] Notice, 85 FR at 13210.

[13] Notice, 85 FR at 13215.

[14] Notice, 85 FR at 13215.

obligations being ''transferred'' or ''assigned'' rather than just ''novated.'' ICE Clear Europe is making these changes to ensure consistency with the terminology used elsewhere in the Rules (for example in Part 9) in relation to the transfer of positions from one Clearing Member to another Clearing Member (whether in a default scenario or otherwise).[15] These proposed changes would also ensure that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another.

Similarly, the proposed rule change would amend Rule 1202(m)(vi)(B) to add the words ''or Customer'' after the word ''Affiliate'' to correct an unintentional omission.[16]

Finally, the proposed rule change would amend Rule 1205(i), which explains when a New Contract Payment Transfer Order is deemed to be satisfied. The proposed rule change would provide that, in addition to the circumstances already listed in Rule 1205(i), New Contract Payment Transfer Orders shall also be satisfied if and at the point that the relevant F&O Transaction or F&O Contract ''has become subject to a Position Transfer Order that has itself become satisfied under Rule 1205(b).'' Under Rule 1205(b), a Position Transfer Order is satisfied when ICE Clear Europe updates its records to reflect the Open Contract Position of the Clearing Member to whom the contract is assigned, transferred, or novated. ICE Clear Europe is making this drafting change to clarify that a New Contract Payment Transfer Order would terminate if the relevant transaction or contract to which it relates has become subject to a Position Transfer Order that has been satisfied.

vii. Complaints Resolution Procedures

The proposed rule change would make a number of clarifications to ICE Clear Europe's Complaints Resolution Procedures, which detail how ICE Clear Europe would consider complaints made to it regarding the conduct of ICE Clear Europe or any of its officers, employees, or Directors. The proposed rule change would first amend Rule 1001(d), which details the scope of complaints subject to the Complaints Resolution Procedures. Rule 1001(d) currently subjects to the Complaints Resolution Procedures any complaint against ICE Clear Europe or any of its officers, employees, or agents in their capacity as such. The proposed rule change would amend Rule 1001(d) to clarify that the Complaints Resolution Procedures also apply to complaints against ICE Clear Europe's Directors, committees, and any individual committee members. ICE Clear Europe is making this change to fix an error in the drafting of Rule 1001(d), and ICE Clear Europe represents that it did not intend to exclude directors and committees from the scope of the Complaints Resolution Procedures.[17] Thus, ICE Clear Europe is making this change to fix a drafting error.[18]

In addition to that change, the proposed rule change would amend the Complaints Resolution Procedures to ensure that they are consistent with the requirements of UK law applicable to ICE Clear Europe, clarify the scope of the procedures, clarify the process and timing for resolving complaints, clarify the effect of referring a complaint to an independent Complaints Commissioner, and update cross-references and correct typographical errors. As discussed below, ICE Clear Europe is making these changes to ensure that it maintains the Complaints Resolution Procedures in accordance with the requirements of UK law, and therefore ICE Clear Europe believes these changes would help ensure that its activities in the UK have an enforceable legal basis.[19]

Beginning with the requirements of UK law, the proposed rule change would amend Paragraph 2.1 of the Complaints Resolution Procedures to clarify that a complaint eligible to be heard under the Procedures (an ''Eligible Complaint'') is only a complaint relating to the manner in which ICE Clear Europe has performed, or failed to perform, its regulatory functions as defined by Section 291(3) of the Financial Services and Markets Act 2000 (''FSMA''). The FSMA requires that ICE Clear Europe maintain procedures for resolving complaints related to its regulatory functions.[20] Similarly, the proposed rule change would add references to the FSMA in Paragraphs 4.4 and 7.4 of the Complaints Resolution Procedures. Thus, ICE Clear Europe is making these changes to help ensure that it maintains the procedures required under UK law, specifically the FSMA.

The proposed rule change would also clarify the scope of the Complaints Resolution Procedures. The proposed rule change first would amend the Complaints Resolution Procedures to clarify that they apply to complaints against ICE Clear Europe's Directors, committees, and any individual committee members, consistent with the change to Rule 1001(d) discussed above. Moreover, the proposed rule change would clarify that the Complaints Resolution Procedures do not apply to any complaint arising out of a contractual or commercial dispute that is not connected to the manner in which ICE Clear Europe has performed or failed to perform its regulatory functions under the FSMA.

The proposed rule change also would revise and clarify the process for investigating and resolving complaints. First, the proposed rule change would amend Paragraph 3.5, which currently states that ICE Clear Europe will not charge Complainants in relation to any Complaint, by clarifying that ICE Clear Europe may seek to recover costs if it can be shown that the Complaint was frivolous and vexations. In new Paragraph 3.6, the proposed rule change would provide ICE Clear Europe the authority to resolve complaints through an alternative process, like mediation, provided that ICE Clear Europe may only do so within four weeks of receiving the Eligible Complaint. Relatedly, in Section 4, the proposed rule change would update the timelines applicable to ICE Clear Europe for acknowledging receipt of a Complaint and for dismissing a Complaint that is not an Eligible Complaint to account for the possibility of an alternative resolution under Paragraph 3.6.

The proposed rule change would next add new provisions dealing with the process for appointing of an investigator, procedures for delaying the complaints process where there are contemporaneous court or other proceedings dealing with the same or a related matter, timelines for complaints investigations, and procedures surrounding the referral of complaints to the independent Complaints Commissioner where they are not dealt with expeditiously by an investigation. The proposed rule change would also add provisions in Paragraph 4.4 to specify the matters that the investigator must consider when deciding whether

[15] Notice, 85 FR at 13210.

[16] Notice, 85 FR at 13210.

[17] Notice, 85 FR at 13206.

[18] Notice, 85 FR at 13215.

[19] Notice, 85 FR at 13215. The Commission has previously stated that under Rule 17Ad–22(e)(1), a Covered Clearing Agency such as ICE Clear Europe should consider whether its policies and procedures for legal risk provide a high degree of certainty for each material aspect of its activities in all relevant jurisdictions and whether it has rules, policies and procedures, and contracts that are enforceable in all relevant jurisdictions and whether it has a high degree of certainty that actions taken by it under such rules, policies and procedures, and contracts will not be voided, reversed, or subject to stays. *See* Securities Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (''Covered Clearing Agencies Release'').

[20] Notice, 85 FR at 13208.

to uphold or reject a complaint against ICE Clear Europe, consistent with the FSMA. In Paragraph 5, the proposed rule change would clarify the manner in which the investigator would provide to ICE Clear Europe and the complainant its conclusions and recommendations for remedial action, if any, and the proposed rule change would remove an unnecessary reference to referral of a complaint to an independent Complaints Commissioner because that is covered in Section 4 and Section 6.

In Sections 6, 7, and 8, the proposed rule change would clarify the effect of referring a complaint to an independent Complaints Commissioner. First, the proposed rule change would confirm, in new Paragraph 6.3, that if a complaint is referred to an independent Complaints Commissioner, the Complainant agrees to be bound by the Commissioner's recommendation, if adopted by ICE Clear Europe, and accepts that the recommendation, if adopted by ICE Clear Europe, would be the full and final resolution and settlement of the complaint. The proposed rule change would remove similar language in existing Paragraph 1.4 of the Complaints Resolution Procedures because that provision would now be duplicative in that event. In Section 7, the proposed rule change would revise the timing for certain actions of the Commissioner upon referral of a complaint and make similar changes as discussed above regarding Paragraph 4.4 to clarify the basis for upholding or rejecting a complaint, consistent with the FSMA. Finally, in Section 8, the proposed rule change would clarify the procedures for the Commissioner to report on the results of the investigation. The proposed rule change would also modify Paragraph 8.2 to remove the Commissioner's authority to require ICE Clear Europe to publish its report and give to ICE Clear Europe the discretion to decide whether to publish a Commissioner's report.

Finally, throughout the Complaints Resolution Procedures, the proposed rule change would make a number of typographical and similar corrections, updates to cross-references, and similar non-substantive drafting corrections. For example, the proposed rule change would update the title of the procedures to the ''Complaints Resolution Procedures'' and change ''should'' to ''must'' and ''shall'' to ''will'' to clarify the binding nature of certain aspects of the Procedures.

As discussed above, ICE Clear Europe is making these changes to improve the functioning of the Complaints Resolution Procedures and clarify certain matters as required under UK law, specifically the FSMA. In so doing, ICE Clear Europe believes that it is helping to ensure that its activities in the UK have an enforceable legal basis.[21]

viii. F&O Contract Settlement

a. Clarifying Concepts That Apply to Both Futures and Options

ICE Clear Europe proposes a number of changes to harmonize the terms used with respect to the settlement of Futures and Options and to make other drafting improvements. Because ICE Clear Europe treats Futures and Options as part of one related category of F&O Contracts, having one harmonized set of terms should improve the efficiency of ICE Clear Europe's processes with respect to F&O Contracts.

First, the proposed rule change would amend the definitions of ''Put,'' ''Set,'' and ''Short'' in Rule 101, to improve their clarity and consistency with terminology used for Futures and Options. ICE Clear Europe is making this change to ensure that these terms clearly refer to Futures and Options, avoiding potential confusion over the use of the terms.[22]

Next, the proposed rule change would amend the term ''Deliverable,'' which Rule 101 currently defines as ''any property, right, interest, register or book entry, commodity, certificate, property entitlement or Investment, which is capable of being delivered pursuant to an F&O Contract.'' The proposed rule change would update this definition to add ''or with respect to which settlement amounts are calculated'' at the end of the definition. ICE Clear Europe is making this change to reflect the fact that the term is used not only in relation to property deliverable under F&O Contracts, but also in relation to the calculation of cash amounts to settle F&O Contracts.[23] Thus, this change would improve the clarity of the term and help to ensure that it is defined consistently with ICE Clear Europe's operational practice.[24]

Similarly, the proposed rule change would delete the term ''Reference Price'' from Rule 101 and revise the definition of ''Exchange Delivery Settlement Price.'' Under the proposed rule change, ICE Clear Europe would no longer use the term Reference Price to refer to the settlement price of an F&O Contract, but rather the term Exchange Delivery Settlement Price. Exchange Delivery Settlement Price is already defined in Rule 101 as the closing, delivery, or cash settlement price determined pursuant to Rule 701 with respect to an F&O Contract or set of F&O Contracts. Although this definition already refers to Options, through the use of the term F&O (which is defined in Rule 101 to include Futures and Options), it does not refer to Rule 802, which is the rule that provides the procedure for determining the settlement price for Options. Moreover, the definition of Exchange Delivery Settlement Price already captures this concept with respect to Futures, because it refers to the price determined pursuant to Rule 701, and Rule 701 provides the procedure for determining the settlement price for Futures. Thus, to clarify that the term Exchange Delivery Settlement Price is applicable to the settlement price of Options the same as it is for Futures, ICE Clear Europe would add a cross-reference to Rule 802 to the definition. ICE Clear Europe further believes this change is appropriate because it would ensure that the Rules use one consistent, clear term for Futures and Options with respect to the concept of settlement price, which applies equally to Futures and Options.[25]

Relatedly, the proposed rule change would make non-substantive drafting clarifications to other rules and procedures to further these changes to the defined terms. Specifically, the proposed rule change would amend Rules 802, Rule 810(d), and 904(b) to use the term Exchange Delivery Settlement Price instead of Reference Price. Moreover, the proposed rule change would make changes throughout the Clearing Procedures and paragraph 3.1(b) of the General Contract Terms to use the term Exchange Delivery Settlement Price. ICE Clear Europe is making these changes to further the changes described above, which it believes would ensure that the Rules use one consistent, clear term for Futures and Options with respect to the concept of settlement price, which applies equally to Futures and Options.[26]

The proposed rule change would also amend Rule 905(b)(vi), which gives ICE Clear Europe the power to pair and cancel offsetting Long and Short positions in the same Future or Option Set to close out contracts of a defaulting Clearing Member. The proposed rule change would insert the words ''buy and sell or'' before ''Long and Short Positions'' to reflect the terminology used throughout the Rules to refer to opposite positions in Futures. Thus, ICE

[21] Notice, 85 FR at 13215.

[22] Notice, 85 FR at 13205.

[23] Notice, 85 FR at 13205.

[24] Notice, 85 FR at 13215.

[25] Notice, 85 FR at 13215.

[26] Notice, 85 FR at 13215.

Clear Europe is making this particular change to ensure this provision remains consistent with other provisions that apply to Futures, and therefore believes this change would enhance the clarity of this provision.

b. Amendments to Part 7 and Part 8 of the Rules

In addition to the changes to improve the clarity of concepts that apply to both Futures and Options, the proposed rule change would amend Part 7 and Part 8 of the Rules, the Clearing Procedures, and the General Contract Terms to clarify ICE Clear Europe's written procedures for settling Futures and Options and ensure that those written procedures accurately reflect ICE Clear Europe's current operational practice, as discussed below.

Beginning with Rule 701, which describes the determination of the Exchange Delivery Settlement Price for Futures, the proposed rule change would amend the title of Rule 701 to add ''for Futures'' at the end of the title. ICE Clear Europe is making this change to clarify that Rule 701 applies to Futures and distinguish it from Rule 802, which describes the determination of the Exchange Delivery Settlement Price for Options. This change is necessary because under the proposed rule change, as described above, the concept of Exchange Delivery Settlement Price would apply to both Futures and Options.

The proposed rule change would also amend Rule 701(b), which currently provides that the Exchange Delivery Settlement Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded. The proposed rule change would amend this to refer to data that is published by the Market on which the contract in question is traded, in addition to data that is provided by the Market. The proposed rule change would also amend Rule 701(b) to state that ICEEU would determine the Exchange Delivery Settlement Price in accordance with applicable Market Rules, subject to Rule 701(c). Rule 701(c) provides that ICE Clear Europe shall be entitled to determine the Exchange Delivery Settlement Price itself, in certain circumstances at its discretion. In Rule 701(c), the proposed rule change add a provision to explain that ICE Clear Europe would communicate to its Clearing Members any Exchange Delivery Settlement Price determined by ICE Clear Europe under Rule 701(c). Finally, the proposed rule change would make corresponding changes to Rule 802, which describes the determination of the Exchange Delivery Settlement Price for Options. ICE Clear Europe is making these changes to reflect the fact that Markets also publish data and that ICE Clear Europe must act in accordance with applicable Market rules.[27] ICE Clear Europe is also adding the reference to existing Rule 701(c) to make clear that Rule 701(b) is subject to 701(c).[28] Thus, in making these changes, ICE Clear Europe believes its Rules and Procedures with respect to F&O Contracts are free from potential conflicts.[29]

Rule 702(a) describes the situations in which a Futures Contract shall be settled in cash, and Rule 702(b) explains that cash settlement and delivery amounts are determined for Customer Accounts based on gross positions. The proposed rule change would add to Rule 702(b) the phrase ''without prejudice to any contractual netting under Rule 406 or the Clearing Procedures.'' The proposed rule change would make an identical change to Rule 705(a). Under Rule 406, contractual netting may be applied to offsetting positions in respect of one of a Clearing Member's Customer Accounts even though such positions are ordinarily held gross. ICE Clear Europe is adding the language in Rule 702(b) and Rule 705(a) to clarify that while cash settlement and delivery amounts are determined for Customer Accounts based on gross positions under Part 7, this does not preclude contractual netting of positions where provided for under Rule 406 or the Clearing Procedures (including contractual netting within the positions of a particular Customer of a Clearing Member), thus avoiding a potential conflict between Part 7 and Rule 406.

In addition, the proposed rule change would amend Rule 703, which relates to deliveries under Futures contracts. Rule 703(a) provides that the Delivery Procedures and the requirements of Rule 703 shall apply to any Futures that are not settled in cash. The proposed rule change would make a clarification by providing that a Market may administer matters or exercise rights on behalf of ICE Clear Europe pursuant to Rule 703 and the Delivery Procedures. This amended provision is needed to reflect the fact that Markets are typically involved in the delivery process for Futures and may carry out functions otherwise specified to be discharged by ICE Clear Europe pursuant to the Rules or the Delivery Procedures.[30] Thus, ICE Clear Europe is making this change to ensure that Rule 703 is consistent with current operational practice in which Markets are involved in the delivery process for Futures.[31]

In addition to these changes, the proposed rule change would amend Paragraph 5.2(d) of the Clearing Procedures, which currently provides that when an Option is exercised, a Contract at the Strike Price of the Option will arise in accordance with Rule 401. The proposed rule change would amend this to specify that it only applies in relation to Options ''whose Deliverable is a Future Contract.'' ICE Clear Europe is making this change to distinguish from Options where the deliverable is a security.[32] The proposed rule change also would amend paragraph 5.7(a), which explains the methods for determining whether elective exercise and/or abandonment of Options on the relevant expiry day is permitted. The proposed rule change would amend 5.7(a) to state that it is subject to the automatic Option exercise facility (as applicable). Paragraph 5.5 of the Clearing Procedures sets out the provisions for automatic exercise of Options, and these provisions would be relevant to determining whether elective exercise and/or abandonment of Options on the relevant expiry day is permitted under paragraph 5.7(a). Thus, for the sake of clarity, the proposed rule change would add the cross reference to beginning of paragraph 5.7(a). ICE Clear Europe is making both of these changes to further improve the clarity of the Clearing Procedures, both to distinguish certain Options and to ensure that the provisions regarding automatic exercise work as intended with respect to exercise and abandonment of Options.[33]

ix. Intellectual Property

ICE Clear Europe is also proposing changes to its Rules to help ensure that its rights with respect to intellectual property are enforceable in all of the jurisdictions where it operates. First, the proposed rule change would amend the definition of ''Intellectual Property'' in Rule 101 to specify that the definition includes ''all intellectual property rights in any part of the world and for the entire duration of such rights.'' ICE Clear Europe is making this change to improve the international coverage of the definition, by expressly confirming that it covers all rights in any part of the world and the entire duration of such

[27] Notice, 85 FR at 13205.

[28] Notice, 85 FR at 13205.

[29] 17 CFR 240.17Ad–22(e)(1); Notice, 85 FR at 13215.

[30] Notice, 85 FR at 13206.

[31] 17 CFR 240.17Ad–22(e)(1); Notice, 85 FR at 13215.

[32] Notice, 85 FR at 13206.

[33] Notice, 85 FR at 13206.

rights.[34] ICE Clear Europe believes that this change would help to confirm that ICE Clear Europe's Intellectual Property specifically includes its rights world-wide, thereby providing further protection and enforceability of ICE Clear Europe's Intellectual Property Rights in accordance with Rule 17Ad–22(e)(1).[35]

In addition, the proposed rule change would add a new Section 12(d) in each of the Standard Terms, to require Customers to agree to Rule 406(g). Rule 406(g) confirms that all Intellectual Property in data relating to Transactions, Contracts, and Open Contract Positions provided to ICE Clear Europe under the Rules or generated by ICE Clear Europe shall be the property of ICE Clear Europe. ICE Clear Europe is making this change to avoid any uncertainty as to the applicability of Rule 406(g) in the context of customer transactions and to support ICE Clear Europe's rights to the Intellectual Property in data provided under the Rules.[36] This change would also help ensure the consistent application of Rule 406(g) by ensuring that ICE Clear Europe receives the same contractual representation from Customers as regards Intellectual Property rights as it does from Clearing Members. Thus, ICE Clear Europe believes this change would assist in the enforcement of its Intellectual Property rights by helping to ensure that Customers, as well as Clearing Members, acknowledge ICE Clear Europe's rights as defined in Rule 406(g), thereby helping to ensure the enforceability of ICE Clear Europe's Intellectual Property Rights in accordance with Rule 17Ad–22(e)(1).[37]

x. Confidentiality

Rule 106(a) currently provides that ICE Clear Europe shall keep confidential certain information received concerning Transactions, Contracts, past or current Open Contract Positions, and other information received from Clearing Members, subject to certain permitted disclosures, such as disclosures pursuant to a formal request from a Regulatory Authority. The proposed rule change would re-organize this provision by moving the list of information that ICE Clear Europe must keep confidential to re-designated paragraph (b) and moving the list of permitted disclosures to paragraph (c). Moreover, with respect to the information that ICE Clear Europe must keep confidential, the proposed rule change would clarify that any information concerning Margin payments between ICE Clear Europe and another clearing house, a Clearing Member, or Sponsored Principal, including in relation to a Customer, must be kept confidential. The previous formulation covered information concerning Margin payments between ICE Clear Europe and another clearing house, a Clearing Member, or Sponsored Principal, but did not specifically include information in relation to a Customer.

With respect to the list of permitted disclosures in re-designated paragraph (c), the proposed rule change would clarify that ICE Clear Europe could make a disclosure to a Regulatory Authority or Governmental Authority where a lawful request is made (rather than a ''formal'' request, as under the current rule) and where disclosure is necessary for the making of a complaint or report under Applicable Laws for an offence alleged or suspected to have been committed under Applicable Laws. Moreover, the proposed rule change would also add a provision to specifically permit disclosure pursuant to any Applicable Law, not simply pursuant to a court order as may be required by Applicable Law, as currently provided by Rule 106.

Finally, Rule 115(b) generally allows ICE Clear Europe to make arrangements with Governmental Authorities for the sharing of information. The proposed rule change would amend this provision to specifically state that it is subject to Rule 106, which, as discussed above, specifies the information that ICE Clear Europe must keep confidential and explains the circumstances under which ICE Clear Europe may disclose confidential information.

ICE Clear Europe designed these changes following an internal review and is making these changes to clarify and enhance its ability to disclose confidential information when requested to do so by a government or regulator or otherwise by Applicable Law.[38] ICE Clear Europe believes these changes are important because they will clearly provide ICE Clear Europe legal authority to disclose confidential information, and ICE Clear Europe may be required to disclose such information to maintain its licensure with a regulator or otherwise under Applicable Law.[39] Thus, ICE Clear Europe believes that in clarifying its ability to disclose confidential information in response to requests from governments and regulators or as required by Applicable Law, the proposed rule change would help to ensure that ICE Clear Europe's rules are consistent with relevant laws and regulations.[40]

xi. Waivers

The proposed rule change would also clarify ICE Clear Europe's authority to extend or waive requirements of the Rules. ICE Clear Europe is making these changes because it believes the current provisions of the Rules regarding waivers do not provide sufficiently clear authority for ICE Clear Europe to waive provisions of the Rules, as needed in relation to the organization and operation of ICE Clear Europe.[41]

Specifically, the proposed rule change would add a sentence to Rule 110(a), which currently allows ICE Clear Europe to waive performance by any Clearing Member or Sponsored Principal of any of its obligations under the Rules or any Contract whenever it considers that such waiver is necessary or in its best interests, to provide that ICE Clear Europe may, in its discretion, publicize such waivers. ICE Clear Europe believes this change, while not altering its existing authority to waive requirements, would provide ICE Clear Europe the ability to publicize such waivers and thereby increase the clarity and transparency of such waivers.

Moreover, Paragraph 4.2 of the Business Continuity Procedures currently provides that ICE Clear Europe may defer or amend any procedure or practice of ICE Clear Europe, any procedure or practice of Clearing Members, and any Contract Terms following a Business Continuity Event. The proposed rule change would clarify this provision by specifying that the Business Continuity Event in question must affect a Clearing Member and/or ICE Clear Europe. The proposed rule change would further specify that in the case of a Business Continuity Event affecting a Clearing Member, ICE Clear Europe may only defer or amend ICE Clear Europe's procedures and practices with respect to that Clearing Member. ICE Clear Europe is making this change to further clarify its authority to defer or amend its procedures and practices following a Business Continuity Event and provide certainty to Clearing Members that if they are not affected by a Business Continuity Event, they will

[34] Notice, 85 FR at 13211.

[35] 17 CFR 240.17Ad–22(e)(1); Notice, 85 FR at 13215.

[36] Notice, 85 FR at 13206.

[37] 17 CFR 240.17Ad–22(e)(1); Notice, 85 FR at 13215.

[38] Notice, 85 FR at 13211.

[39] Notice, 85 FR at 13211.

[40] The Commission has previously stated that under Rule 17Ad–22(e)(1), a Covered Clearing Agency such as ICE Clear Europe should consider whether its rules, policies and procedures, and contracts are clear, understandable, and consistent with relevant laws and regulations. *See* Covered Clearing Agencies Release, 81 FR at 70802.

[41] Notice, 85 FR at 13211.

not be affected by ICE Clear Europe deferring or amending its procedures and practices.

Finally, the proposed rule change would add a new Rule 114(d) to provide expressly that ICE Clear Europe may take any measure that it deems reasonably necessary in relation to the organization and operation of ICE Clear Europe. ICE Clear Europe is proposing to add this provision to ensure that it is not prevented from taking action under a range of circumstances that may arise, including, but not limited to a default scenario, merely because there is no specific provision of the Rules explicitly empowering it to do so. This authority is subject to a limitation that ICE Clear Europe may not take any action in breach of any provision of the Rules or Procedures or that would modify the Rules or Procedures, and that any such action must be taken in accordance with ICE Clear Europe's internal governance requirements. ICE Clear Europe does not believe that this amendment would alter its existing ability to take actions in such circumstances but would provide greater clarity and legal certainty as to ICE Clear Europe's permitted scope of action.[42]

xii. Voiding F&O Contracts

Rule 404(a) provides ICE Clear Europe the discretion to void F&O Contracts in certain circumstances. Under Rule 404(a)(vii), ICE Clear Europe may void an F&O Contract if the relevant Contract is one for which ICE Clear Europe has requested additional Margin or Permitted Cover from the Clearing Member or Sponsored Principal and no Margin or Permitted Cover is provided by the time required. The proposed rule change would clarify Rule 404(a)(vii) by providing that ICE Clear Europe must have requested additional Margin or Permitted Cover ''at the time of the Transaction.'' ICE Clear Europe is making the amendment to provide greater legal certainty by ensuring that its ability to void the F&O Contract is limited to the specific situation where additional margin is requested at the time of the transaction and is not provided.[43] This change would also distinguish Rule 404 from the default rules, which are intended to provide ICE Clear Europe remedies where there is a failure to provide margin requested at times other than at the time of the Transaction.

xiii. Termination of Contracts

The proposed rule change would amend paragraph 3.1(m) of the General Contract Terms. Currently, paragraph 3.1(m) provides that a contract shall terminate automatically, and Rule 209(c) shall apply, upon the Insolvency of ICE Clear Europe. Paragraph 3.1(m) is a standard contract term that applies to all F&O Contracts and to CDS Contracts and FX Contracts to the extent specified in the CDS Procedures and FX Procedures. The proposed rule change would amend paragraph 3.1(m) to provide simply that the contract shall terminate automatically only in accordance with and at the time set out in the Rules. ICE Clear Europe is making this change to ensure that paragraph 3.1(m) captures all possible instances of automatic termination under the Rules and to ensure that this provision of the General Contract Terms does not need to be updated when termination provisions in the Rules are amended or re-numbered.[44]

xiv. Approved Financial Institutions Acting in Other Capacities

Rule 501(a) provides that ICE Clear Europe shall only permit Approved Financial Institutions to open and operate, on behalf of Clearing Members, accounts from which ICE Clear Europe can draw amounts pursuant to a direct debit mandate, for the collection of amounts due to ICE Clear Europe from time to time. Rule 501(a) also provides that Approved Financial Institutions may also act in other capacities from time to time, as approved by ICE Clear Europe. The proposed rule change would modify this slightly to specify that ICE Clear Europe's approval, if any, for an Approved Financial Institution to act in another capacity must be ''in writing.'' ICE Clear Europe is making this amendment to clarify how it would approve requests under Rule 501(a) for Approved Financial Institutions to act in other capacities, but it does not believe that this change would alter the substance of Rule 501(a).[45]

xv. Clearing Procedures

ICE Clear Europe would also amend Paragraphs 6.1 and 6.2 of the Clearing Procedures. Paragraph 6.1(a) allows a Clearing Member to request that ICE Clear Europe convert a transaction of one of its Customers into a proprietary transaction of the Clearing Member upon the default of the Customer or other termination of the Customer's transaction. The proposed rule change would revise the language in Paragraph 6.1(a)(i) to refer to the ''transfer'' of the Customer's transaction, rather than a conversion of the Customer transaction. ICE Clear Europe is making this change to ensure that language in Paragraph 6.1 is consistent with the language used in similar provisions in ICE Clear Europe's Rules and Procedures.

Paragraph 6.2 of the Clearing Procedures sets out the procedures and conditions for the transfer of contracts absent an Event of Default. Paragraph 6.2(a) requires that each Clearing Member with a Customer Account, upon the request of one of its Customers, transfer the Clearing Member's rights and obligations with respect to Contracts recorded in that Customer's Account to another Clearing Member. In that situation, Paragraph 6.2(g) further provides, to Non-FCM/BD Clearing Members only, the right to impose margin requirements that the Customer must satisfy prior to transfer. The proposed rule change would modify Paragraph 6.2(g) so that it applies to all Clearing Members, not just Non-FCM/BD Clearing Members. ICE Clear Europe is making this change to correct a drafting error, as it intended Rule 6.2(g) to apply all Clearing Members, not just Non-FCM/BD Clearing Members.

xvi. Finance Procedures

The proposed rule change would also make a number of clarifications and updates to the Finance Procedures. ICE Clear Europe is making these changes to ensure that the Finance Procedures accurately reflect, and are applied in a manner consistent with, other ICE Clear Europe Rules and Procedures.

First, the proposed rule change would amend Paragraph 2.1. Paragraph 2.1 describes the six currencies that ICE Clear Europe supports and in which ICE Clear Europe settles transactions and holds accounts. The proposed rule change would amend Paragraph 2.1 to specify that certain F&O Contracts may settle wholly or partly in those currencies. ICE Clear Europe does not believe this change would alter the substance of Paragraph 2.1.[46] Rather, ICE Clear Europe is making this change to ensure that the Finance Procedures can accommodate Contracts that settle wholly or partly in a particular currency.

In Paragraph 2.2, the proposed rule change would add a reference to Rule 502(c). Paragraph 2.2 provides that ICE Clear Europe supports cross currency collateral, which means that it is not necessary to cover Margin requirements in the same currency as the underlying Contract. The proposed rule change would amend this by adding a

[42] Notice, 85 FR at 13211.

[43] Notice, 85 FR at 13212.

[44] Notice, 85 FR at 13213.

[45] 17 CFR 240.17Ad–22(e)(1); Notice, 85 FR at 13215.

[46] Notice, 85 FR at 13213.

clarification that this does not apply to variation margin, in accordance with Rule 502(c).[47] Rule 502(c) currently provides that variation margin payments may be made only in cash in the Eligible Currency in which the Contract in question is to be or can be settled. Thus, in adding this provision referencing Rule 502(c), ICE Clear Europe believes the proposed rule change would not alter the substance of Paragraph 2.2. Rather, ICE Clear Europe believes this change would ensure that Paragraph 2.2 is applied consistent with existing Rule 502(c).

Similarly, the proposed rule change would amend Table 1 in Paragraph 5.6 and Paragraph 6.1(i)(*i*). Paragraph 6.1(i)(*i*) provides that contracts will be revalued and subject to calls for variation margin on a daily basis, for settlement next day for payments in Japanese Yen or same day for payments in other currencies. Table 1 in Paragraph 5.6, which sets out the deadlines for various deliveries under the Finance Procedures, repeats the substance of this provision. The proposed rule change would amend both to state that settlement will be next day for payments in currencies other than Euros, Dollars, and Pounds or same day for payments in other currencies. Thus, as under the current provisions, payments in Euros, Dollars, and Pounds will be made same day, while payments in currencies other than Euros, Dollars, and Pounds will be next day. ICE Clear Europe is making this change to clarify this provision and ensure that it reflects the full range of currencies supported by the Clearing House, as described in Paragraph 2.1. Thus, ICE Clear Europe believes this change will eliminate any potential inconsistency between Paragraph 2.1 and Table 1 in Paragraph 5.6 and Paragraph 6.1(i)(*i*).

The proposed rule change would next re-organize Paragraph 6.1(b), which generally describes how Adjustments in Margin calls resulting from price changes in underlying open Contracts will result in a payment from the Clearing Member to ICE Clear Europe or vice versa. The proposed rule change also would add a provision to make clear that any such payments will be subject to Part 3 of the Rules. Part 3 of the Rules describes the financial requirements for Clearing Members and contains provisions regarding payments to and from Clearing Members. Thus, ICE Clear Europe is making this change to ensure that Paragraph 6.1(b) is applied consistent with the related provisions in Part 3 of the Rules.

Paragraphs 6.1(e) and (f) contain provisions regarding withdrawals of cash by Clearing Members from their accounts at ICE Clear Europe. Paragraph 6.1(e) provides a table listing relevant deadlines, organized by currency, by which Clearing Members should provide instructions for withdrawal. Paragraph 6.1(f) further provides that no withdrawals will be possible after these deadlines. The proposed rule change would re-organize these provisions so that Paragraph 6.1(e), rather than (f), specifies that no withdrawals of cash will be possible on the same day if instructions are received after the deadlines in the table in 6.1(e). The proposed rule change would also describe these withdrawals as ''*ad hoc* withdrawals'' and add a provision to state that Paragraph 6.1(f), which provides details on the mechanics of such payments, is subject to Rule 301(f). Rule 301(f) provides details on the payment of amounts by electronic transfer. Thus, similar to the changes above, this change ensures that Paragraph 6.1(f) is applied consistent with the related provisions in Part 3 of the Rules.

Finally, Paragraph 6.1(i)(*vii*) provides that any amount payable by a Clearing Member to the Clearing House (or vice versa) pursuant to the Rules or any Contract may be included within an end-of-day or *ad hoc* payment, and lists examples of the types of amounts payable that would be subject to this provision, such as settlement amounts. The proposed rule change would update the list of examples to include Option premiums, corporate action payments, amounts resulting from reduced gain distributions, and product terminations or non-default loss contributions under Part 9 of the Rules. ICE Clear Europe is making this change to reflect the full range of payments that may be made to and from ICE Clear Europe, but does not believe that this change would alter the substance of Paragraph 6.1(i)(*vii*).[48] Thus, similar to the changes above, this change ensures that Paragraph 6.1(i)(*vii*) is applied consistent with the full range of payments that may be made to and from ICE Clear Europe.

Various changes have been proposed in paragraph 7.2 of the Finance Procedures in relation to non-cash assets provided as Permitted Cover. The changes are intended to update and improve the drafting of this provision and more clearly reflect the operational detail of how ICE Clear Europe deals with Permitted Cover, including the use of the ECS system to provide information in relation to non-cash Permitted Cover provided to the Clearing House.

Similarly, the proposed rule change would add a clarification in Paragraph 8.2, which allows Clearing Members and Sponsored Principals to suggest to ICE Clear Europe that a new class or series of permitted cover be included within the list of acceptable Permitted Cover. The proposed rule change would add a provision to state that a request form to lodge new certificates of deposit, pursuant to Paragraph 8.2, is available on ICE Clear Europe's website. ICE Clear Europe believes that this change would not affect the substance of Paragraph 8.2 but would merely cross-reference relevant information available elsewhere.

Finally, the proposed rule change would update Paragraph 11.4 to state that matching criteria for a settlement system or depository (which are needed when a Clearing Member transfers securities to ICE Clear Europe to meet margin obligations) would be published via circular rather than on ICE Clear Europe's website. ICE Clear Europe believes this change would ultimately not affect the communication of this information to Clearing Members or the content of the information communicated, but rather the vehicle for making that communication. Moreover, given that ICE Clear Europe publishes its circulars on its website, ICE Clear Europe does not believe this change would alter the substance of this provision.

As discussed above, ICE Clear Europe is making these changes to ensure that the Finance Procedures accurately reflect, and are applied in a manner consistent with, other ICE Clear Europe Rules and Procedures, in accordance with Rule 17Ad–22(e)(1).[49]

C. 17Ad–22(e)(2)(i)

As discussed in this section, the proposed rule change would clarify a number of terms used with respect to the persons involved in the governance of ICE Clear Europe. ICE Clear Europe is making these changes, following an internal review, to improve the governance functions of ICE Clear Europe. ICE Clear Europe believes that these changes would help ensure that its governance arrangements are clear and transparent in accordance with Rule 17Ad–22(e)(2)(i).[50]

First, the proposed rule change would expand the definition of ''Board'' in Rule 101. As currently defined, ''Board'' means the board of Directors or any other body established thereunder

[47] Notice, 85 FR at 13213.

[48] Notice, 85 FR at 13213.

[49] 17 CFR 240.17Ad–22(e)(1).

[50] 17 CFR 240.17Ad–22(e)(2)(i).

(whether called a board, a committee, or otherwise) of ICE Clear Europe. The proposed rule change would amend this definition to mean the Board of Directors of ICE Clear Europe and any other body given powers or discretion by the Board of Directors. The proposed rule change would also amend this definition to clarify that the definition includes other bodies established under, or given power by, the Board of Directors only in the context of any power, discretion or authority of the Board of ICE Clear Europe. Following an internal review of this and related definitions, ICE Clear Europe is making this change to clarify that the term Board includes, in the context of any power, discretion or authority of the board, other similar bodies and committees established by or under the Board of Directors of ICE Clear Europe.[51] ICE Clear Europe believes that doing so would help to ensure the clarity and transparency of this definition by being more specific about the legal bodies that would be included in the definition of Board.[52]

Similarly, in a number of the Rules, where reference is made to persons exercising governance or other functions for ICE Clear Europe or a Clearing Member, such as directors or officers, the proposed rule change would expand the reference to include committees, individual committee members, and similar terms. Following an internal review, ICE Clear Europe determined these changes would more accurately describe the persons involved in governance and use a consistent list of such persons involved in governance through the Rules.[53] ICE Clear Europe therefore believes this change would help to ensure the clarity and transparency of the various persons involved in the governance of ICE Clear Europe.[54]

Finally, the proposed rule change would similarly expand the definition of ''Representative.'' Rule 1010 currently defines ''Representative'' generally as ''any Person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person.'' The proposed rule change would expand this to also include ''any Persons that any such Person employs, authorises or appoints to act on its behalf.'' Again, following an internal review, ICE Clear Europe determined to make this change to more accurately describe the persons who act as representatives on behalf of its Clearing Members.[55] This expansion would help to ensure employees of a Clearing Member's Representative are also included in the definition of Representative, such as, for example, employees of a law firm representing a Clearing Member. The proposed rule change would also carry through this change to the introductory sentence of Rule 102(j). Under Rule 102(j), a Clearing Member is bound by an act, omission, conduct, or behaviour of its Customers and clients of its Customers in certain circumstances. The proposed rule change would modify this to clarify that a Clearing Member is also bound by an act, omission, conduct, or behaviour of its Representatives in certain circumstances. Following an internal review, ICE Clear Europe determined to make this change because in certain circumstances Representatives might be authorized to take actions on behalf of Clearing Members, and therefore ICE Clear Europe should be able to rely on the actions of the Representatives in binding the Clearing Member. ICE Clear Europe also determined to make this change to correct a drafting error, as other parts of Rule 102(j) refer to Clearing Members and their Representatives.[56] ICE Clear Europe therefore believes this change would help to ensure the clarity and transparency of the definition of ''Representative'' by being more specific about the persons included in the definition and by specifically binding Clearing Members to the actions of their representatives in certain circumstances under Rule 102(j).[57]

D. 17Ad–22(e)(4)(v)

As discussed in this section, the proposed rule change would amend ICE Clear Europe's Finance Procedure as they relate to changes to ICE Clear Europe's Guaranty Funds. Through its Guaranty Funds, ICE Clear Europe maintains additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for ICE Clear Europe in extreme but plausible market conditions, in accordance with Rule 17Ad–22(e)(4)(ii).[58] As discussed below, ICE Clear Europe believes the change would help ICE Clear Europe to maintain these Guaranty Funds, in accordance with Rule 17Ad–22(e)(4)(v).[59]

Specifically, in Paragraph 6.1(i)(*iii*) of the Finance Procedures, the proposed rule change would amend the time periods that apply to ICE Clear Europe's ability to adjust Clearing Members' Guaranty Fund Contributions. As described in Paragraph 6.1(i)(*iii*), each relevant Guaranty Fund Period, ICE Clear Europe reviews, and may amend, the total value of the Guaranty Funds and required Guaranty Fund Contributions. ICE Clear Europe then notifies each Clearing Member of its total Guaranty Fund Contribution requirements and the adjustments to its Guaranty Fund Contribution. Under the current version of Paragraph 6.1(i)(*iii*), such adjustments take effect for the F&O Guaranty Fund five business days after notification and two business days after notification for the CDS Guaranty Fund and FX Guaranty Fund. The proposed rule change would harmonize these time periods by providing that for all three Guaranty Funds, adjustments take effect five business days after notification. In other words, the time period would remain unchanged for adjustments to the F&O Guaranty Fund but would increase to five business days for adjustments to the CDS Guaranty Fund and FX Guaranty Fund.

ICE Clear Europe believes that it is operationally easier and more efficient to have a single time period for adjustments to Guaranty Fund Contributions. Thus, ICE Clear Europe believes it is appropriate to harmonize this time period across all three Guaranty Funds. Moreover, ICE Clear Europe believes the five business day period, rather than the two business day period, is appropriate because it provides additional time to Clearing Members and because ICE Clear Europe does not anticipate needing to make adjustments in the ordinary course sooner than five business days.[60] For these reasons, ICE Clear Europe is making this change and further believes that the change would be consistent with Rule 17Ad–22(e)(4)(v).[61]

E. 17Ad–22(e)(6)(i) and (ii)

As discussed in this section, the proposed rule change also would revise ICE Clear Europe's Rules and Procedures with respect to the calculation of margin under certain options contracts, the settled-to-market treatment of variation margin, a new

[51] Notice, 85 FR at 13211.

[52] Notice, 85 FR at 13216.

[53] Notice, 85 FR at 13211.

[54] Notice, 85 FR at 13216.

[55] Notice, 85 FR at 13211.

[56] Notice, 85 FR at 13211.

[57] Notice, 85 FR at 13216.

[58] 17 CFR 240.17Ad–22(e)(4)(ii).

[59] 17 CFR 240.17Ad–22(e)(4)(v); Notice, 85 FR at 13217.

[60] Notice, 85 FR at 13213.

[61] 17 CFR 240.17Ad–22(e)(4)(v); Notice, 85 FR at 13217.

mechanism for paying variation margin, and authority to treat amounts payable by a Clearing Member as additional margin. As discussed below, ICE Clear Europe is making these changes, following an internal review and feedback from Clearing Members, to improve its operational practices and facilitate a different legal treatment of variation margin.[62] ICE Clear Europe believes these changes would help to ensure that it maintains a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances, in accordance with Rule 17Ad–22(e)(6)(i) and (ii).[63]

i. Calculation of Margin Under Certain Options Contracts

The proposed rule change would amend Paragraph 4.4(c) of the Clearing Procedures to clarify how ICE Clear Europe would calculate net liquidating value (''NLV'') for Premium Up-Front Options. The new language would also confirm that for long Option holders, a positive NLV amount would be applied against the requirement for Original Margin, and that for short Option holders, negative NLV would contribute to the requirement for Original Margin. ICE Clear Europe is making these changes to provide greater detail in the written Clearing Procedures regarding the operational methods for calculating and applying NLV.[64] ICE Clear Europe believes that this aspect of the proposed rule change would help to ensure that ICE Clear Europe establishes, implements, maintains, and enforces written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[65]

ii. Settled-to-Market Variation Margin

The proposed rule change also would establish the settled-to-market treatment of variation margin. Variation margin, also known as mark-to-market margin, is a daily payment of cash, to ICE Clear Europe by a Clearing Member or vice versa, meant to cover the change in market value of a CDS, F&O, or FX contract. ICE Clear Europe's Rules use three terms to refer to variation margin: Mark-to-Market Margin (for CDS contracts); FX Mark-to-Market Margin (for FX contracts); and Variation Margin (for F&O contracts). The proposed changes described below would apply to Mark-to-Market Margin, FX Market-to-Market Margin, and Variation Margin; in other words, ICE Clear Europe is making the changes described below with respect to payment of variation margin under CDS, FX, and F&O contracts.[66]

ICE Clear Europe is making changes to establish the settled-to-market treatment of variation margin at the request of Clearing Members.[67] Under the settled-to-market treatment, variation margin is treated as a cash payment to settle outstanding exposure following specific payment dates, rather than as collateralizing the exposure.[68] ICE Clear Europe represents that Clearing Members view settled-to-market treatment as beneficial because it may enable them to reduce their capital requirements with respect to cleared contracts.[69] To ensure such treatment, the proposed rule change would revise terminology and make other drafting changes to clarify the legal characterization that payments of variation margin represent settlement payments rather than collateral payments. These changes would not, however, affect how ICE Clear Europe calculates variation margin or other operational aspects of variation margin.

The proposed rule change would first amend the defined terms ''Margin,'' ''Mark-to-Market Margin,'' ''FX Mark-to-Market Margin,'' and ''Variation Margin'' in Rule 101 to characterize such margin as settlement payments. The proposed rule change would do so by referring to the margin as an outright transfer of cash as a settlement payment. For similar reasons, the proposed rule change would revise the defined term ''Original Margin'' to exclude Variation Margin from the entire definition of Original Margin. This change is necessary because the definition of Original Margin refers to the title transfer or pledge of Permitted Collateral, rather than a settlement payment.

Similar to those revisions, the proposed rule change would also make various amendments to the Rules and Procedures to use terms that are more consistent with characterizing variation margin as a settlement payment. For example, the proposed rule change would replace terms like ''deposit,'' ''pledge,'' ''deposited,'' and ''pledged'' with ''transfer,'' ''transferred,'' ''transferred to,'' and cash ''transfer.'' As with the changes described above, these amendments would not reflect a change in actual operational practice, but rather would facilitate the settled-to-market treatment of variation margin.

The proposed rule change would next amend Rule 505 to continue this characterization of payments of variation margin. Under Rule 505, a Customer acknowledges that the Financial Collateral Regulations[70] apply in relation to all Permitted Cover, Margin, and Guaranty Fund Contributions transferred to ICE Clear Europe. The proposed rule change would amend Rule 505 to clarify that payments of Variation Margin, Mark-to-Market Margin, and FX Mark-to-Market Margin do not constitute financial collateral under the Financial Collateral Regulations. This is necessary to ensure that such payments are considered to be settlement payments rather than collateral. Moreover, the proposed rule change would replace the term ''collateral'' in the last sentence of Rule 505 with the more general term ''such assets'' to make Rule 505 more consistent with the definitions used in the Financial Collateral Regulations. As with the changes described above, ICE Clear Europe is proposing these changes based upon feedback received by ICE Clear Europe from some Clearing Members and to ensure consistency with the characterization of such payments at settlement rather than collateral.[71]

To further the characterization of payments of variation margin as settlement payments rather than payments of collateral, the proposed rule change would add a new concept of CDS Price Alignment Amount and FX

[62] Notice, 85 FR at 13203.

[63] 17 CFR 240.17Ad–22(e)(6)(i), (ii); Notice, 85 FR at 13215–13216.

[64] Notice, 85 FR at 13206.

[65] 17 CFR 240.17Ad–22(e)(6)(i); Notice, 85 FR at 13215–13216.

[66] Although ICE Clear Europe has not yet launched clearing of FX products, the proposed rule change would make similar changes to the relevant provisions of the Rules and Procedures regarding FX clearing. Doing so would maintain consistency throughout the rules and ensure settled-to-market treatment when ICE Clear Europe begins clearing of FX products. Notice, 85 FR at 13204.

[67] Notice, 85 FR at 13203.

[68] Notice, 85 FR at 13203.

[69] Notice, 85 FR at 13203.

[70] Rule 101 of the ICE Clear Europe Rules defines the term Financial Collateral Regulations as ''the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements).'' These regulations affect ICE Clear Europe's use of collateral provided by Clearing Members and Customers.

[71] Notice, 85 FR at 13204.

Price Alignment Amount to replace interest paid on Mark-to-Market Margin and FX Mark-to-Market Margin. Currently, ICE Clear Europe pays or charges a CDS Clearing Member interest with respect to net Mark-to-Market Margin transferred between the parties.[72] Under Rule 1519(e), ICE Clear Europe would instead pay or charge a Price Alignment Amount, which would be economically equivalent to the interest that ICE Clear Europe currently pays or charges. Because the term interest is more typically associated with collateral, however, ICE Clear Europe proposes to refer to such amounts as Price Alignment Amounts to better characterize the Mark-to-Market Margin as a settlement payment.[73] Accordingly, the proposed rule change would add new defined terms, update existing defined terms, and update cross references.

Finally, the proposed rule change would amend the Finance Procedures to make other changes to further characterize variation margin as settled-to-market. First, the proposed rule change would add to the Finance Procedures a new paragraph 2.3 which would state that Variation Margin, Mark-to-Market Margin, and FX Mark-to-Market Margin is transferred to and from ICE Clear Europe by way of outright transfer and is not pledged. Second, the proposed rule change would revise paragraph 6.1(i)(*i*) of the Finance Procedures to state that the value of a CDS, F&O, and FX Contract would reset to zero once the settlement payments of variation margin have been made. ICE Clear Europe represents that resetting to zero is required to receive settled-to-market treatment under certain regulations applicable to ICE Clear Europe's Clearing Members.[74] Finally, the proposed rule change would also make a drafting change to paragraph 6.1(i)(*i*) to clarify that ICE Clear Europe would ordinarily calculate adjustments to margin requirements and execute payments in the currency of the relevant Contracts.

ICE Clear Europe believes that these changes, in general, would enable ICE Clear Europe to establish settled-to-market treatment for payments of Mark-to-Market Margin, FX Mark-to-Market Margin, and Variation Margin, at the request of certain Clearing Members to improve the capital treatment of CDS, FX, and F&O contracts for these clearing members. ICE Clear Europe further believes that these changes would place ICE Clear Europe in a better position to collect Mark-to-Market Margin, FX Mark-to-Market Margin, and Variation Margin from these Clearing Members in accordance with Rule 17Ad–22(e)(6)(ii).[75]

iii. Externalised Payments Mechanism

In addition to settled-to-market treatment of variation margin, ICE Clear Europe's Clearing Members have requested that it adopt a new mechanism for the payment of variation margin. These members believe this new mechanism for the payment of variation margin between ICE Clear Europe and Clearing Members would make the payment of variation margin more consistent with how payments are made between those Clearing Members and their customers.[76] In accordance with their request, ICE Clear Europe proposes to adopt this new method of collecting variation margin, which it refers to as the ''Externalised Payments Mechanism.''[77] Under the Externalised Payments Mechanism, Clearing Members may opt not to net together payments of variation margin with other payments, like clearing house and exchange fees, between ICE Clear Europe and the Clearing Member. Under the existing approach, ICE Clear Europe would net these payments together (the amended Rules call this approach the ''Standard Payments Mechanism''). The effect of using the Externalised Payments Mechanism for cash payments would be that payments would be settled pursuant to a separate process and at a separate time from the Standard Payments Mechanism.

To establish the Externalised Payments Mechanism, the proposed rule change would first add new defined terms for the Standard Payments Mechanism and the Externalised Payments Mechanism in Rule 101. Those terms in Rule 101 would cross-reference to the full definitions of those terms as found in proposed changes to Rule 302(a). The proposed changes to Rule 302(a) would clarify that the Externalised Payments Mechanism is an alternative payments mechanism that would only apply in respect of specified Accounts as requested by the Clearing Member and confirmed by ICE Clear Europe in writing. Moreover, Rule 302(a), as proposed to be amended, would state that the Standard Payments Mechanism shall apply unless ICE Clear Europe has agreed that the Externalised Payments Mechanism shall apply to a particular cash payment and that the current provisions regarding the calculation of a net amount payable by or to ICE Clear Europe in respect of each Account are part of the Standard Payments Mechanism.

Next, the proposed rule change would make various changes to the Finance Procedures to implement the Externalised Payments Mechanism. To distinguish the Externalised Payments Mechanism from the Standard Payments Mechanism, the proposed rule change would amend Paragraph 6.1(b) to clarify that cash payments between ICE Clear Europe and a Clearing Member (including Margin) may only be set off and consolidated under the Standard Payments Mechanism. Similarly, the proposed rule change would amend paragraphs 6.1(i)(*i*) and (*ii*) to explain that under the Externalised Payments Mechanism, cash payments would be settled through a separate cash flow and not included in a combined overnight call or return as would apply under the Standard Payments Mechanism. Next, the proposed rule change would amend Paragraph 6.1(b) to describe the types of payments that Clearing Members may elect to settle through the Externalised Payments Mechanism: Upfront fees, Mark-to-Market Margin, FX Mark-to-Market Margin, Variation Margin, and other payments. Similarly, the proposed rule change would clarify in paragraph 6.1(i)(*vii*) that any amount payable by a Clearing Member to ICE Clear Europe (or vice versa) pursuant to the Rules or any Contract may be included within an end-of-day or *ad hoc* payment under the Standard Payments Mechanism and would include, for the sake of clarity, examples of the types of payments that could be included. Finally, the proposed rule change would add new paragraph 6.1(i)(*viii*) to address the applicability of the Externalised Payments Mechanism in circumstances where certain payments are being made under ICE Clear Europe's Default Rules.

Relatedly, the proposed rule change would update Rules 110(g), 303(a), and 1902(h)(i) to reflect the introduction of the Externalised Payments Mechanism and differentiate between payments made under the Standard Payments Mechanism and those made under the Externalised Payments Mechanism.

ICE Clear Europe maintains that these changes, in general, would enable ICE Clear Europe to establish the Externalised Payments Mechanism at the request of certain Clearing Members. ICE Clear Europe further believes that this change would put ICE Clear Europe in a better position to collect variation margin using the Externalised Payments

[72] This concept would apply to FX Mark-to-Market Margin as well, but as noted above, ICE Clear Europe has not yet launched clearing of FX products. *See supra* note 66.

[73] Notice, 85 FR at 13204.

[74] Notice, 85 FR at 13204–13205.

[75] 17 CFR 240.17Ad–22(e)(6)(ii); Notice, 85 FR at 13215–13216.

[76] Notice, 85 FR at 13202.

[77] Notice, 85 FR at 13202.

Mechanism in accordance with Rule 17Ad–22(e)(6)(ii).[78]

iv. Amounts Payable as Additional Margin

Paragraph 6.1 of the Finance Procedures generally describes how payments are made to and from ICE Clear Europe. Paragraph 6.1(g) sets deadlines by which Clearing Members must make overnight and *ad hoc* payments to ICE Clear Europe, *i.e.* complete their daily settlement obligations. The proposed rule change would add to Paragraph 6.1(g) a provision to give ICE Clear Europe the ability to delay any payments due to the Clearing Member from ICE Clear Europe if there are outstanding amounts payable by that Clearing Member (or any Affiliate of that Clearing Member) to ICE Clear Europe and further provides that such amounts withheld would be treated as additional required margin of the Clearing Member under Rule 502(g) (which allows ICE Clear Europe to impose, amend or withdraw additional Margin requirements in respect of any Clearing Member at any time). ICE Clear Europe believes this amendment would enhance its ability to manage the credit and liquidity risk presented by a Clearing Member that has failed to complete its daily settlement obligations by allowing ICE Clear Europe to treat that failure as additional required margin.[79] ICE Clear Europe further believes that this change would help to ensure that ICE Clear Europe has a margin system that includes the authority and operational capacity to make intraday margin, in accordance with Rule 17Ad–22(e)(6)(ii).[80]

Moreover, paragraphs 6.1(i)(*i*) and 6.1(i)(*ii*) of the Finance Procedures provide that if an intra-day margin call affects a significant number of Clearing Members, ICE Clear Europe will issue a circular. ICE Clear Europe is amending this provision to provide that where an intra-day margin call affects a significant number of Clearing Members, it *may* issue a circular. ICE Clear Europe is making this change so it has flexibility to determine the best means of communicating with affected Clearing Members under the particular circumstances. ICE Clear Europe does not believe that a circular, which is widely distributed to the market, will always be the best means of communicating this information.[81] ICE Clear Europe further believes that this flexibility will help to ensure that it has the authority and operational capacity to make intraday margin calls in defined circumstances, in accordance with Rule 17Ad–22(e)(6)(ii).[82]

F. 17Ad–22(e)(7)(i)

As discussed in this section, the proposed rule change also would codify an important ability that ICE Clear Europe uses to generate additional liquidity as needed. Specifically, the proposed rule change would amend Paragraph 7.2 of the Finance Procedures to provide that ICE Clear Europe may use repurchase agreements, secured lending facilities, and sales to generate liquidity from non-cash assets provided that, in the case of Margin and Guaranty Fund Contributions, ICE Clear Europe will remain liable for returning the same kind of assets if the relevant secured obligations are performed or closed out by the Clearing Member. ICE Clear Europe is making this change to reflect its existing ability to generate liquidity from non-cash assets transferred to ICE Clear Europe, subject to the requirement to return unused Margin and Guaranty Fund contributions of the same kind as was provided.[83] This ability is already described in Rule 1103, and ICE Clear Europe is adding this provision to the Finance Procedures to further confirm its ability to maintain sufficient liquid resources in accordance with the requirements of Rule 17Ad–22(e)(7)(i).[84]

G. 17Ad–22(e)(10)

As discussed in this section, the proposed rule change would also update Rule 703 and ICE Clear Europe's Delivery Procedures with respect to physical settlement. ICE Clear Europe is making these changes to be consistent with market practices regarding settlement and the operational practices of associated trading venues for which ICE Clear Europe clears Contracts. ICE Clear Europe believes these changes would help to ensure that ICE Clear Europe establishes, implements, maintains, and enforces written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries, in accordance with Rule 17Ad–22(e)(10).[85]

The proposed rule change would add to the end of Rule 703 a new paragraph (j), which would require Sellers under a Futures Contract to represent that they convey good title to products (free of encumbrances) when physical settlement takes place. ICE Clear Europe is making this change to be consistent with market expectation around deliveries and to be consistent with other deliveries made of such products in the relevant cash markets.[86] ICE Clear Europe also believes this change would help to ensure that Rule 703 is in accordance with Rule 17Ad–22(e)(10).[87]

In the Delivery Procedures, which describe ICE Clear Europe's procedures for physical settlement, the proposed rule change would make various updates to ensure that the procedures are consistent with the operational practices and systems of ICE Clear Europe and the operations of affiliated trading venues. Specifically, in Paragraph 19 of the General Provisions, the proposed rule change would make an amendment to reflect the fact that other deliverable products may be dealt with in ICE Clear Europe's Guardian system in addition to those deliverables already specifically listed in that paragraph. Moreover, the proposed rule change would add a new paragraph to Part A and Part C of the Delivery Procedures to clarify that all references to timings or times of day are references to London times. In addition, the proposed rule change would make updates throughout the Delivery Procedures to reflect current operational practices under which certain submissions (such as delivery intentions) are made electronically through the ECS system, rather than through submission of specified delivery forms. The proposed rule change would also update deadlines and descriptions for particular delivery steps or, in some cases, delete delivery steps that are no longer carried out. Finally, the proposed rule change would delete in its entirety Section 7, which addressed alternative delivery procedure for certain European emissions contracts, as ICE Clear Europe maintains that it is unnecessary in light of the provisions of Part A of the Delivery Procedures.[88] ICE Clear Europe believes that the proposed rule change would help to ensure that its Delivery

[78] 17 CFR 240.17Ad–22(e)(6)(ii); Notice, 85 FR at 13215–13216.

[79] Notice, 85 FR at 13213.

[80] 17 CFR 240.17Ad–22(e)(6)(ii); Notice, 85 FR at 13215–13216.

[81] Notice, 85 FR at 13213.

[82] 17 CFR 240.17Ad–22(e)(6)(ii); Notice, 85 FR at 13215–13216.

[83] Notice, 85 FR at 13213.

[84] 17 CFR 240.17Ad–22(e)(7)(i); Notice, 85 FR at 13213.

[85] 17 CFR 240.17Ad–22(e)(10); Notice, 85 FR at 13215.

[86] Notice, 85 FR at 13206.

[87] 17 CFR 240.17Ad–22(e)(10); Notice, 85 FR at 13215.

[88] Notice, 85 FR at 13210–13211.

Procedures provide clear written standards that state ICE Clear Europe's obligations with respect to the delivery of physical instruments and that identify, monitor, and manage the risks associated with physical deliveries in accordance with Rule 17Ad–22(e)(10).[89]

H. 17Ad–22(e)(13)

As discussed in this section, the proposed rule change would make a number of changes to protect and further enhance ICE Clear Europe's ability to manage the default of a Clearing Member and contain losses resulting from such a default. The proposed rule change would do so by expanding the scope of events that could lead to ICE Clear Europe declaring an event of default with respect to a Clearing Member, clarifying ICE Clear Europe's authority with respect to conducting default auctions, and expanding the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option. ICE Clear Europe is making these changes, following an internal review, to improve its management of Clearing Member defaults. ICE Clear Europe believes these changes are consistent with the requirement of Rule 17Ad–22(e)(13) that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[90]

i. Expanding Event of Default

The proposed rule change would expand the situations in which ICE Clear Europe could declare an Event of Default and therefore employ its default management powers under Part 9 of the Rules. The proposed rule change would do so by amending the definitions of certain events which themselves could be the basis for ICE Clear Europe declaring an Event of Default with respect to a Clearing Member. First, the proposed rule change would amend the definition of ''Bankruptcy'' and of ''Insolvency'' to include a scenario where a person is ''granted suspension of payments.'' Insolvency laws may sometimes allow for a suspension of payments, and treating such a situation as a Bankruptcy would allow ICE Clear Europe to employ the full range of default management powers available as needed to address the suspension of payments.

Second, the proposed rule change would amend Rule 901(a)(viii) to expand the list of approvals and similar legal statuses, the revocation of which may constitute an Event of Default, to include loss of relevant ''exemptions'' by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation, or Delivery Facility. ICE Clear Europe believes that the loss of such an exemption could be equivalent to the loss of a licence or regulatory authorization, which is already an event that could constitute an Event of Default under Rule 901(a)(viii).[91] ICE Clear Europe accordingly believes that loss of an exemption should similarly be treated as an Event of Default under Rule 901(a)(viii).

Third, the current definition of ''Insolvency'' includes ''a Governmental Authority making an order, pursuant to which any of that Person's securities, property, rights, or liabilities are transferred.'' The proposed rule change would expand this to include a Governmental Authority making an ''instrument or other measure'' pursuant to which any of that Person's securities, property, rights or liabilities are transferred, in addition to just ''making an order.'' Similarly, the proposed rule change would expand the definition of ''Insolvency Practitioner'' in Rule 101 to include a ''judicial manager.'' ICE Clear Europe believes these changes would ensure that all relevant insolvency scenarios and insolvency office-holders are covered by the definitions of Insolvency and Insolvency Practitioner, which themselves could lead to ICE Clear Europe declaring an Event of Default under Rule 901.[92]

ICE Clear Europe believes that these changes, taken together, would expand the possible events for which ICE Clear Europe could declare an Event of Default with respect to a Clearing Member to include the situations described above.[93] ICE Clear Europe believes that the proposed rule change would to help ensure that its powers in responding to defaults, which are only available after ICE Clear Europe declares an Event of Default, are accessible as appropriate and necessary to respond to such situations. ICE Clear Europe believes that this would mean that it generally has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in accordance with Rule 17Ad–22(e)(13).[94]

ii. Default Auctions

Rule 905(b) describes actions that ICE Clear Europe may take to close out contracts upon a Clearing Member's default. The proposed rule change would add to this, in new paragraph (xix), explicit authority for ICE Clear Europe to carry out default auctions in accordance with the Default Auction Procedures and construct auction lots out of the defaulting Clearing Member's contracts. The lots may include positions relating to multiple customer accounts of a Non-FCM/BD Clearing Member. An auction lot relating to Contracts of a defaulting FCM/BD Clearing Member could only contain positions relating to a single account, however, and a single auction lot could not consist of both proprietary and client positions. Moreover, new paragraph (xix) would provide ICE Clear Europe with the explicit power to use a single bid price received for a particular lot of auctioned positions to calculate liquidation values and net sums by apportioning this bid price across the various accounts in which the contracts in the auction lot are recorded. ICE Clear Europe is making this change to make explicit its authority to take these actions. Although the existing CDS Default Management Framework permits ICE Clear Europe to conduct auctions in lots,[95] ICE Clear Europe's Rules currently do not expressly grant this authority, and the proposed rule change would make express ICE Clear Europe's authority to do so. In making clear ICE Clear Europe's authority with respect to auctions, which ICE Clear Europe would use to sell a defaulting Clearing Member's contracts and contain potential losses on those contracts, ICE Clear Europe believes that the proposed rule change would help to ensure that it generally has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in accordance with the requirement of Rule 17Ad–22(e)(13).[96]

iii. Net Sum Payable

Rule 906(a) defines how ICE Clear Europe calculates the net sum payable by a defaulting Clearing Member. Among other things, this calculation

[89] 17 CFR 240.17Ad–22(e)(10); Notice, 85 FR at 13215.

[90] 17 CFR 240.17Ad–22(e)(13); Notice, 85 FR at 13216.

[91] Notice, 85 FR at 13209.

[92] Notice, 85 FR at 13209.

[93] Notice, 85 FR at 13209.

[94] 17 CFR 240.17Ad–22(e)(13); Notice, 85 FR at 13216.

[95] *See* Securities Exchange Act Release No. 86783 (Aug. 28, 2019), 84 FR 46575 (Sep. 4, 2019) (SR–ICEEU–2019–014) (approving the CDS Default Management Framework).

[96] 17 CFR 240.17Ad–22(e)(13); Notice, 85 FR at 13216.

includes the value of the exercise of an Option. The proposed rule change would modify Rule 906(a) to refer to the ''abandonment'' of an Option in addition to the exercise of an Option. ICE Clear Europe proposes this change because abandoning an Option could also affect the aggregate amount payable by or to a defaulting Clearing Member in respect of positions recorded in a given account and such impact should be taken into account in addition to the impact of any exercise of an Option.[97] ICE Clear Europe believes that taking into account the exercise of an Option would help to ensure that the net sum payable by or to a defaulting Clearing Member accurately reflects the possible consequences of abandoning Options in the defaulting Clearing Member's portfolio.[98] ICE Clear Europe therefore believes this change would help improve its ability to take timely action to contain losses and liquidity demands associated with a defaulting Clearing Member's Options in accordance with Rule 17Ad–22(e)(13).[99]

I. 17Ad–22(e)(14)

As discussed in this section, the proposed rule change would make a number of changes to protect and further enhance ICE Clear Europe's ability to transfer the positions of a Clearing Member's customers to a different Clearing Member in the event of the first Clearing Member's default. This process, generally known as porting, allows customers uninterrupted access to clearing at ICE Clear Europe in the event of a Clearing Member's default. As discussed below, the proposed rule change would clarify: The application of the Standard Terms, ICE Clear Europe's use or transfer of margin, the timing of the creation, termination, and pricing of contracts subject to porting, and the price at which positions are ported. ICE Clear Europe is making these changes, following an internal review, to ensure its ability to conduct porting. ICE Clear Europe believes these changes are consistent with the requirement of Rule 17Ad–22(e)(14) that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a Clearing Member's customers and the collateral provided to ICE Clear Europe with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that Clearing Member.[100]

i. Application of the Standard Terms

The first set of proposed changes to help facilitate porting would make changes with respect to the application of the Standard Terms. The Standard Terms are uniform contractual terms, as published by ICE Clear Europe, that form the basis for transactions between Non-FCM/BD Clearing Members and their Customers in credit default swaps.[101] The Standard Terms facilitate porting by binding Customers and Clearing Members to a set of uniform contractual provisions that help to ensure that all terminations and re-establishments of cleared contracts occur at the same time and at the same price, reducing the possibility of valuation disputes or other claims that might prevent or reduce the likelihood of porting. The Standard Terms also contain provisions that help to ensure that ICE Clear Europe may use and transfer margin provided by Customers to Clearing Members.

The proposed rule change would make a number of amendments to help ensure that the Standard Terms are contractually binding as between Non-FCM/BD Clearing Members and their Customers and that the Standard Terms cannot be overridden or modified. Specifically, the proposed rule change would add to existing Rule 202(b) an additional provision that Customers and Non-FCM/BD Clearing Members will be deemed to be bound by the Standard Terms through acceptance by conduct as a result of their continued use of ICE Clear Europe. This proposed change would provide an additional basis for certainty that the Standard Terms would apply as between the Customer and Non-FCM/BD Clearing Member, notwithstanding that a Non-FCM/BD Clearing Member had otherwise failed to obtain its Customer's agreement to the Standard Terms (under existing Rule 202(b), Non-FCM/BD Clearing Members are required to ensure that the Standard Terms are contractually binding as between themselves and their Customers).[102] ICE Clear Europe believes that this additional protection is a reasonable approach in light of the Customer's choice to clear its transaction through the Non-FCM/BD Clearing Member at ICE Clear Europe, and represents that the provisions in question are published and referred to in ICE Clear Europe's customer disclosures under the European Market Infrastructure Regulation.[103]

Moreover, the proposed rule change would amend section 2 of each of the Standard Terms (CDS, F&O, and FX), to state that ICE Clear Europe is a third party beneficiary under the Standard Terms and to further provide that, as a result, any modification or amendment to the Standard Terms without ICE Clear Europe's prior written consent shall have no effect. ICE Clear Europe believes this amendment would help to promote post-default porting by ensuring the Standard Terms apply uniformly and by ensuring that ICE Clear Europe is able to object to any modifications to the Standard Terms that would interfere with post-default porting.[104]

Finally, to further clarify the status of the Standard Terms and the Settlement and Notices Terms (which, like the Standard Terms, apply as between the Non-FCM/BD Clearing Member and its Customer), the proposed rule change would amend Rule 102(o). Existing Rule 102(o) provides that the Rules, together with the applicable Clearing Membership Agreement and certain documents given contractual force pursuant to the Rules, form a contract between ICE Clear Europe and each Clearing Member. The proposed rule change would amend Rule 102(o) to specifically exclude the Standard Terms and the Settlement and Notices Terms from this provision. In doing so, ICE Clear Europe believes the proposed rule change would further clarify that the Standard Terms are a contract between the Non-FCM/BD Clearing Member and its Customer, rather than between ICE Clear Europe and each Clearing Member.[105] Moreover, ICE Clear Europe believes that the Standard Terms could not, as discussed above, help facilitate porting if the Standard Terms do not represent a binding contact between the Non-FCM/BD Clearing Member and its Customer.[106] Finally, the proposed rule change would also add to Rule 102(o) a reference to Rule 102(f), which contains the list of the documents that are given contractual force pursuant to the Rules.

ii. Margin

The second set of proposed changes to help facilitate porting would help to ensure that ICE Clear Europe is able to transfer margin provided by a Customer

[97] Notice, 85 FR at 13206.

[98] Notice, 85 FR at 13206.

[99] 17 CFR 240.17Ad–22(e)(13); Notice, 85 FR at 13216.

[100] 17 CFR 240.17Ad–22(e)(14).

[101] The Standard Terms do not apply to FCM/BD Clearing Members and their customers. Notice, 85 FR at 13201.

[102] Notice, 85 FR at 13201.

[103] Notice, 85 FR at 13201 (citing to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories).

[104] Notice, 85 FR at 13201.

[105] Notice, 85 FR at 13201.

[106] Notice, 85 FR at 13201.

from the defaulting Clearing Member to a new Clearing Member (*i.e.,* porting of margin) and further would help to ensure that ICE Clear Europe is able to use margin as needed in response to a Clearing Member's default. Specifically, the proposed rule change would amend existing Rule 504(c)(iv) to provide that a Clearing Member is deemed to represent and warrant that the Clearing Member will not claim that any transfer of Permitted Cover [107] to or use of Permitted Cover by the Clearing House in accordance with the Rules or the relevant Clearing Membership Agreement is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation. By extending the existing representation in Rule 504(c)(iv) to the transfer of Permitted Cover to ICE Clear Europe (rather than merely the usage of Permitted Cover), ICE Clear Europe believes that the proposed rule change would further assure that ICE Clear Europe can accept Permitted Cover without risk of interference from third party claims.[108] Specifically, if it is necessary for ICE Clear Europe to transfer Permitted Cover after the default of a Clearing Member to facilitate porting of a Customer's positions and margin, this proposed amendment would help to facilitate that porting by providing ICE Clear Europe assurance that the defaulting Clearing Member will not claim that the transfer is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation.

Moreover, in section 4(b) of each of the Standard Terms, the proposed rule change would add language to provide that when a Clearing Member transfers collateral provided by a Customer to ICE Clear Europe for credit to that Customer's account, the Customer shall be deemed to give all the same representations, warranties, and acknowledgments as are given by the Clearing Member pursuant to Rule 504(c)(iii), (iv), and (v); Rule 504(g); and Rule 505. Under Rule 504(c)(iii), (iv), and (v), a Clearing Member is deemed to represent and warrant that Permitted Cover is provided on the basis that it may be used by ICE Clear Europe and applied in accordance with ICE Clear Europe's Rules; that the Clearing Member will not claim that any transfer (as amended) of Permitted Cover to or use of Permitted Cover by the Clearing House in accordance with the Rules or the relevant Clearing Membership Agreement is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation; and that the Clearing Member is not in breach of any of its contractual obligations or regulatory requirements or other Applicable Laws towards any third party as a result of the transfer of Permitted Cover to the Clearing House or its collection from or receipt of any assets from its clients. Rule 504(g) provides ICE Clear Europe the right to (i) apply any amount or asset recorded in a particular Account to the extent permitted under Part 9 of the Rules (regarding default) as against the net sum for such Account or (ii) transfer any amount or asset recorded in a particular Account to the extent permitted under Rule 906 (regarding net sums payable) regardless of the origin or status of such amount or assets. Under Rule 505, Clearing Members and Customers acknowledge that the Financial Collateral Regulations [109] apply in relation to all Permitted Cover, Margin, and Guaranty Fund Contributions transferred to ICE Clear Europe in the form of cash or financial instruments. Clearing Members and Customers also agree that they will not dispute the construction of the arrangements regarding the provision of collateral a ''financial collateral arrangements.'' ICE Clear Europe believes these amendments collectively would enhance its ability to use collateral ultimately provided by a Customer, including to cover default losses and to provide for porting of the Customer's positions in case of the relevant Non-FCM/BD Clearing Member's default, by providing additional clarity as to ICE Clear Europe's ability to use collateral provided by a Customer, the Customer's representations and acknowledgments with respect to such collateral, and the legal status of such collateral.[110]

Finally, the proposed rule change would add language in section 4(b) of each of the Standard Terms to provide that the Customer shall take any action reasonably requested by ICE Clear Europe or the Clearing Member that may be necessary or desirable to create, preserve, perfect or validate the right, title, or interests of ICE Clear Europe in any Margin or Permitted Cover or to enable ICE Clear Europe to exercise or enforce any of its rights under the Rules with respect to Margin or other Permitted Cover and that the Customer shall not create or give notice of any Encumbrance related to Permitted Cover that is held by ICE Clear Europe in any Account. The proposed rule change would also add language to section 4(b) of each of the Standard Terms to provide that the Customer shall not assert that: (i) It is the beneficiary of or interested party in any Encumbrance with respect to any Permitted Cover held by ICE Clear Europe; (ii) it has given any notice of any such Encumbrance to ICE Clear Europe; or (iii) ICE Clear Europe otherwise should be attributed with notice in respect of any such Encumbrance. This provision would not, however, prevent any Encumbrance arising under Applicable Laws in favour of a Customer in respect of a Customer Account. ICE Clear Europe believes these amendments collectively would enhance its ability to use collateral ultimately provided by a Customer, including to cover default losses and to provide for porting of the Customer's positions in case of the relevant Non-FCM/BD Clearing Member's default, by providing additional clarity as to ICE Clear Europe's ability to use collateral provided by a Customer and reducing the risk of any Customer or third party claims with respect to such collateral.[111]

iii. Timing

ICE Clear Europe is also making a set of proposed changes to help facilitate porting by improving the clarity and uniformity of the provisions that determine the time at which contracts are formed and terminated.

The proposed rule change would first clarify Rule 401(n), which currently states that where an F&O Contract (other than an ICE Futures US Contract) arises pursuant to Rule 401 as a result of trading, submission of trade data, or other action by or relating to a Customer of a Non-FCM/BD Clearing Member, an opposite Customer-CM F&O Transaction shall arise between such Customer and Clearing Member. The proposed rule change would specify that the opposite Customer-CM F&O Transaction would arise at the same time as the Contract. Doing so would clarify that the opposite Customer-CM F&O Transaction arises at the same time as the F&O Contract arises, thereby ensuring that both

[107] Under ICE Clear Europe Rule 101, the term Permitted Cover is defined as ''cash in Eligible Currencies and other assets determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions and includes, where the context so requires, any such cash or assets transferred to the Clearing House and any proceeds of realisation of the same.''

[108] Notice, 85 FR at 13201, 13215.

[109] Rule 101 of the ICE Clear Europe Rules defines the term Financial Collateral Regulations as ''the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements).'' These regulations affect ICE Clear Europe's use of collateral provided by Clearing Members and Customers.

[110] Notice, 85 FR at 13201, 13216.

[111] Notice, 85 FR at 13201, 13216.

contracts have a uniform time of formation.

Similarly, the proposed rule change would remove from the Standard Terms the current reference in Section 3(b) to transactions arising (as between Non-FCM/BD Clearing Member and Customer) ''at the Acceptance Time.'' Acceptance Time is not a defined term in the Rules. Instead, the proposed rule change would provide that transactions would arise ''as set out in Part 4 of the Rules.'' Part 4 of the Rules, specifically Rule 401, determines the time of formation of cleared contracts at ICE Clear Europe. Again, this proposed change would clarify when contracts arise under the Standard Terms and help to ensure a uniform time of formation by referring to a single set of rules (*i.e.* Part 4 of the Rules) that determine when cleared contracts are formed at ICE Clear Europe. ICE Clear Europe is making these changes to ensure a uniform time for formation of contracts, which it believes would help to facilitate porting by reducing the possibility of disagreements or confusion over when contracts subject to porting have formed.[112]

The proposed rule change would next amend the Standard Terms and Rule 202(b)(iii) to eliminate the use of automatic early termination in client clearing documentation of Non-FCM/BD Clearing Members. As ICE Clear Europe described in the Notice, some Non-FCM/BD Clearing Members may use automatic early termination provisions in their client clearing documentation even though Rule 202(b)(iii) as currently in force generally prohibits this.[113] In such a case, the transaction between the Non-FCM/BD Clearing Member and its Customer may terminate at a different time than the transaction between the Non-FCM/BD Clearing Member and ICE Clear Europe, which could lead to the transactions having different values upon termination following a close-out of a defaulting Non-FCM/BD Clearing Member's contracts (because the transactions were terminated at different times). Moreover, as ICE Clear Europe described in the Notice, automatic or early termination clauses also may give rise to legal uncertainties as to whether certain protections from the disapplication of insolvency law for porting in Part VII of the UK's Companies Act 1989 are available, since following an automatic termination there would be no contract left to port or transfer.[114]

To resolve these issues regarding use of early termination clauses and therefore facilitate porting of contacts, the proposed rule change would first remove Rule 202(b)(iii) in its entirety. Rule 202(b)(iii) currently provides that automatic early termination does not apply to the Standard Terms in respect of either the Non-FCM/BD Clearing Member or its Customer and the relevant Customer-CM Transactions. The proposed rule change would replace this provision with a new Section 5(c) in each of the Standard Terms, which would provide that any provision requiring termination of a Customer-CM CDS Transaction upon, prior to, or following an ICE-Declared Default, or giving a party the right to terminate, shall be ineffective unless (i) one of the parties is incorporated in Switzerland [115] or any other jurisdiction as may be specified by ICE Clear Europe for such purposes or (ii) ICE Clear Europe provides its written consent to such termination provision being effective. Moreover, new Section 5(c)(iii) would provide that even if automatic early termination of the Customer-Clearing Member transaction occurred, the provisions of the Standard Terms relating to calculation of termination values and portability would still apply. Finally, new section 5(c)(i) would provide in case of default, instead of automatic early termination, the suspension of performance under the Customer-Clearing Member Transaction until the corresponding cleared Contract is terminated or the relevant payment date for the net sum owed between the Customer and Non-FCM/BD Clearing Member following termination has occurred. ICE Clear Europe believes suspension of performance provides similar economic protections for Customers as compared to automatic termination because the Customer would not be obligated to make payments while avoiding the risks, as discussed above, of inconsistent timing or valuation or of positions not being portable.[116]

iv. Price

Finally, the proposed rule change would clarify the price at which positions are ported from a defaulting Clearing Member to a non-defaulting Clearing Member and the relevant time for the determination of such price. Currently, Rule 904(b) provides that all Contracts subject to a Transfer shall be Transferred on the basis of the applicable Exchange Delivery Settlement Price, Reference Price, Market-to-Market Value, or other price specified by ICE Clear Europe. ICE Clear Europe would notify Transferee Clearing Members of applicable prices determined pursuant to this provision prior to the Transfer. The proposed rule change would modify this to provide that ICE Clear Europe, at its discretion, shall determine the price of any contract subject to a Transfer and that this price may be determined on basis of the applicable Exchange Delivery Settlement Price (for F&O Contracts), the Market-to-Market Value (for CDS Contracts), the FX Market Price (for FX Contracts), or as zero (for certain Options), in any case as at the time specified by ICE Clear Europe. The proposed rule change would also allow ICE Clear Europe to calculate the price at which positions are ported with reference to any time determined at ICE Clear Europe's discretion, which may be the time of the Transfer, the time of an Event of Default, Insolvency or Unprotected Resolution Step, or the end of the Business Day prior to porting, Event of Default, Insolvency or Unprotected Resolution Step. Similarly, the proposed rule change would amend Rule 905(b)(xiv), which currently allows ICE Clear Europe to transfer a defaulting Clearing Member's contracts to another Clearing Member at a price agreed to with the transferee Clearing Member, to provide instead that ICE Clear Europe may transfer at a price determined by ICE Clear Europe pursuant to part 9 of the Rules. Because ICE Clear Europe, and its Clearing Members, operate in multiple jurisdictions, ICE Clear Europe is making these changes to facilitate porting by giving ICE Clear Europe flexibility to establish prices for contracts to be transferred, as needed to take into consideration different insolvency regimes in Clearing Member jurisdictions.[117]

For similar reasons, the proposed rule change would add a new Rule 905(g). New Rule 905(g) would give ICC discretion to determine the price at which it liquidates, terminates, or closes out a Contract, while Rule 904(b) would only apply to the Transfer of a Contract. The terms of new Rule 905(g) would be similar to those of amended Rule 904(b). Specifically, for all liquidations, terminations and close outs of Contracts, ICE Clear Europe would, at its discretion, determine the price of the Contract, which may be on the basis of

[112] Notice, 85 FR at 13201, 13216.

[113] Notice, 85 FR at 13201–13202.

[114] Notice, 85 FR at 13202.

[115] As described in the Notice, the exception for Switzerland reflects the fact that such jurisdiction is the only Clearing Member jurisdiction for which automatic early termination is recommended for derivatives by the International Swaps and Derivatives Association, Inc. Notice, 85 FR at 13202, n.6.

[116] Notice, 85 FR at 13202.

[117] Notice, 85 FR at 13209.

the Exchange Delivery Settlement Price, the Mark-to-Market Price, the FX Market Price, Reference Price, Market-to-Market Value, current market value or any other price specified by ICE Clear Europe. ICE Clear Europe would be able to calculate the price with reference to any time determined at its discretion, which may be at the time such cancellation is ordered, the time an Event of Default, Insolvency, Unprotected Resolution Step occurs or is declared, or the time of calculation of any price as at the end of the Business Day prior to the Transfer, Event of Default, Insolvency or Unprotected Resolution Step. Moreover, the proposed rule change would amend Rule 905(b)(vi), which allows ICE Clear Europe to pair and cancel offsetting Long and Short positions in the same Future or Option Set or Selling Counterparty and Buying Counterparty positions in any Set of CDS Contracts or FX Contracts. Under Rule 905(b)(vi) as amended, ICE Clear Europe would still have authority to pair and cancel such positions, but the amended rule would refer to Rule 905(g) with respect to determining the price when needed to conduct the pair and cancel. ICE Clear Europe represents that this change is necessary to be consistent with the discretion granted to ICE Clear Europe under amended Rule 905(g).

J. 17Ad–22(e)(17)(i)

As discussed in this section, the proposed rule change would also make changes with respect to requirements applicable to ICE Clear Europe under U.S. tax law and the timing and operational aspects associated with ICE Clear Europe's clearance and settlement of CDS, F&O, and FX Contracts. ICE Clear Europe is making these changes to better manage the operational risks associated with these aspects of ICE Clear Europe's clearance and settlement processes. ICE Clear Europe believes these changes would be consistent with Rule 17Ad–22(e)(17)(i)'s requirement that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[118]

i. U.S. Tax Requirements

The proposed rule change would adopt a new Paragraph 6.1(k) of the Finance Procedures to address the application of Section 871(m) (''Section 871(m)'') of the Internal Revenue Code to Clearing Members. Under Section 871(m), unless a Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes enters into certain agreements with the Internal Revenue Service, ICE Clear Europe would be required to withhold taxes on dividend equivalents with respect to any transactions with that Clearing Member that are subject to Section 871(m).[119]

To avoid having to withhold taxes and manage the operational risks associated with such withholding, ICE Clear Europe is proposing to adopt a new Paragraph 6.1(k) of the Finance Procedures. This new paragraph would require that, as a precondition for a Clearing Member to clear equity contracts with ICE Clear Europe, any Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes must enter into appropriate agreements with the IRS and meet certain other specified qualifications under procedures of the IRS, such that ICE Clear Europe will not be responsible for withholding taxes under Section 871(m). Moreover, new Paragraph 6.1(k)(ii) would require each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes to certify annually that they satisfy these requirements. New Paragraph 6.1(k)(iii) also would require each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes to provide, on an annual basis, certain information necessary for ICE Clear Europe to make required IRS filings. Finally, new Paragraph 6.1(k)(iv) would require each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes to notify ICE Clear Europe of relevant changes in their circumstances affecting compliance with paragraph 6.1(k).

ICE Clear Europe is making this proposed change to manage the operational risks associated with the application of Section 871(m) to Clearing Members. Because, as discussed above, Section 871(m) could require ICE Clear Europe in certain circumstances to withhold taxes on dividend equivalents with respect to any transactions with a Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes that are subject to Section 871(m), ICE Clear Europe believes application of Section 871(m) could hinder its operational processes for clearing and settling transactions.[120] ICE Clear Europe therefore believes that application of Section 871(m) represents an operational risk to ICE Clear Europe, and that the proposed response to that risk would be consistent with the requirement in Rule 17Ad–22(e)(17) that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks and mitigate their impact through the use of appropriate policies and procedures.[121]

ii. Timing and Operations

ICE Clear Europe is also making changes to clarify and harmonize references to timing in the Rules, the CDS Procedures, Clearing Procedures, Finance Procedures, and mitigate other aspects of the operational risk associated with clearing contracts. ICE Clear Europe is doing so to manage and mitigate the operational risks presented by having divergent standards of timing applied to its clearing of contracts.

Beginning with CDS Contracts, the proposed rule change would clarify, at the beginning of Part 15 of the Rules and at Paragraph 1.86 of the CDS Procedures, that references to timings or times of day in connection with CDS Contracts are to Greenwich Mean Time (without taking into account daylight savings time (British Summer Time)). ICE Clear Europe is making these changes to reflect applicable timings for the CDS market under standard CDS documentation, and to avoid application of Rule 102(h) (which specifies London time by default, including with daylight savings time adjustments). ICE Clear Europe believes this change would help to avoid a risk that cleared CDS Contracts at ICE Clear Europe would diverge from the timing of uncleared CDS contracts, which also follow standard CDS documentation using Greenwich Mean Time.[122]

With respect to the Clearing Procedures, Section 2 describes the operational aspects of ICE Clear Europe's systems for clearing trades and managing positions. The proposed rule change would delete, in Paragraph 2.2(c)(ii), a reference to allocation of trades within one hour. The timing of allocation may be a matter of the relevant Market Rules, so ICE Clear Europe is making this change to avoid potential conflict with those Market Rules, including a situation where ICE Clear Europe's systems allocate trades at a time different from the relevant Market where those trades occur.[123]

[118] 17 CFR 240.17Ad–22(e)(17)(i); Notice, 85 FR at 13216.

[119] Notice, 85 FR at 13208.

[120] Notice, 85 FR at 13208–13209.

[121] 17 CFR 240.17Ad–22(e)(17)(i); Notice, 85 FR at 13216.

[122] Notice, 85 FR at 13212.

[123] Notice, 85 FR at 13213.

Similarly, the proposed rule change would amend Paragraph 2.4(c), which specifies that close-outs of Options must be complete at or before 10:00 a.m. to be reflected in Open Contract Positions and Margin calls calculated at the end of that day, to instead specify that close-outs must be complete at or before the time specified by the relevant Market from time to time. Again, ICE Clear Europe is making this change to avoid potential conflict with those Market Rules and to reduce the operational risks that could result from such a conflict.[124]

The proposed rule change would also add a new Paragraph 2.6 and Paragraph 2.7. New Paragraph 2.6 would make explicit that Clearing Members bear the risk of late or incorrect instructions to ICE Clear Europe. Paragraph 2.7 would specify technical reasons for which ICE Clear Europe may reject an F&O contract, such as the trader not being recognized, the Clearing Member not being approved, or the relevant market member code is not recognized or approved. Paragraph 2.7 would also specify how ICE Clear Europe would respond to the rejected contract, which would include, for example, contacting the relevant Market. As with the changes discussed above, ICE Clear Europe is adding these new paragraphs to manage and mitigate the operational risks presented by late or incorrect instructions and invalid F&O Contracts.[125]

Similarly, in paragraphs 11.2 and 11.4 of the Finance Procedures, ICE Clear Europe would remove a presumption that deposits and withdrawals of non-cash collateral should be settled on the same day as a Clearing Member places with ICE Clear Europe an instruction for deposit or withdrawal. Instead, the proposed rule change would state that ICE Clear Europe accepts settlement instructions specifying a settlement date up to two business days after the relevant trade date and that the proposed settlement must be specified in the instruction and agreed to by ICE Clear Europe. If ICE Clear Europe assumes same-day settlement where a Clearing Member does not intend same-day settlement, this could result in a mismatch and a failure to complete settlement. Thus, this change would mitigate the operational risk that could be presented by use of such an assumption, in accordance with Rule 17Ad–22(e)(17)(i).[126]

K. 17Ad–22(e)(18)

As discussed in this section, ICE Clear Europe is also proposing a number of changes to the standards that govern membership in ICE Clear Europe. ICE Clear Europe is making these changes to enhance these requirements following an internal review that identified areas for improvement. ICE Clear Europe believes the proposed rule change would help to ensure that ICE Clear Europe satisfies Rule 17Ad–22(e)(18), which requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation, and monitor compliance with such participation requirements on an ongoing basis.[127]

i. Rule 117

The proposed rule change would first amend Rule 117. Rule 117 requires that Clearing Members arbitrate any disputes with ICE Clear Europe that are not subject to ICE Clear Europe's Disciplinary Procedures or Complaints Resolution Procedures. Rule 117(k) further requires that Clearing Members waive any ability to claim sovereign immunity with respect to such arbitration. The proposed rule change would amend Rule 117(k) slightly to provide that Clearing Members ''irrevocably'' waive any ability to claim sovereign immunity with respect to such arbitration. ICE Clear Europe is making this change so its Rules reflect the typical practice for waivers of sovereign immunity and the documentation thereof in the derivatives markets and therefore believes that this change should not be inconsistent with other waivers its Clearing Members may have already made.[128]

ii. Rule 201

The proposed rule change would also make various enhancements to Rule 201(a), which sets out the basic standards for membership in ICE Clear Europe. As discussed above, following an internal review, ICE Clear Europe is making these changes to further specify the operational, managerial, back office, systems, controls, business continuity and banking requirements applicable to Clearing Members. As with the changes to Rule 117 discussed above, ICE Clear Europe is making these changes to further clarify and establish objective, risk-based, and publicly disclosed criteria for participation by its Clearing Members, in accordance with Rule 17Ad–22(e)(18).[129] Each of these changes is described below according to the numbering of Rule 201.

First, the proposed rule change would amend Rule 201(a)(vi), which currently requires a Clearing Member to nominate a Person meeting certain requirements to act on behalf of the Clearing Member, to further require that the nominated Person have all authorisations, registrations, licences, permissions, non-objections, consents, or approvals required under Applicable Law in any jurisdiction in order to act as a representative for the relevant Clearing Member's business in connection with ICE Clear Europe. ICE Clear Europe is making this change to ensure that representatives of Clearing Members hold all authorizations, licences, consents, or approvals required under applicable laws needed to act on behalf of Clearing Members.

The proposed rule change would next amend Rule 201(a)(xi), which requires that a Clearing Member be fit and proper and have sufficient qualities of financial responsibility and operational capacity, to further require that a Clearing Member have sufficient qualities of compliance and managerial responsibilities, including having adequate segregation of front and back office functions and adequate back office and compliance support, as required under Applicable Laws. ICE Clear Europe is making this change to add an explicit reference to Applicable Laws and ensure that Clearing Members have adequate back office and compliance support.

The proposed rule change would amend Rule 201(a)(xiv), which requires that a Clearing Member have in place business continuity procedures to satisfy ICE Clear Europe's minimum requirements, to require instead that a Clearing Member have in place business continuity procedures to enable it to meet its obligations as a Clearing Member. ICE Clear Europe is making this change in wording to clarify that rather than meeting certain minimum requirements, the business continuity procedures must enable the Clearing Member to meet its obligations to ICE Clear Europe.

[124] Notice, 85 FR at 13213.

[125] Notice, 85 FR at 13213.

[126] 17 CFR 240.17Ad–22(e)(17)(i); Notice, 85 FR at 13213.

[127] 17 CFR 240.17Ad–22(e)(18); Notice, 85 FR at 13217.

[128] Notice, 85 FR at 13212.

[129] 17 CFR 240.17Ad–22(e)(18); Notice, 85 FR at 13216–13217.

The proposed rule change would amend Rule 201(a)(xxv), which requires that a Clearing Member have provided details of an office which is staffed during normal business hours and sufficient for its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive officer, to expand this to include its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive director or other executive officer. ICE Clear Europe is making this change to expand the scope of this provision to include those offices under the supervision of an executive director or other officer.

The proposed rule change would amend Rule 201(a)(xxvi), which requires that a Clearing Member satisfy ICE Clear Europe that it, its officers, directors, and Controllers would each meet the requirements for an ''approved person'' under applicable rules of the UK Financial Conduct Authority and Prudential Regulation Authority, to further apply this requirement to the Clearing Member's relevant employees and further require that the Clearing Member satisfy ICE Clear Europe that such persons are fit and proper. ICE Clear Europe is making this change to further extend this requirement to relevant employees subject to the applicable rules of the UK Financial Conduct Authority and Prudential Regulation Authority.

Finally, the proposed rule change would amend Rule 201(a)(xxvi), which requires that a Clearing Member hold a Nominated Bank Account or Accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House. The proposed rule change would update the wording to refer to ''one or more'' Approved Financial Institutions and to further require that the Clearing Member satisfy ICE Clear Europe of the adequacy of its contingency banking arrangements in the event of an Insolvency or failure to pay or default of an Approved Financial Institution which affects the operation of a Nominated Bank Account or Accounts or a Clearing House Account. ICE Clear Europe is making this change to ensure that its Clearing Members have sufficient back-up arrangements in the event that an Approved Financial Institution is no longer able to operate on their behalf.

iii. Rule 202

Similar to the changes to Rule 201, ICE Clear Europe would also make changes to Rule 202. Rule 202 sets out the ongoing obligations of Clearing Members, while Rule 201 sets out the criteria for membership. As discussed above, following an internal review, ICE Clear Europe is making these changes to include additional detail on system and controls requirements and to add new requirements to ensure that ICE Clear Europe has sufficient access rights in relation to its Clearing Members. ICE Clear Europe believes these proposed changes would address identified commercial and operational risks for ICE Clear Europe and ensure that Clearing Members meet appropriate and evolving standards concerning their systems and operations. ICE Clear Europe believes that in making these changes the proposed rule change would further clarify and establish objective, risk-based, and publicly disclosed criteria for participation by its Clearing Members, in accordance with Rule 17Ad–22(e)(18).[130] Each of these changes is described below according to the numbering of Rule 202.

The proposed rule change would first amend Rule 202(a)(xi), to replace references to the deposit of funds with a reference to ''cash transfers.'' ICE Clear Europe is making this change to further establish a settled-to-market treatment of variation margin, as discussed above.[131]

Next, the proposed rule change would amend Rule 202(a)(xiv), which defines the standards for systems and controls that a Clearing Member must have in place. The proposed rule change would specify that a Clearing Member must have adequate systems and controls in place to ensure that it has adequate separation policies to mitigate concentration risk of critical business functions and compliance oversight in place to enable it to meet its obligations as a Clearing Member, adequate segregation of front and back office functions, and adequate back office and compliance support, as required under Applicable Laws. The proposed rule change would also require that a Clearing Member have adequate systems and controls in place to ensure that it has internal audit processes that are applied appropriately. ICE Clear Europe is making this change to require additional detail on system and controls requirements for Clearing Members.

The proposed rule change would next add a new paragraph in Rule 202(a)(xxii) to require a Clearing Member to be accessible during and for two hours immediately after close of business on every business day. ICE Clear Europe is making this change to ensure that Clearing Members remain accessible following close of business, during which time ICE Clear Europe may need to contact Clearing Members regarding events that happened during the business day.

Finally, the proposed rule change would add a new paragraph in Rule 202(a)(xxiii) to require a Clearing Member to provide such access as ICE Clear Europe requires to its premises, records, and personnel for the purposes of, for example, carrying out investigations or audits. ICE Clear Europe is making this change to further enhance its ability to investigate and audit a Clearing Member, such as, for example, an investigation in connection with a disciplinary proceeding.

iv. Rule 203

Rule 203 sets out certain prohibitions on Clearing Members. The proposed rule change would amend Rule 203(a)(xvi) to specify that a Clearing Member is prohibited from engaging in conduct that would render it unable to satisfy obligations under Rule 202(a). Rule 203(a)(xvi) already prohibits a Clearing Member from engaging in conduct that would render it unable to satisfy the membership criteria in Rule 201(a). ICE Clear Europe views Rule 202(a) as working in conjunction with Rule 201(a), and, accordingly, is making the proposed amendment to close a potential gap in the coverage of Rule 203(a).[132]

The proposed rule change would also add a new paragraph at Rule 203(a)(xxii). New Rule 203(a)(xxii) would explicitly limit the ability of a Clearing Member or its Affiliates to exercise set-off rights against ICE Clear Europe where such Clearing Member (or its Affiliates) have a relationship in another capacity, for example providing banking or custodial services to ICE Clear Europe. ICE Clear Europe is making this change to reduce the risks that other contractual agreements contain provisions that could interfere with ICE Clear Europe's default management or operational processes.[133] ICE Clear Europe also believes this change would provide a level playing field for all Clearing Members, regardless of any other commercial relationships with ICE Clear Europe, and therefore would help to ensure that ICE Clear Europe establishes objective criteria for participation applicable to all of its Clearing

[130] 17 CFR 240.17Ad–22(e)(18); Notice, 85 FR at 13216–13217.

[131] *See supra* section II.E.ii.

[132] Notice, 85 FR at 13212.

[133] Notice, 85 FR at 13212.

Members, in accordance with Rule 17Ad–22(e)(18).[134]

v. Rule 204

ICE Clear Europe would also make changes to Rule 204, which requires a Clearing Member to notify ICE Clear Europe in certain circumstances. Specifically, Rule 204(a)(xii) requires that a Clearing Member notify ICE Clear Europe of any breach by the Clearing Member of any Applicable Law relating to its status and performance as a Clearing Member. The proposed rule change would amend this to further require that the Clearing Member provide notice of any non-frivolous or non-vexatious investigation or allegation of a breach by the Clearing Member of any Applicable Law relating to its status and performance as a Clearing Member. Moreover, Rule 204(b)(i) requires that a Clearing Member notify ICE Clear Europe of a change of control where that change of control is notifiable to the UK Financial Conduct Authority or Prudential Regulation Authority. The proposed rule change would extend this to require notification where a change of control is subject to the approval of the UK Financial Conduct Authority or Prudential Regulation Authority, in addition to a change of control that is notifiable. ICE Clear Europe believes these are appropriate extensions of Rule 204 and that the proposed changes would facilitate ongoing monitoring by ICE Clear Europe of circumstances that may significantly affect Clearing Members.[135] ICE Clear Europe also believes the proposed amendments would close a potential gap in notification requirements based on a distinction between regulatory notice and approval.

vi. Rule 206

ICE Clear Europe also proposes a minor change to Rule 206. Rule 206 requires that a Clearing Member maintain at all times the requisite types and amount of Capital as required under the CDS Procedures, Finance Procedures, and Membership Procedures, and further requires that a Clearing Member, upon request, provide financial statements and other documentation supporting calculations of Capital. The proposed rule change would amend Rule 206 to add a reference to other financial resources requirements (in addition to Capital) under the relevant procedures. ICE Clear Europe is making this change to correctly cross-refer to the existing requirements of the various procedures documents, which may impose requirements for other financial resources in addition to capital. In doing so, ICE Clear Europe believes that the change would help to ensure that its criteria for participation are objective and clear and help ensure that Clearing Members have sufficient financial resources, in accordance with Rule 17Ad–22(e)(18).[136]

vii. Membership Procedures

The proposed rule change would amend the Membership Procedures in various places to be consistent with the amendments to the membership provisions of the Rules discussed above and to ensure that the Membership Procedures use terminology consistent with the Rules.

The proposed rule change would first amend Paragraph 1.1, which describes the membership application process, to specify that ICE Clear Europe would require evidence of authority of the persons who sign the Clearing Membership Agreement, Sponsor Agreement, and Sponsored Principal Clearing Agreement on behalf of a Clearing Member. ICE Clear Europe is making this change to be consistent with ICE Clear Europe's other practices requiring signatories.

Paragraph 4.2 of the Membership Procedures provides, in a table, details of the various notifications that Clearing Members should make to ICE Clear Europe, including when to submit the notification and the form to use. The proposed rule change would update various entries in the table to reflect the wording used in the current Rules and the changes discussed above, by, for example, removing use of the word ''deposit,'' referring to the board of directors of a Clearing Member in addition to key personnel, specifying that certain days for providing a notice are business days, requiring notification of a suspension of a clearing arrangements with an Eligible Person, requiring notice of any Insolvency of the Clearing Member or its shareholders or any death of a substantial shareholder, and requiring notice of changes to the board of directors of a Clearing Member.

Like the changes discussed above, ICE Clear Europe is making these changes to ensure that its Membership Procedures provide objective, risk-based, and publicly disclosed criteria for participation, in accordance with Rule 17Ad–22(e)(18).[137]

viii. Rule 301

Rule 301 sets out certain financial requirements and payment obligations on Clearing Members. Rule 301(f) requires that a Clearing Member pay all amounts payable to ICE Clear Europe by electronic transfer from an account at an Approved Financial Institution only. The proposed rule change would modify Rule 301(f) to require instead that a Clearing Member pay all amounts payable to ICE Clear Europe by electronic transfer from an account at an Approved Financial Institution only except with the written consent of ICE Clear Europe and delete an existing exception for application fees. ICE Clear Europe is making this change to provide it and Clearing Members greater flexibility to make all payments using a method other than electronic transfer from an account at an Approved Financial Institution should that become necessary due to, for example, an outage or other interruption to the operation of an Approved Financial Institution.[138] Like the changes discussed above, ICE Clear Europe is making this change to ensure that this aspect of its membership requirements is objective, risk-based, and publicly disclosed, in accordance with Rule 17Ad–22(e)(18).[139]

L. 17A(b)(3)(F)

As discussed in this section, the proposed rule change would amend Part 7 and Part 8 of the Rules to simplify and clarify the drafting of provisions relating to the cash settlement of Futures and Options Contracts.[140] ICE Clear Europe is making these changes to improve its procedures regarding cash settlement and to ensure that its written procedures for cash settlement accurately describe its current operational practices and processes.[141] As such, ICE Clear Europe believes these changes would help ensure that ICE Clear Europe's Rules promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, in accordance with Section 17A(b)(3)(F) of the Act.[142]

[134] 17 CFR 240.17Ad–22(e)(18); Notice, 85 FR at 13212.

[135] Notice, 85 FR at 13212.

[136] 17 CFR 240.17Ad–22(e)(18); Notice, 85 FR at 13212, 13216, and 13217.

[137] 17 CFR 240.17Ad–22(e)(18); Notice, 85 FR at 13216–13217.

[138] Notice, 85 FR at 13212.

[139] 17 CFR 240.17Ad–22(e)(18); Notice, 85 FR at 13216–13217.

[140] Notice, 85 FR at 13205–13206.

[141] Notice, 85 FR at 13205–13206.

[142] 15 U.S.C. 78q–1(b)(3)(F); Notice, 85 FR at 13214.

Beginning with Part 7 of the Rules, the proposed rule change would amend Rule 702(c) to clarify the method of determining the amount payable for cash settlement of a Future. Currently, Rule 702(c) provides that the amount payable shall be the net gain or loss, based on the difference between the price at which Open Contract Positions are recorded on ICE Clear Europe's books and the Exchange Delivery settlement price. The proposed amended language would confirm that the relevant amount is based on the price at which Open Contract Positions were last recorded on ICE Clear Europe's books and the Exchange Delivery Settlement Price (and not necessarily the difference between these two prices), in any case as provided in the applicable Contract Terms.

Rule 703(f) gives ICE Clear Europe the authority, at its discretion, to direct a Clearing Member who is a Seller under a Futures Contract to deliver the Deliverable that is the subject matter of such Contract to another Clearing Member that is a Buyer. Rule 703(f) further provides that in such a case, the Clearing Members shall make all payments in relation to such Contracts only to and from ICE Clear Europe. The proposed rule change would caveat this point by adding the phrase ''(except with the prior written consent of the Clearing House).'' The proposed rule change would make an identical change to Rule 809(d) with respect to Options Contracts. ICE Clear Europe is making this change to Rule 703(f) and Rule 809(d) to provide flexibility to also permit payments to be made directly between Clearing Members rather than to and from ICE Clear Europe. ICE Clear Europe believes this operational flexibility would improve its ability to cash settle Futures and Options Contracts by allowing ICE Clear Europe to facilitate direct payments between Clearing Members.[143]

The proposed rule change would also revise Rule 703(h). Rule 703(h) currently provides that where a Clearing Member that is a Buyer or Seller under a Futures Contract subject to delivery is subject to grounds for declaring an Event of Default or Force Majeure Event, the rights, liabilities, and obligations of the defaulter may, at the option of ICE Clear Europe, be subject to mandatory cash settlement. The proposed rule change would revise this provision to provide that in such a situation, the obligations of both Clearing Members under the Contract (not just the defaulting Clearing Member) may be subject to mandatory cash settlement directions. ICE Clear Europe is making this change to facilitate management of such a default and avoid need for ICE Clear Europe to make or take delivery of the underlying asset from the non-defaulting clearing member.

Finally, the proposed rule change would amend Rule 810, which describes the cash settlement of Options. Specifically, the proposed rule change would amend Rule 810(d) to clarify that ICE Clear Europe would determine the cash settlement price for an Option using the Exchange Delivery Settlement Price on the day of settlement or exercise and that, to receive cash settlement, all outstanding premium payments must have been made in relation to the relevant set of Options (in addition to Margin payments). ICE Clear Europe is making these changes to clarify the practices and processes for cash settlement of Options.

M. 17A(b)(3)(H)

As discussed in this section, the proposed rule change would amend Part 10 of the Rules to streamline and improve ICE Clear Europe's process for disciplining Clearing Members. ICE Clear Europe is making the changes to implement lessons learned from an internal review at ICE Clear Europe and from the practice of previous complaint and disciplinary processes, especially at the exchanges affiliated with ICE Clear Europe through its corporate structure, where such processes occur more regularly. As such, ICE Clear Europe believes these changes would help to ensure that its Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with Section 17A(b)(3)(H) of the Act.[144] As discussed below, ICE Clear Europe proposes these changes to Rules 1002, 1003, 1004, and 1005, and further proposes creating a new 1006.

i. Rule 1002

The proposed rule change would begin with Rule 1002, making various changes to improve the process for investigating potential breaches of the Rules by Clearing Members.

Starting with Rule 1002(c), the proposed rule change help to ensure that external advisers, such as accountants or attorneys hired by ICE Clear Europe to assist an investigation, keep information confidential. Specifically, the proposed rule change would add language to Rule 1002(c) to ensure that any external advisers appointed by ICE Clear Europe treat information that the advisers have been given access to as confidential, in addition to treating information obtained in the course of the investigation as confidential (as required currently under Rule 1002(c)).

The proposed rule change would also revise Rule 1002(d)(i) and (d)(iv) to ensure that ICE Clear Europe can access the information it needs to conduct an investigation. As revised, Rule 1002(d)(i) and (iv) would require a Clearing Member, at ICE Clear Europe's direction, to provide access to (i) information and documentary and other material documents and (ii) documents, records, or materials in its possession, in addition to the making such materials available for inspection (as required currently under Rule 1002(d)).

The proposed rule change would also revise Rule 1002(e) to clarify that non-compliance with an investigation can lead to additional disciplinary action being brought against a Clearing Member. Rule 1002(e) currently specifies that failure to cooperate with an investigation would constitute a breach of the Rules, but the added language would specify that non-compliance is capable of giving rise to separate and/or additional disciplinary action in accordance with Part 10 of the Rules. This change would thus clarify the consequences to Clearing Members of failing to cooperate with an investigation.

The proposed rule change would amend Rule 1002(g), which provides details regarding an initial meeting between ICE Clear Europe and the Clearing Member subject to investigation, to improve the drafting of the provision. Under Rule 1002, after ICE Clear Europe provides a Letter of Mindedness (which explains ICE Clear Europe's preliminary conclusions and its intended course of action), ICE Clear Europe must invite the Clearing Member to attend an initial meeting, or send written comments, to provide the Clearing Member an opportunity to correct any factual error in the Letter of Mindedness. The initial meeting would take place on a confidential basis. The proposed rule change would make minor amendments to this provision to clarify that ICE Clear Europe would serve the Letter of Mindedness to the Clearing Member rather than issue it; that the Clearing Member would be afforded an opportunity to address any factual ''inaccuracy'' in addition to a factual ''error''; and that the initial meeting would take place ''in private on a confidential basis'' rather than just ''on a confidential basis.'' Thus, ICE Clear Europe is making this change to improve the overall drafting of 1002(g).

[143] Notice, 85 FR at 13206.

[144] 15 U.S.C. 78q–1(b)(3)(H); Notice, 85 FR at 13214.

The proposed rule change would amend 1002(h), which currently requires that ICE Clear Europe finalize its initial findings and communicate those in writing to the Clearing Member, to further require that ICE Clear Europe communicate any steps it proposes to take and notify the Clearing Member of the acts or practices which ICE Clear Europe has found the Clearing Member to have taken or omitted, the relevant provisions breached, and the proposed sanctions. Thus, this change would improve the availability of information to Clearing Members regarding the investigation by requiring that ICE Clear Europe communicate certain information to Clearing Members.

The proposed rule change would also amend Rule 1002(i) to clarify certain steps that ICE Clear Europe may take following the communication of its initial findings to a Clearing Member. In Rule 1002(i)(*iv*), which currently provides that ICE Clear Europe may commence disciplinary proceedings following the communication of its initial findings to a Clearing Member, the proposed rule change would add a cross-reference to Rule 1003 (under which such disciplinary proceedings would take place). Moreover, in Rule 1002(i)(*v*), which provides that ICE Clear Europe may refer a matter for further inquiry following the communication of its initial findings to a Clearing Member, the proposed rule change would add a list of the entities to whom ICE Clear Europe may refer the matter for further inquiry: ICE Clear Europe, a Market, or a Governmental Authority. The proposed rule change would amend Rule 1002(i)(*vii*), which gives ICE Clear Europe the ability to publish its findings following the initial meeting discussed above, to also provide that ICE Clear Europe could publish its initial findings following receipt of written comments from the Clearing Member. As discussed above, following the service of the Letter of Mindedness under Rule 1002(g), a Clearing Member may submit written comments to ICE Clear Europe instead of conducting an initial meeting, and thus this change would clarify Rule 1002(i)(*vii*) to take this circumstance into account. Finally, the proposed rule change would add a new Rule 1002(i)(*viii*) to state expressly that ICE Clear Europe may take a combination of the actions listed in Rule 1002(i). Thus, this change would provide further clarity to the actions that ICE Clear Europe could take in response to its investigation.

ii. Rule 1003

The proposed rule change would also make various amendments to Rule 1003 to enhance and clarify the process for conducting disciplinary proceedings. ICE Clear Europe is making these proposed changes to reduce unnecessarily complex drafting, describe the various steps involved in the disciplinary process in more detail (similar to those changes proposed for Rule 1002(h) described in the context of investigations), and specify further the timing by which certain actions must be taken. ICE Clear Europe believes the changes would help to ensure that ICE Clear Europe's Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with 17A(b)(3)(H) of the Act.[145]

Specifically, in Rule 1003(b), the proposed amendments would require, upon ICE Clear Europe's determination to commence disciplinary proceedings, that ICE Clear Europe provide written notice to the Clearing Member that disciplinary proceedings are to be commenced. This requirement to provide written notice of commencement already exists in current Rule 1003(g), and the proposed rule change would move this requirement to Rule 1003(b) and revise Rule 1003(g) as appropriate. Because Rule 1003(b) details other actions that ICE Clear Europe must take upon determining to commence disciplinary proceedings, ICE Clear Europe is moving this notification requirement to Rule 1003(b) to consolidate in Rule 1003(b) the requirements applicable to ICE Clear Europe upon determining to commence disciplinary proceedings.

Currently, under Rule 1003(b), upon ICE Clear Europe's determination to commence disciplinary proceedings, ICE Clear Europe must establish a Disciplinary Panel. The proposed rule change would revise Rule 1003(b) to state explicitly that ICE Clear Europe shall appoint the chairman and members of the Disciplinary Panel, a point that is assumed in the current rule. Moreover, the proposed rule change would clarify the use of independent assessors by the Disciplinary Panel, but would not alter the substance of those provisions as they exist in current Rule 1003(b). Specifically, current Rule 1003(b) provides that ''Expert assessors may be appointed, at the discretion of the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but not to vote,'' and the proposed rule change would clarify this by specifying that ''such persons shall not be entitled'' to vote. Similarly, current Rule 1003(b) provides that no person shall serve on or sit with a Disciplinary Panel if the person has a personal or financial interest in or has been involved in any investigation into or previous Disciplinary Panel hearing on the matter. The proposed rule change would modify this to state that no person shall be appointed to a Disciplinary Panel or be eligible as an expert assessor if he has any personal or financial interest in the investigation which has led to the current disciplinary proceedings or has been involved in any investigation into or previous Disciplinary Panel dealing with or relating to the matter which is the subject of the current disciplinary proceedings. Thus, these changes would clarify the existing provisions of Rule 1003(b) by making more specific ICE Clear Europe's authority with respect to appointing members to the Disciplinary Panel and the standard of independence for members of the Disciplinary Panel and expert assessors.

Currently, Rule 1003(c) provides that the Clearing Member may object to any particular appointment to the Disciplinary Panel, which objection will be determined in the first instance by the chairman of the Disciplinary Panel and, in the event that the objection is to the chairman, then the Chairman of ICE Clear Europe. The proposed rule change would revise Rule 1003(c) to explicitly state that the Clearing Member shall be notified of the composition of the Disciplinary Panel. This point is assumed in the current rule, and the proposed rule change would clarify this provision by making it explicit. The proposed rule change would further require that the Clearing Member be notified within seven calendar days of the panel being established and that the Clearing Member have ten further calendar days to object in writing to any particular appointment. Thus, these changes would clarify Rule 1003(c) by making explicit certain matters assumed in the rule, clarify the method for objecting to an appointment, and further place limits on the use of such objections by Clearing Members.

In Rule 1003(d), the proposed rule change would make minor drafting improvements by, for example, changing ''of'' to ''that'' and by referring to the ''subject matter of the disciplinary proceedings'' rather than the ''outcome'' of the proceedings. Thus, this change would further clarify and improve the coherency of this provision.

Rule 1003(e) currently provides that in the event of equality of votes, the chairman of the Disciplinary Panel shall

[145] 15 U.S.C. 78q–1(b)(3)(H); Notice, 85 FR at 13214.

have a second or casting vote in reaching any determination. The proposed rule change would clarify this provision by stating that it applies to in relation to any matter before the Disciplinary Panel. This point is assumed in the current rule, and this change would further clarify the rule by making this point explicit.

As discussed above, ICE Clear Europe would revise Rule 1003(g) to consolidate the requirement to provide written notice of commencement of disciplinary proceedings in Rule 1003(b). Instead, under the proposed rule change, Rule 1003(g) would require that ICE Clear Europe send a formal written notice of the alleged breach of the Rules to the Clearing Member after the appointment of a Disciplinary Panel. The proposed rule change would make other minor drafting improvements to Rule 1003(g). These changes would improve the information available to Clearing Members and help to ensure that Clearing Members are aware of the alleged breaches that would be the subject of the disciplinary proceedings.

Current Rule 1003(h) gives the Clearing Member or other person subject to the notice of the alleged breach of the Rules 20 days from the service of the notice to provide a statement of defence. The proposed rule change would modify this provision slightly to clarify that the 20 day time period consists of 20 calendar days, and that it begins on the date of service of the notice. Moreover, the proposed rule change would add a provision to require that the statement of defence state explicitly whether the Clearing Member accepts the allegations. The proposed rule change would make other minor drafting clarifications, like referring to matters ''specified'' rather than ''alleged.'' Thus, this change would clarify this rule by being explicit about the days used to count the deadline for the statement of defence and by further requiring that the Clearing Member be explicit about whether it accepts the allegations.

Current Rule 1003(i) provides that having seen and considered the state of defence, ICE Clearing Europe may proceed with the disciplinary proceedings, discontinue the disciplinary proceedings, or deal with the matter as set out in Rule 1003(j). The proposed rule change would delete this provision as unnecessary because ICE Clear Europe has the authority to continue or discontinue disciplinary proceedings at any time and as such Rule 1003(j) did not provide any additional authority.

Current Rule 1003(j) allows ICE Clear Europe to amend the notice of alleged breach that is required by Rule 1003(g) and explains certain limitations on ICE Clear Europe's ability to amend that notice. The proposed rule change would renumber this provision as Rule 1003(i) and further specify ICE Clear Europe's ability to amend by explicitly stating that ICE Clear Europe may change the breach alleged in the notice or add another breach. The proposed rule change would also make certain drafting clarifications and improvements to the limitations on ICE Clear Europe's to amend the notice, but would not alter the substance of those limitations. Finally, the proposed rule change would explicitly require that following any deletion, amendment, or other alteration, ICE Clear Europe serve an amended notice on the Clearing Member. Thus, this aspect of the proposed rule change would enhance the fairness of the disciplinary proceedings by clarifying the limits on ICE Clear Europe's ability to amend a notice and requiring that ICE Clear Europe serve an amended notice to the Clearing Member.

Current Rule 1003(k) specifies that ICE Clear Europe's power to amend a Notice exists where it has determined that a separate or unrelated *prima facie* breach of ICE Clear Europe's Rules has occurred. The proposed rule change would renumber this provision as Rule 1003(j) and make drafting improvements, by for example, changing ''exist'' to ''exists'' and adding a reference to the disciplinary proceeding. Moreover, current Rule 1003(k) provides that ICE Clear Europe is not obliged to hold a further initial meeting or otherwise consult with a Clearing Member in response to additional or new alleged breaches. The proposed rule change would maintain this provision but would further specify that it only applies to additional or new alleged breaches that come to ICE Clear Europe's attention during the ongoing disciplinary proceedings. Similar to the change to Rule 1003(j), this aspect of the proposed rule change would enhance the fairness of the disciplinary proceedings by limiting Rule 1003(k), which exempts ICE Clear Europe from holding a further initial meeting or otherwise consulting with a Clearing Member with respect to new or additional breaches, to breaches that come to ICE Clear Europe's attention during the ongoing disciplinary proceedings.

The proposed rule change would also make non-substantive drafting improvements to renumbered Rules 1003(l), (m), (o), (q), (r), and (t). These changes would include, for example, specifying dates or deadlines as constituting calendar days, capitalizing defined terms, adding explicit references to the Disciplinary Panel and disciplinary proceedings, specifying that agreements shall be written, and updating or adding cross-references as needed. These changes would improve the overall clarity of these provisions.

In renumbered Rule 1003(p) (currently Rule 1003(q)), the proposed rule change would specify in further detail what information the Disciplinary Panel must communicate to ICE Clear Europe and the relevant Clearing Member once a decision has been made as to whether a breach of the Rules has been proven following a hearing. This would include, for example, the rationale for the Disciplinary Panel's decision, details of the breach of the Rules, and any sanctions to be imposed. The proposed rule change would also clarify that sanctions would be suspended pending the determination of any appeal, unless ICE Clear Europe determined that any order of suspension of the Clearing Member should be enforced during that period. This proposed change would help to enhance the fairness of the disciplinary proceedings by specifying the information that ICE Clear Europe must communicate to a Clearing Member regarding a decision and allow a Clearing Member to appeal without sanctions going into effect.

Finally, the proposed rule change would amend renumbered Rule 1003(s) (currently Rule 1003(t)), which gives the Disciplinary Panel authority to order any party to the proceedings to pay costs as it thinks appropriate, including the costs of running the Disciplinary Panel. The proposed rule change would modify this slightly by specifying that the Disciplinary may order a party to pay the fees and expenses of the members of the Disciplinary Panel. Moreover, the proposed rule change would specify that any order in relation to payment of costs may also specify the manner of assessment and timetable for payment. ICE Clear Europe intends this specific amendment to clarify current practice, under which a Disciplinary Panel has broad discretion to give awards on costs, and not substantively change the Disciplinary Panel's authority with respect to assessment of costs.[146] Thus, this change would further clarify Rule 1003(s) by making this point explicit.

iii. Rule 1004

In Rule 1004, the proposed rule change would make various amendments to clarify conditions

[146] Notice, 85 FR at 13207.

surrounding the use of the Summary Procedure and to improve the drafting of the provisions in Rule 1004. Currently, under Rule 1004, a Clearing Member may submit in writing to ICE Clear Europe a request to use the Summary Procedure, and ICE Clear Europe may in its discretion refer a matter to the Summary Procedure. The Summary Procedure is designed to be used in a scenario where a full disciplinary process would be disproportionate in terms of time or cost. The proposed rule change would modify Rule 1004(a) to clarify that the Summary Procedure would be used for disposing of a matter within 14 days of Notice being served. ICE Clear Europe is making this change to facilitate prompt resolution of matters subject to the Summary Procedure.

The proposed rule change would next amend Rule 1004(b) to provide ICE Clear Europe with the express ability to refuse the use of the Summary Procedure for matters which are more serious or are considered of particular significance or relevance to the market in general or in the public interest. This change thus would clarify the circumstances in which ICE Clear Europe may reject the inappropriate use of the Summary Procedure.

Rule 1004(c) currently provides that upon reference of the matter to the Summary Procedures, ICE Clear Europe shall nominate three Directors or employees of ICE Clear Europe to form the Summary Disciplinary Committee. The proposed rule change would modify this provision first to provide that it applies upon agreement to refer the matter to the Summary Procedure. This change would carry forth the change to Rule 1004(b) described above, giving ICE Clear Europe the express ability to refuse the use of the Summary Procedure. Moreover, the proposed rule change would modify Rule 1004(c) to state that ICE Clear Europe shall appoint members to the Summary Disciplinary Committee rather than nominate, because use of the term nominate gives the impression that ICE Clear Europe's choice would need to be ratified by someone else, which is not the case.

Current Rule 1004(d) provides the Summary Disciplinary Committee discretion to make such directions as to the conduct of the case as it sees fit. The proposed rule change would clarify that this provision also applies to the hearing of the case as well as the conduct of the case.

Current Rule 1004(e) provides that the Summary Disciplinary Committee may accept as conclusive any finding of fact by a court or Governmental Authority. The proposed rule change would clarify that this provision applies to any legally appointed court, tribunal, expert, arbitrator, or Governmental Authority. Thus, this change would clarify the scope of this provision.

Current Rule 1004(f) requires that the Summary Disciplinary Committee hold a private hearing where the Clearing Member may respond to the alleged breach of the Rules. The proposed rule change would simplify this provision to state that all hearings before the Summary Disciplinary Committee shall be held in private unless ICE Clear Europe and the Clearing Member agree otherwise. Thus, this change would simplify the drafting of this provision but not alter its substance.

Finally, the proposed rule change would amend Rule 1004(i) to specify the information that the Summary Disciplinary Committee must communicate to the Clearing Member in greater detail (mirroring the changes to similar requirements imposed on the Disciplinary Panel under Rule 1003). The proposed rule change would also clarify in Rule 1004(i) that in keeping with the summary nature of the proceeding, the range of sanctions available to the Summary Disciplinary Committee would be limited to those set out in the Notice and any additional sanctions arising out of the conduct of the proceedings.

As discussed above, ICE Clear Europe believes that these changes to Rule 1004, in clarifying the timeline for disposing of matters under the Summary Proceeding, requiring ICC's consent to use the Summary Proceeding, clarify ICE Clear Europe's authority in appoint members to the Summary Disciplinary Committee, and clarifying the scope of the Summary Disciplinary Committee's authority, would help to ensure that ICE Clear Europe's Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with Section 17A(b)(3)(H) of the Act.[147]

iv. Rule 1005

Throughout Rule 1005, which addresses appeals in the context of disciplinary proceedings, the proposed rule change would make a number of drafting clarifications and typographical corrections, like capitalizing defined terms and adding cross-references as needed. The proposed rule change also would amend Rule 1005(a)(ii) to clarify that the grounds for appeal listed in Rule 1005(a)(ii) are the only grounds for appeal and a party may not otherwise appeal on other grounds. Finally, the proposed rule change would amend Rule 1005(d) to require that the lawyer appointed to the Appeal Panel has been in practice for more than ten years and to clarify that an expert assessor, in addition to any other person sitting on an Appeal Panel, may not have a personal or financial interest in or have been involved in the investigation of or proceedings with respect to the matter under consideration. ICE Clear Europe believes that in making these changes, the proposed rule change would help to improve the use of appeals, and thereby would help to ensure that ICE Clear Europe's Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with 17A(b)(3)(H) of the Act.[148]

v. Rule 1006

The proposed rule change would add new Rule 1006 to address the interaction between ICE Clear Europe's disciplinary procedures under the Rules and any similar procedures under the rules of an Exchange. Exchanges that ICE Clear Europe clears are likely to have their own disciplinary procedures, with the result that a single disciplinary issue may give rise to two different disciplinary procedures dealing with the same fundamental issues. For example, ICE Futures Europe has disciplinary procedures set out in Section E of its Regulations.[149] ICE Clear Europe intends new Rule 1006 to: (i) Ensure that the existence of parallel disciplinary procedures under Market Rules does not preclude ICE Clear Europe's own disciplinary procedures; and (ii) confirm that where an exchange is carrying out disciplinary proceedings at the same time as ICE Clear Europe in relation to an exchange member that is also a Clearing Member, such proceedings may be consolidated with those of ICE Clear Europe to avoid unnecessary duplication of efforts and resources. This, for example, would allow the exchange and ICE Clear Europe to rely on the same pieces of evidence or conduct combined interviews of witnesses, to avoid unnecessary duplication of effort. ICE Clear Europe believes such coordinated proceedings may be appropriate in a range of circumstances, such as market abuses and delivery failures.[150] In providing for these coordinated proceedings, ICE Clear Europe believes the proposed rule change would improve the efficiency of disciplinary proceedings and avoid unnecessary effort or expenditure by Clearing

[147] 15 U.S.C. 78q–1(b)(3)(H).

[148] 15 U.S.C. 78q–1(b)(3)(H); Notice, 85 FR at 13214.

[149] Notice, 85 FR at 13207.

[150] Notice, 85 FR at 13207–13208.

Members in responding to multiple, simultaneous proceedings, and thereby would help to ensure that ICE Clear Europe's Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with 17A(b)(3)(H) of the Act.[151]

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization. For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, 17A(b)(3)(H) of the Act, and Rules 17Ad–22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).[152]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.[153]

As discussed in Section II.B above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents, to ensure that the Amended Documents are clear, consistent, and provide an enforceable legal basis for ICE Clear Europe's activities. In the Commission's view, a lack of clarity and consistency in ICE Clear Europe's Rules and Procedures could hinder ICE Clear Europe's ability to promptly and accurately clear and settle transactions, by possibly leading to disputes over the terms of transactions. Likewise the Commission believes a lack of enforceable legal basis could undermine the legitimacy and finality of ICE Clear Europe's actions in clearing and settling transactions. Thus, the Commission believes this aspect of the proposed rule change should help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.C above, the proposed rule change would clarify the scope of the terms used with respect to the persons involved in the governance of ICE Clear Europe. The Commission believes that this change would help to ensure clarity regarding the persons involved in the governance processes at ICE Clear Europe. The Commission believes that a lack of clarity could lead to potential confusion regarding the proper persons to take action on behalf of ICE Clear Europe, thereby potentially hindering ICE Clear Europe's ability to operate and therefore clear and settle transactions. Thus, the Commission believes this aspect of the proposed rule change should help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.D above, the proposed rule change would unify the time period for adjustments under the CDS, F&O, and FX Guaranty Funds, thereby helping ICE Clear Europe to maintain the Guaranty Funds. Because ICE Clear Europe maintains the Guaranty Funds to absorb potential losses, including losses from the default of the two participant families that would potentially cause the largest aggregate credit exposure for ICE Clear Europe in extreme but plausible market conditions, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's maintenance of the Guaranty Funds, would also facilitate ICE Clear Europe's ability to cover such losses. The Commission further believes that such losses could, if not covered, interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's maintenance of the Guaranty Funds, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

As discussed in Section II.E above, the proposed rule change would clarify how ICE Clear Europe would calculate NLV for Premium Up-Front Options relating to Original Margin and would provide ICE Clear Europe authority to treat amounts owed to it by a Clearing Member as additional margin. The Commission believes that this aspect of the proposed rule change should help ICE Clear Europe to calculate such margin by clarifying the calculation of NLV and giving authority with respect to treating amounts owed as margin. Moreover, as discussed in Section II.E above, the proposed rule change would, at the request of Clearing Members, establish the settled-to-market treatment of variation margin and adopt the Externalised Payments Mechanism for the payment of variation margin. The Commission believes that this aspect of the proposed rule change should help ICE Clear Europe to collect such margin by establishing a legal treatment of variation margin that may benefit Clearing Members' capital requirements and by establishing a method for paying variation margin that is more consistent with market practices. The Commission believes that in calculating and collecting margin, including initial margin and variation margin, ICE Clear Europe manages and mitigates potential losses associated with clearing and settling transactions. The Commission further believes that losses associated with clearing and settling transactions, if not managed and mitigated by margin, could interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's calculating and collection of margin, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

As discussed in Section II.F above, the proposed rule change would give ICE Clear Europe explicit authority to use repurchase agreements, secured lending facilities, and sales to generate liquidity from non-cash assets, subject to certain conditions. The Commission believes that this aspect of the proposed rule change would provide ICE Clear Europe an additional source of liquidity to use as needed to meet liquidity demands from clearing and settling transactions and potential liquidity demands resulting from the default of a Clearing Member. The Commission further believes that such liquidity may be needed for ICE Clear Europe to clear and settle transactions, including clearing and settling transactions in the event of a Clearing Member's default. The Commission therefore believes that this aspect of the proposed rule change would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.G above, the proposed rule change would update Rule 703 and ICE Clear Europe's Delivery Procedures regarding physical

[151] 15 U.S.C. 78q–1(b)(3)(H); Notice, 85 FR at 13214.

[152] 15 U.S.C. 78q–1(b)(3)(F); 15 U.S.C 78q–1(b)(3)(H); 17 CFR 240.17Ad–22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).

[153] 15 U.S.C. 78q–1(b)(3)(F).

settlement to be consistent with market practices and the operational practices of associated trading venues for which ICE Clear Europe clears Contracts. The Commission believes that discrepancies between ICE Clear Europe's stated practices in the Delivery Procedures and the operational practices of associated trading venues could lead to failures to conduct physical settlement, and therefore failures to finalize and clear transactions. Therefore, the Commission believes that in resolving these potential discrepancies, the proposed rule change would help to ensure that physical settlement is completed. Moreover, the Commission believes that in updating Rule 703 to require Sellers under a Futures Contract to represent that they convey good title to products (free of encumbrances) when physical settlement takes place, the proposed rule change would help to mitigate the risk that a Seller would deliver a product subject to an encumbrance that could interfere with settlement of a transaction. The Commission therefore believes that this aspect of the proposed rule change should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.H above, the proposed rule change would expand the scope of events that could lead to ICE Clear Europe declaring an Event of Default with respect to a Clearing Member, clarify ICE Clear Europe's authority with respect to conducting default auctions, and amend the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option. Upon declaring an Event of Default, ICE Clear Europe has certain powers under Part 9 of the Rules to respond to the default. The Commission therefore believes that expanding the scope of events that could lead to ICE Clear Europe declaring an Event of Default would better enable ICE Clear Europe to invoke these powers and thereby prevent or reduce the losses that could result from a default. Similarly, the Commission believes that clarifying ICE Clear Europe's authority with respect to conducting default auctions and amending the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option would help ICE Clear Europe to respond to a default and thereby prevent or reduce the losses that could result from such a default. The Commission further believes that losses from a default could interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's ability to respond to defaults and thereby prevent or reduce losses, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

As discussed in Section II.I above, the proposed rule change would clarify the application of the Standard Terms; ICE Clear Europe's use or transfer of margin; the timing of the creation, and termination of contracts subject to porting; and the price at which positions are ported, all for the purpose of enhancing ICE Clear Europe's ability to conduct porting of a Customer's positions. The Commission believes that, in further enabling ICE Clear Europe to conduct porting, the proposed rule change would help facilitate the transfer of Customer positions from one Clearing Member to another Clearing Member and the settlement of the transactions resulting from such transfers. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating porting, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.J above, the proposed rule change would make changes to manage and mitigate the operational risks associated with requirements applicable to ICE Clear Europe under U.S. tax law and the timing and operational aspects associated with ICE Clear Europe's clearance and settlement of CDS, F&O, and FX Contracts. The Commission believes that such operational risks, if not properly managed and mitigated, could interfere with ICE Clear Europe's ability to clear and settle transactions. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating the management and mitigation of these operational risks, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.K above, the proposed rule change would also enhance and update the standards and requirements applicable to membership in ICE Clear Europe. Moreover, as discussed in Section II.M above, the proposed rule change would amend Part 10 of the Rules to streamline and improve ICE Clear Europe's process for disciplining Clearing Members that violate these standards and requirements, and other aspects of the Rules. The Commission believes that these membership standards and requirements, among other things, would help to ensure that ICE Clear Europe's Clearing Members are able to perform their obligations that enable ICE Clear Europe to clear and settle transactions, such as transferring margin and contributing to the Guaranty Fund. Moreover, the Commission believes that ICE Clear Europe's process for disciplining Clearing Members that violate these membership standards and requirements, and other aspects of the Rules, would help to ensure that Clearing Members meet their obligations to ICE Clear Europe under the Rules. Therefore, the Commission believes that in enhancing these standards and requirements and the process ICE Clear Europe uses to discipline Clearing Members, the proposed rule change should thereby help to ensure that ICE Clear Europe is able to clear and settle transactions.

Finally, as discussed in Section II.L above, the proposed rule change would amend Part 7 and Part 8 of the Rules to simplify and clarify the drafting of provisions relating to the cash settlement of Futures and Options Contracts. Specifically, the proposed rule change would ensure that ICE Clear Europe's written procedures for cash settlement accurately describe its current operational practices and processes and would clarify the method of determining the amount payable for cash settlement of a Future. In doing so, the Commission believes that the proposed rule change should help to avoid any possible disputes or discrepancies over these operational processes, which could hinder cash settlement.

The proposed rule change would also give ICE Clear Europe the authority to require both Clearing Members that are party to a Futures contract to engage in cash settlement if one of the Clearing Members defaults and give ICE Clear Europe flexibility to permit payments to be made directly between Clearing when directing Clearing Members to deliver to other Clearing Members under Rules 703(f) and 809(d). In doing so, the Commission believes that the proposed rule change should help ICE Clear Europe to continue settling transactions even in cases of default and help ICE Clear Europe to facilitate deliveries and payments among clearing members.

Finally, the proposed rule change would clarify that ICE Clear Europe could determine the cash settlement price for an Option using the Exchange Delivery Settlement Price on the day of settlement or exercise and would also require that, to receive cash settlement, all outstanding premium payments must have been made in relation to the

relevant set of Options (in addition to Margin payments). The Commission believes that these changes allow ICE Clear Europe additional operational flexibility and help to ensure that the Clearing Member has made the payments necessary to clear and settle an Option. Thus, the Commission believes that these aspects of the proposed rule change should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

For these reasons, the Commission finds the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, derivative agreements, contracts, and transactions and would assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Therefore, the Commission finds the proposed rule change is consistent with section 17A(b)(3)(F) of the Act.[154]

B. Consistency With Section 17A(b)(3)(H) of the Act

Section 17A(b)(3)(H) of the Act requires that the rules of ICE Clear Europe in general provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation of any person with respect to access to services offered by ICE Clear Europe.[155] As discussed in Section II.M above, the proposed rule change would amend Part 10 of the Rules to streamline and improve ICE Clear Europe's process for disciplining Clearing Members, including amendments to Rule 1002. The Commission believes that these changes to Rule 1002, in ensuring the confidentiality of information and increasing the information that ICE Clear Europe must disclose, would help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members by providing Clearing Members with additional information about the consequences of the investigation and ICE Clear Europe's conclusions. Moreover, in ensuring that ICE Clear Europe can access information it needs to conduct its investigation, the Commission believes that these changes would help to ensure the efficacy of ICE Clear Europe's investigation, thereby improving ICE Clear Europe's ability to conduct a fair investigation.

The changes to Part 10 discussed in Section II.M above would also include amendments to Rule 1003. The Commission believes that these amendments, in clarifying ICE Clear Europe's authority to appoint members to the Disciplinary Panel and providing the Clearing Member an ability to object to such appointments, would help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members by giving Clearing Members a voice in the establishment of the disciplinary panel. Similarly, the Commission believes that in establishing the standard of independence for members of the Disciplinary Panel and expert assessors and clarifying limits on ICE Clear Europe's ability to amend a notice and requiring that ICE Clear Europe serve an amended notice to the Clearing Member, the amendments to Rule 1003 should help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members by limiting ICE Clear Europe's ability to add additional charges and helping to ensure a minimum level of independence, and therefore objectivity, among the members of the Disciplinary Panel and expert assessors. Finally, in clarifying a Disciplinary Panel's ability to award costs, the Commission believes the changes to Rule 1003 should make clear to both parties of the proceeding the potential risk they would face to pay for the costs of the proceeding.

Moreover, as discussed in Section II.M above, the proposed rule change would also amend Rule 1004 to clarify certain conditions surrounding the use of the Summary Procedure and to improve the drafting of Rule 1004. Similarly, as discussed in Section II.M above, the proposed rule change would make a number of drafting clarifications and typographical corrections in Rule 1005 and clarifying the scope of the grounds for appeal. The Commission believes that the changes would improve the clarity of these aspects of the disciplinary procedures and reduce any potential confusion or disputes over their application, thereby helping to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members.

Finally, as discussed in Section II.M above, the proposed rule change would add a new Rule 1006 to address the interaction between ICE Clear Europe's disciplinary procedures under the Rules and any similar procedures under the rules of an Exchange. The Commission believes that this change would help to avoid any potential conflicts between ICE Clear Europe's disciplinary procedures and any similar procedures of an Exchange and help to ensure the efficiency of proceedings by allowing ICE Clear Europe and an Exchange to consolidate proceedings and share evidence and other materials. In doing so, the Commission believes Rule 1006 should help Clearing Members to avoid the burden of having to respond to simultaneous, separate proceedings. Therefore, the Commission believes this change would help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members.

For these reasons, the Commission finds the proposed rule change is consistent with section 17A(b)(3)(H) of the Act.[156]

C. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[157] As discussed in Section II.B above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents to explicitly and correctly reference current law; eliminate discrepancies and inconsistencies; comply with applicable legal requirements; use consistent terminology; update cross references and numbering; and correct drafting errors. The Commission believes that these changes, taken as a whole, would help to ensure that the Amend Documents provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of ICE Clear Europe's activities in all relevant jurisdictions. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(1).[158]

D. Consistency With Rule 17Ad–22(e)(2)(i)

Rule 17Ad–22(e)(2)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[159] As discussed in Section II.C above, the proposed rule change would clarify the scope of terms used with respect to the persons involved in the governance of ICE Clear Europe by (i) revising the

[154] 15 U.S.C. 78q–1(b)(3)(F).

[155] 15 U.S.C. 78q–1(b)(3)(H).

[156] 15 U.S.C. 78q–1(b)(3)(H).

[157] 17 CFR 240.17Ad–22(e)(1).

[158] 17 CFR 240.17Ad–22(e)(1).

[159] 17 CFR 240.17Ad–22(e)(2)(i).

definition of Board and Representative and (ii) expanding references to persons exercising governance for ICE Clear Europe to include committees and individual committee members. The Commission believes that these changes should help to ensure that ICE Clear Europe's governance arrangements are clear and transparent by clarifying the definition of Board and Representative and clearly identifying the persons involved in governance at ICE Clear Europe. For this reason, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(2)(i).[160]

E. Consistency With Rule 17Ad–22(e)(4)(v)

Rule 17Ad–22(e)(4)(v) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining the financial resources required under Rule 17Ad–22(e)(4)(ii) in combined or separately maintained clearing or guaranty funds.[161] As discussed in Section II.D above, the proposed rule change would establish a single time period under which adjustments to Contributions to the CDS, F&O, and FX Guaranty Funds would take effect. The Commission believes that establishing a single time period would improve the efficiency of ICE Clear Europe's operations with respect to adjustments to the Guaranty Fund and reduce the possibility for any discrepancy or confusion among Clearing Members who contribute ton multiple Guaranty Funds. Moreover, the Commission believes that the five business day period provided for by the proposed rule change, rather than the two business day period currently applicable to adjustments to the CDS and FX Guaranty Funds, would provide additional time to Clearing Members to adapt to adjustments without materially affecting ICE Clear Europe's ability to adjust the Guaranty Funds. Thus, in general, the Commission believes this change would better enable ICE Clear Europe to maintain the CDS, F&O, and FX Guaranty Funds. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(4)(v).[162]

F. Consistency With Rule 17Ad–22(e)(6)(i) and (ii)

Rule 17Ad–22(e)(6)(i) and (ii) require that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its Clearing Members by establishing a risk-based margin system that, at a minimum (i) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and (ii) marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances.[163] As discussed in Section II.E above, the proposed rule change would clarify how ICE Clear Europe would calculate NLV for Premium Up-Front Options; establish the settled-to-market treatment of variation margin; adopt the Externalised Payments Mechanism for the payment of variation margin; and provide ICE Clear Europe authority to treat amounts owed to it by a Clearing Member as additional margin. Because, as discussed in Section II.E above, ICE Clear Europe is establishing the settled-to-market treatment of variation margin and the Externalised Payments Mechanism at the request of Clearing Members, the Commission believes these changes would facilitate ICE Clear Europe's collection of variation margin from Clearing Members. The Commission further believes that, in further clarifying the calculation of NLV and establishing ICE Clear Europe's authority to treat amounts owed to it by a Clearing Member as additional margin, the proposed rule change should help to ensure that ICE Clear Europe's margin system produces margin commensurate with the risks presented by a Clearing Member. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(6)(i) and (ii).[164]

G. Consistency With Rule 17Ad–22(e)(7)(i)

Rule 17Ad–22(e)(7)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by ICE Clear Europe, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.[165] As discussed in Section II.F above, the proposed rule change would amend the Finance Procedures to give ICE Clear Europe explicit authority use repurchase agreements, secured lending facilities, and sales to generate liquidity from non-cash assets, subject to certain conditions. The Commission believes that this change would provide ICE Clear Europe a source of liquidity, effectively borrowing from Clearing Members' Margin and Guaranty Fund contributions by using non-cash collateral to generate liquidity. The Commission further believes that this source of liquidity, along with ICE Clear Europe's existing sources of liquidity, should help to ensure that ICE Clear Europe maintains sufficient liquid resources. For this reason, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(7)(i).[166]

H. Consistency With Rule 17Ad–22(e)(10)

Rule 17Ad–22(e)(10) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.[167] As discussed in Section II.G above, the proposed rule change would add a new Rule 703(j) to require Sellers under a Futures Contract to represent that they convey good title to products (free of encumbrances) when physical settlement takes place. In doing so, the Commission believes the proposed rule change would establish an operational practice to manage the risks associated with physical deliveries, by mitigating the risk that a

[160] 17 CFR 240.17Ad–22(e)(2)(i).

[161] 17 CFR 240.17Ad–22(e)(4)(v).

[162] 17 CFR 240.17Ad–22(e)(4)(v).

[163] 17 CFR 240.17Ad–22(e)(6)(i), (ii).

[164] 17 CFR 240.17Ad–22(e)(6)(i), (ii).

[165] 17 CFR 240.17Ad–22(e)(7)(i).

[166] 17 CFR 240.17Ad–22(e)(7)(i).

[167] 17 CFR 240.17Ad–22(e)(10).

Seller would deliver products subject to encumbrances.

Moreover, as discussed in Section II.G above, the proposed rule change would update the Delivery Procedures to be consistent with ICE Clear Europe's and affiliated trading venues' operational practices. The Commission believes that these changes should help to ensure that the Delivery Procedures accurately reflect delivery obligations, in line with operations at ICE Clear Europe and affiliated trading venues, and mitigate the risks that could arise from discrepancies between such operational practices and the Delivery Procedures.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(10).[168]

I. Consistency With Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its Clearing Members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.[169] As discussed in Section II.H above, the proposed rule change would expand the scope of events that could lead to ICE Clear Europe declaring an Event of Default with respect to a Clearing Member by amending the definitions of certain events which themselves could be the basis for ICE Clear Europe declaring an Event of Default. In doing so, the Commission believes the proposed rule change should help ensure that ICE Clear Europe's powers in responding to defaults, which are only available after ICE Clear Europe declares an Event of Default, are accessible as appropriate and necessary to respond to situations not currently considered to be an Event of Default.

Moreover, as discussed in Section II.H above, the proposed rule change would give ICE Clear Europe explicit authority to carry out default auctions in accordance with the Default Auction Procedures and construct auction lots out of the defaulting Clearing Member's contracts. The Commission believes that this aspect of the proposed rule change would help facilitate ICE Clear Europe's conduct of default auctions, which ICE Clear Europe uses to contain losses and liquidity demands in the event of a Clearing Member's default.

Finally, as discussed in Section II.H above, the proposed rule change would expand the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option. The Commission believes this would help ensure that the net sum payable by or to a defaulting Clearing Member accurately reflects the possible consequences of abandoning Options in the defaulting Clearing Member's portfolio, and therefore reflects any potential losses to ICE Clear Europe resulting from such abandonment.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(13).[170]

J. Consistency With Rule 17Ad–22(e)(14)

Rule 17Ad–22(e)(14) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a Clearing Member's customers and the collateral provided to ICE Clear Europe with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that Clearing Member.[171] As discussed in Section II.I above, the proposed rule change would further enhance ICE Clear Europe's ability to transfer the positions of a Clearing Member's customers in the event of that Clearing Member's default by ensuring that the Standard Terms are contractually binding between Customers and Clearing Members and cannot be overridden. Because the Standard Terms are uniform contractual provisions that ensure that all terminations and re-establishments of cleared contracts occur at the same time and at the same price, the Commission believes this change would help facilitate porting by helping to ensure that all terminations and re-establishments of cleared contracts occur at the same time and at the same price, thereby reducing the possibility of valuation disputes or other claims that might prevent or reduce the likelihood of porting.

Moreover, as discussed in Section II.I above, the proposed rule change would require Clearing Members and Customers to make representations regarding the transfer of collateral to ICE Clear Europe and further would require Customers to take any action reasonably requested by ICE Clear Europe or Clearing Member that may be necessary or desirable to create, preserve, perfect, or validate the right, title or interests of ICE Clear Europe in the collateral. The Commission believes this change would help to ensure that ICE Clear Europe is able to transfer and use collateral as needed, including as needed for porting, free from any other claim or encumbrance.

The proposed rule would also, as discussed in Section II.I above, clarify the time at which contracts are deemed to arise and replace automatic early termination clauses with suspension of performance. Because discrepancies in the timing of the creation and termination of a contract could lead to disputes about whether that contract could be ported, the Commission believes that this change would help to enable the portability of a customer's contracts.

Finally, as discussed in Section II.I above, the proposed rule change would give ICE Clear Europe discretion to determine the price at which it transfer or liquidates a contract and the time for determining such price. Because ICE Clear Europe may need to consider different prices and times under the different insolvency regimes of the jurisdictions in which it operates, the Commission believes this change should further facilitate ICE Clear Europe's ability to port by giving it flexibility with respect to the determination of those prices.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(14).[172]

K. Consistency With Rule 17Ad–22(e)(17)(i)

Rule 17Ad–22(e)(17)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[173] As discussed in Section II.J above, the proposed rule change would require that, before clearing equity contracts with ICE Clear Europe, any Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes enter into appropriate agreements with the IRS and meet certain other specified qualifications under procedures of the IRS, such that ICE Clear Europe would not be responsible for withholding taxes under Section 871(m) of the Internal Revenue

[168] 17 CFR 240.17Ad–22(e)(10).

[169] 17 CFR 240.17Ad–22(e)(13).

[170] 17 CFR 240.17Ad–22(e)(13).

[171] 17 CFR 240.17Ad–22(e)(14).

[172] 17 CFR 240.17Ad–22(e)(14).

[173] 17 CFR 240.17Ad–22(e)(17)(i).

Code. The Commission believes that this change would help ICE Clear Europe to avoid having to withhold taxes and further believes that having to withhold taxes could hinder ICE Clear Europe's operational processes for clearing and settling transactions. As such, the Commission believes that this change would help ICE Clear Europe to manage the operational risks associated with the application of Section 871(m) of the Internal Revenue Code.

Moreover, as discussed in Section II.J above, the proposed rule change would clarify and harmonize references to timing in the Rules, the CDS Procedures, Clearing Procedures, and Finance Procedures; revise the timing of certain actions taking by ICE Clear Europe to avoid any potential conflict with the practices of the markets that ICE Clear Europe clears; make explicit that Clearing Members bear the risk of late instruction; and remove a presumption that deposits and withdrawals of non-cash collateral should be settled on the same day as a Clearing Member places with ICE Clear Europe an instruction for deposit or withdrawal. The Commission believes that these changes should help mitigate the operational risks that could result from discrepancies about the timing for certain actions or unclear deadlines, such as the risk that ICE Clear Europe's assumption about the timing of settlement does not match a Clearing Member's instruction.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(17)(i).[174]

L. Consistency With Rule 17Ad–22(e)(18)

Rule 17Ad–22(e)(18) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation, and monitor compliance with such participation requirements on an ongoing basis.[175] As discussed in Section II.K above, the proposed rule change would revise the standards that govern membership in ICE Clear Europe; clarify the waiver of sovereign immunity that all Clearing Members must make; expand and enhance Rule 201(a) and Rule 202(a), which set out the requirements for membership in ICE Clear Europe and obligations on Clearing Members; amend Rule 203 to prohibit a Clearing Member from engaging in conduct that would render it unable to satisfy the membership and from exercising set-off rights against ICE Clear Europe; expand the events for which a Clearing Member must notify ICE Clear Europe under Rule 204; clarify that Rule 206 also requires Clearing Members to maintain financial resources in addition to capital; and update the Membership Procedures in light of these changes. The Commission believes that these changes, taken as a whole, would enhance the criteria for participation in ICE Clear Europe and would help to ensure that ICE Clear Europe continues to maintain objective, risk-based, and publicly disclosed criteria for participation, that permit fair and open access.

Moreover, as discussed in Section II.K above, the proposed rule change would clarify that Rule 301(f) requires written consent from ICE Clear Europe for an exception to the requirement that a Clearing Member pay all amounts payable to ICE Clear Europe by electronic transfer from an account at an Approved Financial Institution only. Again, the Commission believes that this revision would enhance and clarify this requirement with respect to membership in ICE Clear Europe and therefore would help to ensure that ICE Clear Europe continues to maintain objective, risk-based, and publicly disclosed criteria for participation, that permit fair and open access.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(18).[176]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as modified by Partial Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Partial Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2020–003 and should be submitted on or before May 14, 2020.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[177] to approve the proposed rule change, as modified by Partial Amendment No. 1, prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 updates Exhibit 5C to reflect changes made to the Finance Procedures subsequent to the initial filing of this proposed rule change,

[174] 17 CFR 240.17Ad–22(e)(17)(i).

[175] 17 CFR 240.17Ad–22(e)(18).

[176] 17 CFR 240.17Ad–22(e)(17)(i).

[177] 15 U.S.C. 78s(b)(2).

corrects a typographical error in the amendment to Rule 1005(d) by restoring a requirement that had been unintentionally deleted, and makes minor typographical corrections in relation to both of those changes. By updating Exhibit 5C, correcting the error in amended Rule 1005(d), and making typographical corrections in relation to those changes, Partial Amendment No. 1 provides for a more clear and comprehensive understanding of the estimated impact of the proposed rule change, which helps to improve the Commission's review of the proposed rule change for consistency with the Act.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Act and the applicable rules thereunder. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[178]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act, 17A(b)(3)(H) of the Act, and Rules 17Ad–22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).[179]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[180] that the proposed rule change, as modified by Partial Amendment No. 1 (SR–ICEEU–2020–003), be, and hereby is, approved on an accelerated basis.[181]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[182]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08487 Filed 4–22–20; 8:45 am]

BILLING CODE 8011–01–P

[178] 15 U.S.C. 78s(b)(2).

[179] 15 U.S.C. 78q–1(b)(3)(F); 15 U.S.C 78q–1(b)(3)(H); 17Ad–22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).

[180] 15 U.S.C. 78s(b)(2).

[181] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[182] 17 CFR 200.30–3(a)(12).

FEDERAL REGISTER

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Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 217 and 324

Federal Deposit Insurance Corporation

12 CFR Part 324

Regulatory Capital Rule: Temporary Changes to the Community Bank Leverage Ratio Framework; Rules

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2020–0016]

RIN 1557–AE88

FEDERAL RESERVE SYSTEM

12 CFR Part 217, 12 CFR Part 324

[Regulation Q; Docket No. R–1710]

RIN 7100–AF84, RIN 3064–AF45

FEDERAL DEPOSIT INSURANCE CORPORATION

Regulatory Capital Rule: Temporary Changes to the Community Bank Leverage Ratio Framework

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Interim final rule; request for comment.

SUMMARY: This interim final rule makes temporary changes to the community bank leverage ratio framework, pursuant to section 4012 of the Coronavirus Aid, Relief, and Economic Security Act (statutory interim final rule). As of the second quarter 2020, a banking organization with a leverage ratio of 8 percent or greater (and that meets other qualifying criteria) may elect to use the community bank leverage ratio framework. The statutory interim final rule also establishes a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls below the 8-percent community bank leverage ratio requirement, so long as the banking organization maintains a leverage ratio of 7 percent or greater. The temporary changes to the community bank leverage ratio framework implemented by this statutory interim final rule will cease to be effective as of the earlier of the termination date of the national emergency concerning the coronavirus disease declared by the President on March 13, 2020, under the National Emergencies Act, or December 31, 2020. To provide clarity to banking organizations, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation issued concurrently an interim final rule that provides a transition from the temporary 8-percent community bank leverage ratio requirement to a 9-percent community bank leverage ratio requirement.

DATES: The interim final rule is effective April 23, 2020. Comments on the interim final rule must be received no later than June 8, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters are encouraged to use the title ''Regulatory Capital Rule: Temporary Changes to the Community Bank Leverage Ratio Framework'' to facilitate the organization and distribution of comments among the agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding. Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rule: Temporary Changes to the Community Bank Leverage Ratio Framework'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—''*Regulations.gov* Classic or *Regulations.gov* Beta'':

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0016'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0016'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0016'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0016'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0016'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET

or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1710 and RIN 7100–AF84, by any of the following methods:

1. *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

2. *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.

3. *FAX:* (202) 452–3819 or (202) 452–3102.

4. *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 sensitive personally identifiable information at the commenter's request. Public comments may also 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 security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FDIC: You may submit comments, identified by RIN 3064–AF45, by any of the following methods:

- *Agency website: http://www.FDIC.gov/regulations/laws/Federal/.* Follow the instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include the RIN 3064–AF45 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AF45.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/Federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Benjamin Pegg, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Carl Kaminski, Special Counsel, or Daniel Perez, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 872–7526; Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973–6862; or Brendan Rowan, Senior Financial Institution Policy Analyst I, (202) 475–6685, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–2877; Andrew Hartlage, Counsel, (202) 452–6483; or Jonah Kind, Senior Attorney, (202) 452–2045, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for the Deaf (TDD) only, call (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Noah Cuttler, Senior Policy Analyst, *ncuttler@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

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I. Background on the Community Bank Leverage Ratio Framework

The community bank leverage ratio framework provides a simple measure of capital adequacy for community banking organizations that meet certain qualifying criteria. The community bank leverage ratio framework implements section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which requires the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) to establish a community bank leverage ratio of not less than 8 percent and not more than 10 percent for qualifying community banking organizations.[1] Under section 201(c) of EGRRCPA, a qualifying community banking organization that exceeds the community bank leverage ratio, as established by the agencies, shall be considered to have met the generally applicable risk-based and leverage capital requirements in the capital rule (generally applicable rule), any other applicable capital or leverage requirements, and, if applicable, the ''well capitalized'' capital ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act. Section 201(b) of EGRRCPA also requires the agencies to establish procedures for the treatment of a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement as established by the agencies.

In 2019, the agencies issued a final rule establishing the community bank leverage ratio framework, which became effective January 1, 2020 (2019 final rule).[2] Under the 2019 final rule, the agencies established a community bank leverage ratio of 9 percent using the capital rule's existing leverage ratio. A

[1] Public Law 115–174, 132 Stat. 1296, 1306–07 (2018) (codified at 12 U.S.C. 5371 note). The authorizing statues use the term ''qualifying community bank,'' whereas the regulation implementing the statues uses the term ''qualifying community banking organization.'' The terms generally have the same meaning. Section 201(a)(3) of EGRRCPA provides that a qualifying community banking organization is a depository institution or depository institution holding company with total consolidated assets of less than $10 billion that satisfies such other factors, based on the banking organization's risk profile, that the agencies determine are appropriate. This determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and such other factors that the agencies determine appropriate.

[2] 84 FR 61776 (November 13, 2019).

qualifying community banking organization that maintains a leverage ratio of greater than 9 percent and elects to use the community bank leverage ratio framework will be considered to have satisfied the generally applicable rule and any other applicable capital or leverage requirements, and, if applicable, will be considered to be well capitalized.[3]

Under the 2019 final rule, a qualifying community banking organization is any depository institution or depository institution holding company that has less than $10 billion in total consolidated assets, off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets, and trading assets and liabilities of 5 percent or less of total consolidated assets. The banking organization also cannot be an advanced approaches banking organization.[4]

In addition, the 2019 final rule established a two-quarter grace period during which a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the greater-than-9-percent leverage ratio requirement, generally would still be considered well capitalized so long as the banking organization maintains a leverage ratio of greater than 8 percent. A banking organization that either fails to meet all the qualifying criteria within the grace period or fails to maintain a leverage ratio of greater than 8 percent is required to comply with the generally applicable rule and file the appropriate regulatory reports.

II. Section 4012 of the Coronavirus Aid, Relief, and Economic Security Act

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.[5] The CARES Act directs the agencies to make temporary changes to the community bank leverage ratio framework. Specifically, section 4012 of the CARES Act directs the agencies to issue an interim final rule that provides that, for purposes of section 201 of EGRRCPA, the community bank leverage ratio shall be 8 percent and that a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement established under the CARES Act shall have a reasonable grace period to satisfy that requirement. A qualifying community banking organization to which the grace period applies may continue to be treated as a qualifying community banking organization and shall be presumed to satisfy the capital and leverage requirements described in section 201(c) of EGRRCPA.

Under section 4012 of the CARES Act, this interim final rule (statutory interim final rule) is effective during the period beginning on the date on which the agencies issue the statutory interim final rule and ending on the sooner of the termination date of the national emergency concerning the coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act, or December 31, 2020 (termination date).

III. Temporary Changes to the Community Bank Leverage Ratio Framework

In accordance with section 4012 of the CARES Act, the statutory interim final rule makes certain temporary changes to the community bank leverage ratio framework. Effective as of April 23, 2020, the community bank leverage ratio will be 8 percent until the termination date of the statutory interim final rule. A banking organization with a leverage ratio of 8 percent or greater (and that meets the other qualifying criteria) may elect to use the community bank leverage ratio framework during the time the interim final rule is in effect.

In addition, under the statutory interim final rule, a community banking organization that temporarily fails to meet any of the qualifying criteria, including the 8-percent community bank leverage ratio requirement, generally will still be considered well capitalized so long as the banking organization maintains a leverage ratio equal to 7 percent or greater. A banking organization that fails to meet the qualifying criteria after the end of the grace period or reports a leverage ratio of less than 7 percent will be required to comply with the generally applicable rule and file the appropriate regulatory reports.[6] The statutory interim final rule does not make any changes to the other qualifying criteria in the community bank leverage ratio framework.

The agencies adopted, in the 2019 final rule, a two-quarter grace period with a leverage ratio requirement that is 1 percentage point below the community bank leverage ratio on the basis that these requirements appropriately mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization's risk profile from quarter to quarter, while capturing more permanent changes in a banking organization's risk profile. The agencies continue to believe that this approach is appropriate and provides a qualifying community banking organization whose leverage ratio falls below the 8-percent community bank leverage ratio requirement a reasonable amount of time to satisfy that requirement, consistent with section 4012 of the CARES Act.

IV. Effective Date of the Statutory Interim Final Rule

The statutory interim final rule is effective as of April 23, 2020. Banking organizations may utilize the requirements under the statutory interim final rule for purposes of filing their Call Report or Form FR Y–9C, as applicable, for the second quarter of 2020 (*i.e.,* as of June 30, 2020).

V. Transition Interim Final Rule

The agencies are issuing concurrently an interim final rule that provides a transition from the temporary 8-percent community bank leverage ratio requirement, as mandated under section 4012 of the CARES Act, to the 9-percent community bank leverage ratio requirement, as established by the agencies in the 2019 final rule (transition interim final rule). When the requirements in the transition interim final rule become applicable, the community bank leverage ratio will be 8 percent in the second quarter through fourth quarter of calendar year 2020, 8.5 percent in calendar year 2021, and 9 percent thereafter. Section 201 of EGRRCPA requires a qualifying

[3] Under existing PCA requirements applicable to insured depository institutions, to be considered ''well capitalized'' a banking organization must demonstrate that it is not subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. *See* 12 CFR 6.4(b)(1)(iv) (OCC); 12 CFR 208.43(b)(1)(v) (Board); 12 CFR 324.403(b)(1)(v) (FDIC). The same legal requirements continue to apply under the community bank leverage ratio framework.

[4] A banking organization is an advanced approaches banking organization if it (1) is a global systemically important bank holding company, (2) is a Category II banking organization, (3) has elected to be an advanced approached banking organization, (4) is a subsidiary of a company that is an advanced approaches banking organization, or (5) has a subsidiary depository institution that is an advanced approaches banking organization. *See* 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

[5] Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281.

[6] In addition, consistent with the 2019 final rule, a banking organization that ceases to satisfy the qualifying criteria as a result of a business combination also will receive no grace period and will be required to comply with the generally applicable rule.

community banking organization to exceed the community bank leverage ratio established by the agencies in order to be considered to have met the generally applicable rule, any other applicable capital or leverage requirements, and, if applicable, the ''well capitalized'' capital ratio requirements, whereas section 4012 of the CARES Act requires that a qualifying community banking organization meet or exceed an 8 percent community bank leverage ratio to be considered the same. The agencies are issuing the transition interim final rule to provide community banking organizations with sufficient time and clarity to meet the requirements under the community bank leverage ratio framework while they also focus on supporting lending to creditworthy households and businesses given the recent strains on the U.S. economy caused by the COVID–19 emergency.

Question 1: The agencies invite comment on the grace period under the statutory interim final rule. Specifically, what are the advantages and disadvantages of the period of time the statutory interim final rule provides for a banking organization that no longer meets the qualifying criteria to transition to the generally applicable rule? What other alternatives should the agencies consider providing as a reasonable grace period, as required under section 4012 of the CARES Act, for a banking organization that no longer meets the definition of a qualifying community banking organization and why?

VI. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing the statutory interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[7] Pursuant to section 553(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.'' [8]

The agencies believe that the public interest is best served by implementing the statutory interim final rule immediately upon publication in the **Federal Register**. As discussed above, section 4012 of the CARES Act directs the agencies to issue an interim final rule that provides that, for purposes of section 201 of EGRRCPA, the community bank leverage ratio shall be 8 percent and that a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement established under the CARES Act shall have a reasonable grace period to satisfy that requirement. A qualifying community banking organization to which the grace period applies may continue to be treated as a qualifying community banking organization and shall be presumed to satisfy the capital and leverage requirements described in section 201(c) of EGRRCPA.

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.[9] Because the rules relieve a restriction, the statutory interim final rule is exempt from the APA's delayed effective date requirement.[10] Additionally, the agencies find good cause to publish the statutory interim final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

While the agencies believe that there is good cause to issue the statutory interim final rule without advance notice and comment and with an immediate effective date as of the date of **Federal Register** publication, the agencies are interested in the views of the public and request comment on all aspects of the statutory interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[11] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[12]

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.[13]

For the same reasons set forth above, the agencies are adopting the statutory 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.[14] In light of section 4012 of the CARES Act, the agencies believe that delaying the effective date of the statutory interim final rule would be contrary to the public interest.

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

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The statutory interim final rule affects the agencies' current information collections for the Call Reports (OCC OMB Control No. 1557–0081; Board OMB Control No. 7100–0036; and FDIC OMB Control No. 3064–0052). The Board has reviewed the statutory interim final rule pursuant to authority delegated by the OMB.

While the statutory interim final rule contains no information collection requirements, the agencies have determined that there are changes that should be made to the Call Reports as a result of this rulemaking. Although there may be a substantive change resulting from changes to the community bank leverage ratio framework for purposes of the Call Reports, the change should be minimal

[7] 5 U.S.C. 553.

[8] 5 U.S.C. 553(b)(B).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 553(d)(1).

[11] 5 U.S.C. 801 *et seq.*

[12] 5 U.S.C. 801(a)(3).

[13] 5 U.S.C. 804(2).

[14] 5 U.S.C. 808.

and result in a zero net change in hourly burden under the agencies' information collections. Submissions will, however, be made by the agencies to OMB. The changes to the Call Reports and their related instructions will be addressed in a separate **Federal Register** notice.

In addition, there are changes that the Board should make to the Financial Statements for Holding Companies (FR Y–9 reports; OMB No. 7100–0128) to accurately reflect the changes of the statutory interim final rule. The Board will separately address these changes to the FR Y–9 reports and their instructions in the transition interim final rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [15] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[16] 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 agencies have determined for good cause that general notice and opportunity for public comment is impracticable and contrary to the public's interest, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply. Nevertheless, the agencies are interested in receiving feedback on ways that they could reduce any potential burden of the statutory interim final rule on 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),[17] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[18] For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish the statutory interim final rule with an immediate effective date.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [19] requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the statutory interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps they 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?

G. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this statutory interim final rule, the OCC concludes that the requirements of UMRA do not apply to this statutory interim final rule.

List of Subjects in 12 CFR

12 CFR Part 3

Administrative practice and procedure, Capital, Federal savings associations, National banks, Risk.

12 CFR Part 217

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

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends chapter I of Title 12 of the Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

■ 2. Add § 3.303 to read as follows:

§ 3.303 Temporary changes to the community bank leverage ratio framework.

(a)(1) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association and that meets all the criteria to be a qualifying community banking organization under § 3.12(a)(2) but for § 3.12(a)(2)(i) is a qualifying community banking organization if it has a leverage ratio equal to or greater than 8 percent.

(2) Notwithstanding § 3.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 3.12(a)(3) shall be considered to have met the minimum

[15] 5 U.S.C. 601 *et seq.*

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

[17] 12 U.S.C. 4802(a).

[18] 12 U.S.C. 4802.

[19] 12 U.S.C. 4809.

capital requirements under § 3.10, the capital ratio requirements for the well capitalized capital category under § 6.4(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio equal to or greater than 8 percent.

(b) Notwithstanding § 3.12(c)(6) and subject to § 3.12(c)(5), a qualifying community banking organization that has a leverage ratio of 7 percent or greater has the grace period described in § 3.12(c)(1) through (4). A national bank or Federal savings association that has a leverage ratio of less than 7 percent does not have a grace period and must comply with the minimum capital requirements under § 3.10(a)(1) and must report the required capital measures under § 3.10(a)(1) for the quarter in which it reports a leverage ratio of less than 7 percent.

(c) Pursuant to section 4012 of the Coronavirus Aid, Relief, and Economic Security Act, the requirements provided under paragraphs (a) and (b) of this section are effective during the period beginning on April 23, 2020 and ending on the sooner of:

(1) The termination date of the national emergency concerning the novel coronavirus disease outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 *et seq.*); or

(2) December 31, 2020.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

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

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

■ 3. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

Subpart G—Transition Provisions

■ 4. Add § 217.304 to read as follows:

§ 217.304 Temporary changes to the community bank leverage ratio framework.

(a)(1) A Board-regulated institution that is not an advanced approaches Board-regulated institution and that meets all the criteria to be a qualifying community banking organization under § 217.12(a)(2) but for § 217.12(a)(2)(i) is a qualifying community banking organization if it has a leverage ratio equal to or greater than 8 percent.

(2) Notwithstanding § 217.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 217.12(a)(3) shall be considered to have met the minimum capital requirements under § 217.10, the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1) of this chapter, if applicable, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio equal to or greater than 8 percent.

(b) Notwithstanding § 217.12(c)(6) and subject to § 217.12(c)(5), a Board-regulated institution that has a leverage ratio of 7 percent or greater has the grace period described in § 217.12(c)(1) through (4). A Board-regulated institution that has a leverage ratio of less than 7 percent does not have a grace period and must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it reports a leverage ratio of less than 7 percent.

(c) Pursuant to section 4012 of the Coronavirus Aid, Relief, and Economic Security Act, the requirements provided under paragraphs (a) and (b) of this section are effective during the period beginning on April 23, 2020 and ending on the sooner of:

(1) The termination date of the national emergency concerning the novel coronavirus disease outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 *et seq.*); or

(2) December 31, 2020.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends chapter III of Title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

■ 5. The authority citation for part 324 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115–174; Pub. L. 116–136, 134 Stat. 281.

■ 6. Add § 324.303 to read as follows:

§ 324.303 Temporary changes to the community bank leverage ratio framework.

(a)(1) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that meets all the criteria to be a qualifying community banking organization under § 324.12(a)(2) but for § 324.12(a)(2)(i) is a qualifying community banking organization if it has a leverage ratio equal to or greater than 8 percent.

(2) Notwithstanding § 324.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 324.12(a)(3) shall be considered to have met the minimum capital requirements under § 324.10, the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio equal to or greater than 8 percent.

(b) Notwithstanding § 324.12(c)(6) and subject to § 324.12(c)(5), a qualifying community banking organization that has a leverage ratio of 7 percent or greater has the grace period described in § 324.12(c)(1) through (4). An FDIC-supervised institution that has a leverage ratio of less than 7 percent does not have a grace period and must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it reports a leverage ratio of less than 7 percent.

(c) Pursuant to section 4012 of the Coronavirus Aid, Relief, and Economic Security Act, the requirements provided under paragraphs (a) and (b) of this section are effective during the period beginning on April 23, 2020 and ending on the sooner of:

(1) The termination date of the national emergency concerning the novel coronavirus disease outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 *et seq.*); or

(2) December 31, 2020.

Brian P. Brooks,

First Deputy Comptroller of the Currency

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

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about April 3, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–07449 Filed 4–22–20; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2020–0017]

RIN 1557–AE89

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1711]

RIN 7100–AF85

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF47

Regulatory Capital Rule: Transition for the Community Bank Leverage Ratio Framework

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Interim final rule; request for comment.

SUMMARY: This interim final rule provides a graduated transition to a community bank leverage ratio requirement of 9 percent from the temporary 8-percent community bank leverage ratio requirement (transition interim final rule). When the requirements in the transition interim final rule become applicable, the community bank leverage ratio will be 8 percent beginning in the second quarter of calendar year 2020, 8.5 percent through calendar year 2021, and 9 percent thereafter. The transition interim final rule also maintains a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls no more than 1 percentage point below the applicable community bank leverage ratio requirement. The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (together, the agencies) issued concurrently an interim final rule that established an 8-percent community bank leverage ratio, as mandated under the Coronavirus Aid, Relief, and Economic Security Act. The agencies are issuing the transition interim final rule to provide community banking organizations with sufficient time and clarity to meet the 9 percent leverage ratio requirement under the community bank leverage ratio framework while they also focus on supporting lending to creditworthy households and businesses given the recent strains on the U.S. economy caused by the coronavirus disease emergency.

DATES: The interim final rule is effective April 23, 2020. Comments on the interim final rule must be received no later than June 8, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters are encouraged to use the title ''Regulatory Capital Rule: Transition for the Community Bank Leverage Ratio Framework'' to facilitate the organization and distribution of comments among the agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding. Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rule: Transition for the Community Bank Leverage Ratio Framework'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—''Regulations.gov Classic or *Regulations.gov Beta*'':

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0017'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0017'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0017'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0017'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering

tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0017'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1711 and RIN 7100–AF85, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *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 sensitive personally identifiable information at the commenter's request. Public comments may also 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 security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FDIC: You may submit comments, identified by RIN 3064–AF47, by any of the following methods:

- *Agency website: http://www.FDIC.gov/regulations/laws/Federal/.* Follow the instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include the RIN 3064–AF47 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AF47.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/Federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Benjamin Pegg, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; Carl Kaminski, Special Counsel, or Daniel Perez, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 872–7526; Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973–6862; or Brendan Rowan, Senior Financial Institution Policy Analyst I, (202) 475–6685, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–2877; Andrew Hartlage, Counsel, (202) 452–6483; or Jonah Kind, Senior Attorney, (202) 452–2045, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for the Deaf (TDD) only, call (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Noah Cuttler, Senior Policy Analyst, *ncuttler@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background on the Community Bank Leverage Ratio Framework

The community bank leverage ratio framework provides a simple measure of capital adequacy for community banking organizations that meet certain qualifying criteria. The community bank leverage ratio framework implements section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which requires the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) to establish a community bank leverage ratio of not less than 8 percent and not more than 10 percent for a qualifying community banking organization.[1] Under section 201(c) of EGRRCPA, a qualifying community banking organization whose leverage ratio exceeds the community

[1] Public Law 115–174, 132 Stat. 1296, 1306–07 (2018) (codified at 12 U.S.C. 5371 note). The authorizing statues use the term ''qualifying community bank,'' whereas the regulation implementing the statues uses the term ''qualifying community banking organization.'' The terms generally have the same meaning. Section 201(a)(3) of EGRRCPA provides that a qualifying community banking organization is a depository institution or depository institution holding company with total consolidated assets of less than $10 billion that satisfies such other factors, based on the banking organization's risk profile, that the agencies determine are appropriate. This determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and any such factors that the agencies determine appropriate.

bank leverage ratio, as established by the agencies, shall be considered to have met the generally applicable risk-based and leverage capital requirements in the capital rule (generally applicable rule), any other applicable capital or leverage requirements, and, if applicable, the ''well capitalized'' ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act. Section 201(b) of EGRRCPA also requires the agencies to establish procedures for the treatment of a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement as established by the agencies.

In 2019, the agencies issued a final rule establishing the community bank leverage ratio framework, which became effective January 1, 2020 (2019 final rule).[2] Under the 2019 final rule, the agencies established a community bank leverage ratio of 9 percent using the existing leverage ratio. A qualifying community banking organization that maintains a leverage ratio of greater than 9 percent and elects to use the community bank leverage ratio framework will be considered to have satisfied the generally applicable rule and any other applicable capital or leverage requirements, and, if applicable, will be considered to be well capitalized.[3]

Under the 2019 final rule, a qualifying community banking organization is any depository institution or depository institution holding company that has less than $10 billion in total consolidated assets, off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets, and trading assets and liabilities of 5 percent or less of total consolidated assets. The banking organization also cannot be an advanced approaches banking organization.[4]

In addition, the 2019 final rule established a two-quarter grace period during which a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the greater-than-9-percent leverage ratio requirement, generally would still be considered well capitalized so long as the banking organization maintains a leverage ratio of greater than 8 percent. A banking organization that either fails to meet all the qualifying criteria within the grace period or fails to maintain a leverage ratio of greater than 8 percent is required to comply with the generally applicable rule and file the appropriate regulatory reports.

II. Statutory Interim Final Rule

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.[5] Section 4012 of the CARES Act directs the agencies to issue an interim final rule that provides that, for purposes of section 201 of EGRRCPA, the community bank leverage ratio shall be 8 percent and that a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement established under the CARES Act shall have a reasonable grace period to satisfy that requirement. The interim final rule required under section 4012 of the CARES Act is effective during the period beginning on the date on which the agencies issue the interim final rule and ending on the sooner of the termination date of the national emergency concerning the coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act, or December 31, 2020 (termination date).

Accordingly, the agencies issued concurrently an interim final rule that implements a temporary 8-percent community bank leverage ratio requirement, as mandated under section 4012 of the CARES Act (statutory interim final rule). The statutory interim final rule also establishes a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls below the 8-percent community bank leverage ratio requirement. The provisions in this transition interim final rule will become effective upon the termination date of the statutory interim final rule.

III. Transition Interim Final Rule

Pursuant to section 201(b) of EGRRCPA, this interim final rule (transition interim final rule) provides a graduated transition from the temporary 8-percent community bank leverage ratio requirement, as mandated under the CARES Act, to the 9-percent community bank leverage ratio requirement as established under the 2019 final rule. Specifically, the transition interim final rule provides that the community bank leverage ratio will be 8 percent in the second quarter through fourth quarter of calendar year 2020, 8.5 percent in calendar year 2021, and 9 percent thereafter. The transition interim final rule also modifies the two-quarter grace period for a qualifying community banking organization to take into account the graduated increase in the community bank leverage ratio requirement. The transition interim final rule does not make any changes to the other qualifying criteria in the community bank leverage ratio framework.

The transition interim final rule extends the 8-percent community bank leverage ratio requirement through December 31, 2020, in the event the statutory interim final rule terminates before December 31, 2020. Thus, even if the statutory interim final rule terminates prior to December 31, 2020, the community bank leverage ratio will continue to be set at 8 percent for the remainder of 2020. Section 201 of EGRRCPA requires a qualifying community banking organization exceed the community bank leverage ratio established by the agencies in order to be considered to have met the generally applicable rule, any other applicable capital or leverage requirements, and, if applicable, the ''well capitalized'' capital ratio requirements, whereas section 4012 of the CARES Act requires that a qualifying community banking organization meet or exceed an 8 percent community bank leverage ratio to be considered the same.

In the 2019 final rule, the agencies previously adopted a 9-percent community bank leverage ratio requirement on the basis that this threshold, with complementary qualifying criteria, generally maintains the current level of regulatory capital held by qualifying banking organizations and supports the agencies' goals of reducing regulatory burden while maintaining safety and soundness. The agencies intend for the graduated approach under this transition interim final rule to provide community banking organizations with sufficient time to meet a 9-percent

[2] 84 FR 61776 (November 13, 2019).

[3] Under existing PCA requirements applicable to insured depository institutions, to be considered ''well capitalized'' a banking organization must demonstrate that it is not subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. See 12 CFR 6.4(b)(1)(iv) (OCC); 12 CFR 208.43(b)(1)(v) (Board); 12 CFR 324.403(b)(1)(v) (FDIC). The same legal requirements continue to apply under the community bank leverage ratio framework.

[4] A banking organization is an advanced approaches banking organization if it (1) is a global systemically important bank holding company, (2) is a Category II banking organization, (3) has elected to be an advanced approached banking organization, (4) is a subsidiary of a company that is an advanced approaches banking organization, or (5) has a subsidiary depository institution that is an advanced approaches banking organization. *See* 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

[5] Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281.

community bank leverage ratio requirement while they also focus on supporting lending to creditworthy households and businesses. This latter goal is particularly critical given the recent strains on the U.S. economy caused by COVID–19.

The graduated approach also provides clarity to a qualifying community banking organization that is planning to elect to use the community bank leverage ratio framework because, under section 4012 of the CARES Act, the statutory interim final rule could cease to be effective at any time before December 31, 2020. The transition interim final rule is consistent with the agencies' authority under section 201 of EGRRCPA (which mandates a community bank leverage ratio of not less than 8 percent and not more than 10 percent).

Based on reported data as of December 31, 2019, there are 5,258 banking organizations with less than $10 billion in total consolidated assets. The agencies estimate that approximately 95 percent of these banking organizations would qualify to use the community bank leverage ratio framework under the 8 percent calibration and other qualifying criteria. The agencies estimate that approximately 91 percent of such banking organizations would qualify to use the community bank leverage ratio framework under the 8.5 percent calibration and other qualifying criteria.

Consistent with section 201(c) of EGRRCPA, under the transition interim final rule, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized during a two-quarter grace period so long as the banking organization maintains a leverage ratio of the following: Greater than 7 percent in the second quarter through fourth quarter of calendar year 2020, greater than 7.5 percent in calendar year 2021, and greater than 8 percent thereafter.[6] A banking organization that fails to meet the qualifying criteria after the end of the grace period or reports a leverage ratio of equal to or less than 7 percent in the second through fourth quarters of calendar year 2020, equal to or less than 7.5 percent in calendar year 2021, or equal to or less than 8 percent thereafter, will be required to comply immediately with the generally applicable rule and file the appropriate regulatory reports.[7]

The agencies adopted in the 2019 final rule a two-quarter grace period with a leverage ratio requirement that is 1 percentage point below the community bank leverage ratio on the basis that these requirements appropriately mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization's risk profile from quarter to quarter, while capturing more permanent changes in a banking organization's risk profile. The agencies continue to believe that this approach is appropriate and provides a qualifying community banking organization whose leverage ratio falls below the applicable community bank leverage ratio requirement a reasonable amount of time to once again satisfy that requirement. This approach is consistent with section 201(b)(2) of EGRRCPA, which directs the agencies to establish procedures for the treatment of a qualifying community bank whose leverage ratio falls below the community bank leverage ratio requirement as established by the agencies.

TABLE 1—SCHEDULE OF COMMUNITY BANK LEVERAGE RATIO REQUIREMENTS

Calendar year	Community bank leverage ratio (percent)	Leverage ratio under the applicable grace period (percent)
2020 ..	8	7
2021 ..	8.5	7.5
2022 ..	9	8

The agencies are maintaining the 2019 final rule's requirement that the grace period will begin as of the end of the calendar quarter in which the electing banking organization ceases to satisfy any of the qualifying criteria (so long as the banking organization maintains a leverage ratio of greater than the requirement for the applicable period) and will end after two consecutive calendar quarters. For example, if the electing banking organization, which had met all qualifying criteria as of March 31, 2020, no longer meets one of the qualifying criteria as of May 15, 2020, and still does not meet the criteria as of the end of that quarter, the grace period for such a banking organization will begin as of the end of the quarter ending June 30, 2020. The banking organization may continue to use the community bank leverage ratio framework as of September 30, 2020, but will need to comply fully with the generally applicable rule (including the associated reporting requirements) as of December 31, 2020, unless the banking organization once again meets all qualifying criteria by that date.

If an electing banking organization is in the grace period when the required community bank leverage ratio increases, the banking organization would be subject, as of that change, to both the higher community bank leverage ratio requirement and higher grace period leverage ratio requirement. For example, if the electing banking organization that had met all qualifying criteria as of September 30, 2020, has a 7.2 percent community bank leverage ratio (but meets all the other qualifying criteria) as of the end of December 31, 2020, the grace period for such a banking organization will begin as of the end of the fourth quarter. The banking organization may continue to use the community bank leverage ratio framework as of March 31, 2021, if the banking organization has a leverage ratio of greater than 7.5 percent, and will need to comply fully with the generally applicable rule (including the associated reporting requirements) as of June 30, 2021, unless the banking organization has a leverage ratio of greater than 8.5 percent (and meets all the other qualifying criteria) by that date. In this example, if the banking organization has a leverage ratio equal to or less than 7.5 percent as of March 31, 2021, it would not be eligible to use the community bank leverage ratio framework and would be subject immediately to the requirements of the generally applicable rule.

As mentioned above, the grace period for an electing community banking organization is limited to two consecutive calendar quarters. For example, if the electing banking organization that had met all qualifying criteria as of June 30, 2021, has an 8.3 percent community bank leverage ratio (but meets all the other qualifying criteria) as of the end of September 30, 2021, the grace period for such a

[6] While the statutory interim final rule is in effect, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized so long as the banking organization maintains a leverage ratio of 7 percent or greater during a two-quarter grace period. Similarly, while the statutory interim final rule is in effect, a banking organization that fails to meet the qualifying criteria after the end of the grace period or reports a leverage ratio of less than 7 percent must comply with the generally applicable rule and file the appropriate regulatory reports.

[7] In addition, consistent with the 2019 final rule, a banking organization that ceases to satisfy the qualifying criteria as a result of a business combination also will receive no grace period and will be required to comply with the generally applicable rule.

banking organization will begin as of the end of the third quarter. The banking organization may continue to use the community bank leverage ratio framework as of December 31, 2021, if the banking organization has a leverage ratio of greater than 7.5 percent, and will need to comply fully with the generally applicable rule (including the associated reporting requirements) as of March 31, 2022, unless the banking organization has a leverage ratio of greater than 9.0 percent (and meets all the other qualifying criteria) by that date.

IV. Effective Date of the Transition Interim Final Rule

The transition interim final rule is effective immediately upon publication in the **Federal Register**. Banking organizations are subject to the requirements under the transition interim final rule for purposes of filing their Call Report or Form FR Y–9C, as applicable, beginning in the quarter in which the statutory interim final rule is no longer in effect. A banking organization's compliance with capital requirements for a quarter prior to the transition interim final rule's effective date shall be determined according to the generally applicable rule unless the banking organization has filed their Call Report Form or FR Y–9C, as applicable, for the prior quarter and has indicated that it has elected to use the community bank leverage ratio.

Question 1: The agencies invite comment on the proposed graduated increase under the transition interim final rule. What alternatives, if any, should the banking agencies consider to provide sufficient time for a banking organization to meet a 9-percent community bank leverage ratio requirement and why?

V. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing this transition interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[8] 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.''[9]

The agencies believe that the public interest is best served by implementing the transition interim final rule as soon as possible. As discussed above, section 4012 of the CARES Act directs the agencies to issue an interim final rule that provides that, for purposes of section 201 of EGRRCPA, the community bank leverage ratio shall be 8 percent and that a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement established under the CARES Act shall have a reasonable grace period to satisfy that requirement. A qualifying community banking organization to which the grace period applies may continue to be treated as a qualifying community banking organization and shall be presumed to satisfy the capital and leverage requirements described in section 201(c) of EGRRCPA. The agencies are issuing this interim final rule immediately, and concurrently with the interim final rule mandated by section 4012 of the CARES Act, in order to provide community banking organizations with sufficient time to meet the leverage ratio requirement and to provide clarity to a qualifying community banking organization that is planning to elect to use the community bank leverage ratio framework, because, under section 4012 of the CARES Act, the statutory interim final rule could cease to be effective at any time before December 31, 2020.

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.[10] Because the rules relieve a restriction, the transition interim final rule is exempt from the APA's delayed effective date requirement.[11] Additionally, the agencies find good cause to publish the transition interim final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

While the agencies believe there is good cause to issue the transition interim final rule without advance notice and comment and with an immediate effective date as of the date of **Federal Register** publication, the agencies are interested in the views of the public and request comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[12] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[13]

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.[14]

For the same reasons set forth above, the agencies are adopting the transition 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.[15] In light of section 4012 of the CARES Act, and the reasons described above for immediately providing a transition period to the temporary change mandated by section 4012, the agencies believe that delaying the effective date of the transition interim final rule would be contrary to the public interest.

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

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that

[8] 5 U.S.C. 553.

[9] 5 U.S.C. 553(b)(B).

[10] 5 U.S.C. 553(d).

[11] 5 U.S.C. 553(d)(1).

[12] 5 U.S.C. 801 *et seq.*

[13] 5 U.S.C. 801(a)(3).

[14] 5 U.S.C. 804(2).

[15] 5 U.S.C. 808.

no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The transition interim final rule affects the agencies' current information collections for the Call Reports (OCC OMB Control No. 1557–0081; Board OMB Control No. 7100–0036; and FDIC OMB Control No. 3064–0052). The Board has reviewed the transition interim final rule pursuant to authority delegated by the OMB.

While the transition interim final rule contains no information collection requirements, the agencies have determined that there are changes that should be made to the Call Reports as a result of this rulemaking. Although there may be a substantive change resulting from changes to the community bank leverage ratio framework for purposes of the Call Reports, the change should be minimal and result in a zero net change in hourly burden under the agencies' information collections. Submissions will, however, be made by the agencies to OMB. The changes to the Call Reports and their related instructions will be addressed in a separate **Federal Register** notice.

In addition, the Board has temporarily revised the Financial Statements for Holding Companies (FR Y–9 reports; OMB No. 7100–0128) to accurately reflect aspects of the statutory interim final rule and the transition interim final rule. On June 15, 1984, OMB delegated to the Board authority under the PRA to approve a temporary revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

The Board's delegated authority requires that the Board, after temporarily approving a collection, publish a notice soliciting public comment. Therefore, the Board is inviting comment on a proposal to extend each of these information collections for three years, with the revisions discussed below.

The Board invites public comment on the following information collections, which are being reviewed under authority delegated by the OMB under the PRA. Comments must be submitted on or before June 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, including whether the information has practical utility;

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

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

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

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

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

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

Report Title: Financial Statements for Holding Companies.

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

OMB control number: 7100–0128.

Effective Date: June 30, 2020.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies,[16] securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated number of respondents: FR Y–9C (non-advanced approaches community bank leverage ratio (CBLR) HCs with less than $5 billion in total assets): 71; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35; FR Y–9C (non-advanced approaches, non CBLR, HCs with less than $5 billion in total assets): 84; FR Y–9C (non-advanced approaches, non CBLR HCs, with $5 billion or more in total assets): 154; FR Y–9C (advanced approaches HCs): 19; FR Y–9LP: 434; FR Y–9SP: 3,960; FR Y–9ES: 83; FR Y–9CS: 236.

Estimated average hours per response:

Reporting

FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 29.14 hours; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35.11; FR Y–9C (non-advanced approaches, non CBLR HCs, with less than $5 billion in total assets): 40.98; FR Y–9C (non-advanced approaches, non CBLR, HCs with $5 billion or more in total assets): 46.95 hours; FR Y–9C (advanced approaches HCs): 48.59 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.40 hours; FR Y–9ES: 0.50 hours; FR Y–9CS: 0.50 hours.

Recordkeeping

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

Estimated annual burden hours:

Reporting

FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 8,276 hours; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 4,915; FR Y–9C (non-advanced approaches non CBLR HCs with less than $5 billion in total assets): 13,769; FR Y–9C (non-advanced approaches non CBLR HCs with $5 billion or more in total assets): 28,921 hours; FR Y–9C (advanced approaches HCs): 3,693 hours; FR Y–9LP: 9,149 hours; FR Y–9SP: 42,768 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

Recordkeeping

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

General description of report: The FR Y–9 family of reporting forms continues to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. Financial data from these reporting forms are used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate holding company mergers and acquisitions, and to analyze a holding

[16] An SLHC must file one or more of the FR Y–9 series of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

company's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C, FR Y–9LP, and FR Y–9SP serve as standardized financial statements for the consolidated holding company. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. The FR Y–9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the voluntary FR Y–9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FR Y–9C on a quarterly basis, the FR Y–9LP quarterly, the FR Y–9SP semiannually, the FR Y–9ES annually, and the FR Y–9CS on a schedule that is determined when this supplement is used.

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

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

Such treatment is appropriate under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y–9C report and the FR Y–9SP report, Schedule HC's memorandum item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

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

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

Current Actions: The Board has temporarily revised the instructions to the FR Y–9C report to accurately reflect the transition provision as modified by the statutory interim final rule and the transition interim final rule. Specifically, the Board has temporarily revised the FR Y–9C general instructions on the FR Y–9C, Schedule HC–R, Part I, to reflect a HC's eligibility to opt-in to the CBLR framework to 8 percent, and allow a two-quarter grace period for an HC that falls below the 8-percent CBLR requirement. In addition, the revised general instructions provide a transition for the to be 8 percent in the second through fourth quarters of calendar year 2020, 8.5 percent in calendar year 2021, and 9 percent in calendar year 2022. HCs report their leverage ratio in Schedule HC–R, Part I, line item 31. A qualifying HC can opt into CBLR by electing in HC–R, Part I, line item 31.a. and must report the qualifying criteria for using the CBLR framework in lines 32 through 3.

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

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [17] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[18] 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 agencies have determined for good cause that general notice and opportunity for public comment is impracticable and contrary to the public's interest, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply. Nevertheless, the agencies are interested in receiving feedback on ways that they could reduce any potential burden of the transition interim final rule on small entities.

[17] 5 U.S.C. 601 *et seq.*

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

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[19] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[20] For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish the transition interim final rule with an immediate effective date.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[21] requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the transition interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps they 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?

G. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for the transition interim final rule, the OCC concludes that the requirements of UMRA do not apply to this transition interim final rule.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, Federal savings associations, National banks, Risk.

12 CFR Part 217

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

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

DEPARTMENT OF THE TREASURY

12 CFR Chapter I

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends chapter I of Title 12 of the Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B); and Pub. L. 116–136, 134 Stat. 281.

■ 2. Amend § 3.303 by adding paragraph (d) to read as follows:

§ 3.303 Temporary changes to the community bank leverage ratio framework.

* * * * *

(d) Upon the termination of the requirements in paragraphs (a) and (b) of this section as provided in paragraph (c) of this section, a qualifying community banking organization, as defined in § 3.12(a)(2), is subject to the following:

(1) Through December 31, 2020:

(i) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association and that meets all the criteria to be a qualifying community banking organization under § 3.12(a)(2) but for § 3.12(a)(2)(i) is a qualifying banking organization if it has a leverage ratio greater than 8 percent.

(ii) Notwithstanding § 3.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 3.12(a)(3) shall be considered to have met the minimum capital requirements under § 3.10, the capital ratio requirements for the well capitalized capital category under § 6.4(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 8 percent.

(iii) Notwithstanding § 3.12(c)(6) and subject to § 3.12(c)(5), a qualifying community banking organization that has a leverage ratio of greater than 7 percent has the grace period described in § 3.12(c)(1) through (4). A national bank or Federal savings association that has a leverage ratio of 7 percent or less does not have a grace period and must comply with the minimum capital requirements under § 3.10(a)(1) and must report the required capital measures under § 3.10(a)(1) for the quarter in which it reports a leverage ratio of 7 percent or less.

(2) From January 1, 2021, through December 31, 2021:

(i) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association and that meets all the criteria to be a qualifying community banking organization under § 3.12(a)(2) but for § 3.12(a)(2)(i) is a qualifying banking organization if it has a leverage ratio greater than 8.5 percent.

(ii) Notwithstanding § 3.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 3.12(a)(3) shall be considered to have met the minimum capital requirements under § 3.10, the capital ratio requirements for the well capitalized capital category under

[19] 12 U.S.C. 4802(a).

[20] 12 U.S.C. 4802.

[21] 12 U.S.C. 4809.

§ 6.4(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 8.5 percent.

(iii) Notwithstanding § 3.12(c)(6) and subject to § 3.12(c)(5), a qualifying community banking organization that has a leverage ratio of greater than 7.5 percent has the grace period described in § 3.12(c)(1) through (4). A national bank or Federal savings association that has a leverage ratio of 7.5 percent or less does not have a grace period and must comply with the minimum capital requirements under § 3.10(a)(1) and must report the required capital measures under § 3.10(a)(1) for the quarter in which it reports a leverage ratio of 7.5 percent or less.

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

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

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

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

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

Subpart G—Transition Provisions

■ 4. Amend § 217.304 by adding paragraph (d) to read as follows:

§ 217.304 Temporary changes to the community bank leverage ratio framework.

* * * * *

(d) Upon the termination of the requirements in paragraphs (a) and (b) of this section as provided in paragraph (c) of this section, a Board-regulated institution is subject to the following:

(1) Through December 31, 2020:

(i) A Board-regulated institution that is not an advanced approaches Board-regulated institution and that meets all the criteria to be a qualifying community banking organization under § 217.12(a)(2) but for § 217.12(a)(2)(i) is a qualifying banking organization if it has a leverage ratio greater than 8 percent.

(ii) Notwithstanding § 217.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 217.12(a)(3) shall be considered to have met the minimum capital requirements under § 217.10, the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1) of this chapter, if applicable, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 8 percent.

(iii) Notwithstanding § 217.12(c)(6) and subject to § 217.12(c)(5), a Board-regulated institution that has a leverage ratio of greater than 7 percent has the grace period described in § 217.12(c)(1) through (4). A Board-regulated institution that has a leverage ratio of 7 percent or less does not have a grace period and must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it reports a leverage ratio of 7 percent or less.

(2) From January 1, 2021, through December 31, 2021:

(i) A Board-regulated institution that is not an advanced approaches Board-regulated institution and that meets all the criteria to be a qualifying community banking organization under § 217.12(a)(2) but for § 217.12(a)(2)(i) is a qualifying banking organization if it has a leverage ratio greater than 8.5 percent.

(ii) Notwithstanding § 217.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 217.12(a)(3) shall be considered to have met the minimum capital requirements under § 217.10, the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1) of this chapter, if applicable, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 8.5 percent.

(iii) Notwithstanding § 217.12(c)(6) and subject to § 217.12(c)(5), a Board-regulated institution that has a leverage ratio of greater than 7.5 percent has the grace period described in § 217.12(c)(1) through (4). A Board-regulated institution that has a leverage ratio of 7.5 percent or less does not have a grace period and must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it reports a leverage ratio of 7.5 percent or less.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends chapter III of Title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 5. The authority citation for part 324 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115–174; Pub. L. 116–136, 134 Stat. 281.

■ 6. Amend § 324.303 by adding paragraph (d) to read as follows:

§ 324.303 Temporary changes to the community bank leverage ratio framework.

* * * * *

(d) Upon the termination of the requirements in paragraphs (a) and (b) of this section as provided in paragraph (c) of this section, a qualifying community banking organization, as defined in § 324.12(a)(2), is subject to the following:

(1) Through December 31, 2020:

(i) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that meets all the criteria to be a qualifying community banking organization under § 324.12(a)(2) but for § 324.12(a)(2)(i) is a qualifying banking organization if it has a leverage ratio greater than 8 percent.

(ii) Notwithstanding § 324.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 324.12(a)(3) shall be considered to have met the minimum capital requirements under § 324.10, the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 8 percent.

(iii) Notwithstanding § 324.12(c)(6) and subject to § 324.12(c)(5), a qualifying community banking organization that has a leverage ratio of greater than 7 percent has the grace period described in § 324.12(c)(1) through (4). An FDIC-supervised institution that has a leverage ratio of 7 percent or less does not have a grace period and must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it reports a leverage ratio of 7 percent or less.

(2) From January 1, 2021, through December 31, 2021:

(i) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that meets all the criteria to be a qualifying community banking organization under § 324.12(a)(2) but for § 324.12(a)(2)(i) is a qualifying banking organization if it has a leverage ratio greater than 8.5 percent.

(ii) Notwithstanding § 324.12(a)(1), a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under § 324.12(a)(3) shall be considered to have met the minimum capital requirements under § 324.10, the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 8.5 percent.

(iii) Notwithstanding § 324.12(c)(6) and subject to § 3247.12(c)(5), a qualifying community banking organization that has a leverage ratio of greater than 7.5 percent has the grace period described in § 324.12(c)(1) through (4). An FDIC-supervised institution that has a leverage ratio of 7.5 percent or less does not have a grace period and must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it reports a leverage ratio of 7.5 percent or less.

Brian P. Brooks,

First Deputy Comptroller of the Currency.

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

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about April 3, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–07448 Filed 4–22–20; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 79 April 23, 2020

Part V

The President

Federal Register
Vol. 85, No. 79
Thursday, April 23, 2020

Presidential Documents

Title 3—

The President

Proclamation 10010 of April 17, 2020

National Crime Victims' Rights Week, 2020

By the President of the United States of America

A Proclamation

In 1981, President Ronald Reagan proclaimed the first National Crime Victims' Rights Week to acknowledge the abuse and trauma that victims of crimes often experience, and to recognize the tireless work of dedicated advocates who have taken up the cause of supporting crime victims across our country. Thanks to the efforts of these individuals, more victims are receiving the care they deserve and accessing tools to empower them as they recover. This week, we express our appreciation for those who support crime victims, and we reaffirm our strong commitment to reducing the trauma of crime for victims and their loved ones.

My Administration remains focused on helping victims of crime recover from and overcome the physical, emotional, and financial suffering they have endured. As one of my first acts as President, I established the Victims of Immigrant Crime Engagement (VOICE) Office within the Department of Homeland Security to serve the needs of Angel Families who suffered as a result of crimes committed by illegal immigrants. Additionally, for Fiscal Year 2018 alone, the Department of Justice's Office for Victims of Crime awarded more than $2.3 billion in grants for victim assistance and compensation programs. These dollars financed services for more than 6 million victims, provided millions in compensation, and did not cost taxpayers a dime. It all came from the fines and penalties paid by convicted Federal offenders. As part of our support for crime victims, we are also providing significant funding to operate local domestic violence shelters, elder abuse programs, child advocacy centers, rape crisis centers, homicide support groups, and other victim assistance programs across the United States. Through programs like these, victims of crimes are better able to begin the healing process and work to rebuild their lives.

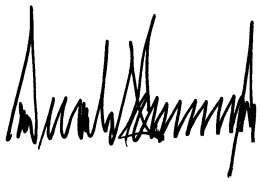
Our Nation's law enforcement officers also provide critical support to crime victims. These brave men and women serve as the first line of response for many victims of crime, and my Administration remains committed to empowering them as they fulfill this and all of their duties to their communities. To further enhance public safety and the oversight of justice, my Administration established the Presidential Commission on Law Enforcement and the Administration of Justice. This commission, the first of its kind in more than 50 years, is set up to study the biggest threats to law and order and help our law enforcement officers increase the safety of our Nation. By providing more resources to first responders to carry out their mission, we are more effectively assisting crime victims and empowering law enforcement to prevent crimes before they occur.

This week, we are reminded that in many cases crime victims experience long-lasting trauma and need assistance. We must continue to champion efforts to expand their access to quality services and to fight alongside them to secure the justice they deserve. My Administration will never stop working to achieve this goal, and we will always strive toward a better future for all Americans free from crime.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim April 19 through April 25, 2020, as National Crime Victims' Rights Week. I urge all Americans, families, law enforcement, community and faith-based organizations, and private organizations to work together to support victims of crime and protect their rights.

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



[FR Doc. 2020–08838
Filed 4–22–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10011 of April 17, 2020

National Park Week, 2020

By the President of the United States of America

A Proclamation

Our national parks embody the magnificence and grandeur of our great Nation. Every year, more than 300 million visitors enjoy the breathtaking landscapes, abundant wildlife, historic landmarks, and patriotic memorials found at these great American sites. During National Park Week, we recognize the majesty of our national parks, pay tribute to the tranquility and solace they provide, and applaud the men and women who work tirelessly to preserve our heritage for us and for future generations of Americans.

This year, the recognition of our national parks is particularly poignant as our country continues to combat the challenges posed by the coronavirus pandemic. Where our national parks have been able to remain safely open, they continue to provide a respite for the American people. Guidance from local health departments and the Centers for Disease Control and Prevention has led the National Park Service to determine that access to national parks must be temporarily curtailed, and that entire parks must be closed in some cases, to ensure the safety of visitors, employees, volunteers, and others. In the interim, we have found creative ways for Americans to connect with national parks through virtual opportunities that can be experienced remotely. At the same time, we look forward to when we can once again fully share with the public the benefits of our national parks.

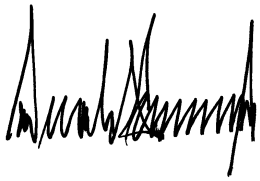
Even in challenging times, my Administration remains committed to maintaining and improving the condition and infrastructure of our national parks. Since 2017, we have invested in the restoration of the USS Arizona Memorial at Pearl Harbor, the restoration of the Washington Monument, and the construction of a new boardwalk around Old Faithful in Yellowstone National Park. My fiscal year 2021 budget proposes the establishment of a Public Lands Infrastructure Fund, which would ensure continued long-term investments in the infrastructure of our Nation's public lands. Additionally, last year, I signed into law the John D. Dingell, Jr. Conservation, Management, and Recreation Act, the first comprehensive legislation addressing public lands management in over a decade. This legislation permanently reauthorized the Land and Water Conservation Fund, adjusted the boundaries of 15 national parks, and extended 2 national trails. These improvements will allow increased visitor access to our iconic national parks and landmarks.

The National Park Service also collaborates with a growing network of States, local governments, and nonprofit organizations to encourage all Americans to use parks and other public lands as resources. The programs offered through these partnerships share the storied history of our Nation's triumphs and challenges with visitors from around our country and the world. For example, this year, we commemorate the 100th anniversary of the ratification of the 19th Amendment, which secured for women the right to vote. The voices of women whose vision, tenacity, and resilience moved them to tear down barriers and lead reform movements are shared at the Women's Rights National Historical Park in New York, the Belmont-Paul Women's Equality National Monument in Washington, DC, and other sites across the country.

The splendor of our Nation's landscapes and landmarks is a true reflection of our rich history and the beauty and greatness of America. As we observe National Park Week, we reaffirm our commitment to providing all Americans with greater opportunities to experience the stunning mountains, plains, deserts, coastlines, forests, and cultural and historical monuments displayed in our national parks. This week, we recognize the importance of our national park system and look forward to reopening all areas of our sites and parks to provide the public with more opportunities to enjoy all of our tremendous national landmarks.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 18 through April 26, 2020, as National Park Week. I encourage all Americans to celebrate our national parks by learning more about the natural, cultural, and historical heritage that belongs to each and every citizen of the United States of America.

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



[FR Doc. 2020–08840
Filed 4–22–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10012 of April 17, 2020

National Volunteer Week, 2020

By the President of the United States of America

A Proclamation

Civic engagement and volunteer service strengthens the fabric of our Nation and reflects the true heart, spirit, and goodness of America. National Volunteer Week is an opportunity to recognize and honor the countless individuals who selflessly invest in the lives of others. These ordinary citizens make extraordinary contributions to individuals, families, neighborhoods, communities, and our Nation.

Our national character is measured by the unity, compassion, and initiative shown by Americans who help others. Volunteers serving in community and charitable organizations, faith-based institutions, and nonprofits fulfill critical needs and challenges faced by people of all ages and backgrounds. In soup kitchens, shelters, schools, hospitals, religious organizations, and countless other venues, volunteers foster a spirit of kindness and goodwill in communities large and small throughout the United States. When friends, neighbors, and strangers unite for a common cause, it demonstrates that we have the power to change lives and improve our world.

We have never needed the volunteerism of America more than we do today. The coronavirus poses an unprecedented risk to the health, wellbeing, and prosperity of our Nation. True to form, in the midst of these turbulent times, Americans are unifying with unprecedented compassion, courage, and strength, bringing help and hope to those who need it most. Countless Americans have found unique and innovative ways to spread joy and meet the emotional, physical, and spiritual needs of others, despite the need to adhere to social distancing measures. Some are using technology to read stories to children and teach virtual classes; others are delivering necessities, such as groceries and medications, to seniors and others who are most at-risk from the virus. Non-profit organizations and companies are also mobilizing to provide equipment, supplies, resources, and necessities to people in need. Licensed healthcare professionals have stepped up as volunteers like never before for their fellow Americans to combat the coronavirus pandemic. If you have the ability to join their ranks, please visit www.FEMA.gov/coronavirus/how-to-help.

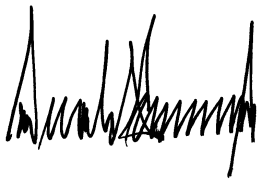
Volunteering to donate blood is especially important right now. Currently, our country's blood and platelet supply is dangerously low, and many blood drives have been cancelled. This extreme shortage poses a severe threat for our Nation's injured and those battling serious illnesses. I urge healthy Americans who are able to help fix this by making an appointment to give blood at a local donation center. Blood donation centers have safety protocols in place to prevent the spread of infections, including the coronavirus. The power of this safe and simple act of service is immeasurable.

This National Volunteer Week, we pay tribute to men and women of all ages who devote their time, talent, and resources to the greater good. These unsung heroes expand the capacity of countless organizations across our Nation and around the world. During this pivotal time of uncertainty and shared sacrifice, Melania and I are especially grateful to all Americans who demonstrate love, compassion, mercy, and respect for humankind through volunteer service. Their actions enhance their own lives and the

lives of those they serve, reflecting the best of America and the enduring principles that bind us together.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 19 through April 25, 2020, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across our country and pledging to make service a part of their daily lives.

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



[FR Doc. 2020–08841
Filed 4–22–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10013 of April 17, 2020

Days of Remembrance of Victims of the Holocaust, 2020

By the President of the United States of America

A Proclamation

Our Nation's annual observance of Yom HaShoah, Holocaust Remembrance Day, calls on all Americans to pause and reflect on the horrific atrocities committed by the Nazi regime against minority groups and other ''undesirables'' in the years leading up to and during World War II. Among those murdered in the Holocaust were 6 million Jewish men, women, and children who became victims of the Third Reich's unthinkably evil ''Final Solution.'' As this year's Yom HaShoah commences, let us remember the millions of lives extinguished in the Holocaust, including those of Jewish, Polish, and Slavic ancestry, Roma and Sinti, individuals with mental and physical disabilities, gays, political dissidents, and dozens of other groups, and let us reaffirm our commitment to preserving and carrying forward their stories so that such repugnant acts of evil never occur again.

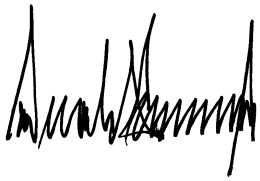
This year's observance is particularly meaningful as earlier in the year we observed the 75th anniversary of the liberation of Auschwitz and other Nazi concentration camps throughout Europe. We must never forget the abhorrent anti-Semitism, racial hatred, and discrimination stoked by the Nazi regime and its accomplices and enablers that sent countless people to ghettos, concentration camps, killing fields, and death camps—a monstrous system that resulted in the murder of two out of three Jews in Europe and the imprisonment and torture of millions more.

Tragically, far too many Americans of Jewish faith still face persecution. That is why I issued an Executive Order in December of 2019 to further expand and strengthen my Administration's ongoing efforts to combat racist and anti-Semitic discrimination. We must always condemn and confront all forms of racial, religious, and ethnic prejudice, discrimination, and hatred and strengthen the mutual bonds of respect that unite us all as Americans.

During this time, as we mourn the millions of lives tragically lost during this dark stain on human history, we vow to ensure that future generations know the horrors of the Holocaust so that its crimes are never repeated. We also remember the powerful example that countless victims set through their remarkable determination, courage, and devotion. Together, let us resolve to build a society that always values the sanctity of every human life and the dignity of every faith. In doing so, we will make certain that freedom and liberty always triumph over evil and oppression.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby ask the people of the United States to observe the Days of Remembrance of Victims of the Holocaust, April 19 through April 26, 2020, and the solemn anniversary of the liberation of Nazi death camps, with appropriate study, prayers and commemoration, and to honor the memory of the victims of the Holocaust and Nazi persecution by remembering the lessons of this atrocity so that it is never repeated.

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



[FR Doc. 2020–08843
Filed 4–22–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Executive Order 13916 of April 18, 2020

National Emergency Authority To Temporarily Extend Deadlines for Certain Estimated Payments

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and in furtherance of Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak), which declared a national emergency by reason of the threat that the novel (new) coronavirus known as SARS–CoV–2 poses to our Nation's healthcare systems, I hereby order as follows:

Section 1. *Emergency Authority.* (a) To provide additional authority to the Secretary of the Treasury (Secretary) to respond to the national emergency declared by Proclamation 9994, the authority at section 1318(a) of title 19, United States Code, to extend during the continuance of such emergency the time prescribed therein for the performance of any act is invoked and made available, according to its terms, to the Secretary.

(b) The Secretary shall consider taking appropriate action under section 1318(a) of title 19, United States Code, to temporarily extend deadlines, for importers suffering significant financial hardship because of COVID–19, for the estimated payments described therein, other than those assessed pursuant to sections 1671, 1673, 1862, 2251, and 2411 of title 19, United States Code.

(c) The Secretary shall consult with the Secretary of Homeland Security or his designee before exercising, as invoked and made available under this order, any of the authority set forth in section 1318(a) of title 19, United States Code.

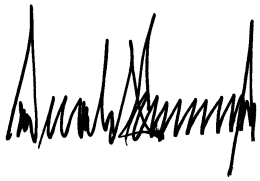
Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or 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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 18, 2020.

[FR Doc. 2020–08846
Filed 4–22–20; 11:15 am]
Billing code 3295–F0–P

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Federal Register

Vol. 85, No. 79

Thursday, April 23, 2020

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FEDERAL REGISTER PAGES AND DATE, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 14, 2020

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