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NATIONAL LABOR RELATIONS BOARD

5 CFR Part 7101

RIN 3209–AA57

Supplemental Standards of Ethical Conduct for Employees of the National Labor Relations Board

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (''NLRB'' or ''Board''), with the concurrence of the U.S. Office of Government Ethics (OGE), is issuing this final procedural rule amending the Supplemental Standards of Ethical Conduct for Employees of the National Labor Relations Board (NLRB Supplemental Ethics Regulations) to eliminate an out-of-date and unnecessary reference to the identity of its Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO) from its regulations.

DATES: This amendment is effective July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167. The OGE Standards, codified at 5 CFR part 2635, established uniform standards of ethical conduct that apply to all executive branch personnel.

Pursuant to 5 CFR 2635.105, executive branch agencies are authorized to publish, with the concurrence of OGE, agency-specific supplemental regulations that are deemed necessary to properly implement their respective ethics programs. On February 12, 1997, the NLRB, with OGE's concurrence, published in the **Federal Register** an interim final rule to establish the NLRB Supplemental Ethics Regulations. 62 FR 6445. The NLRB is now amending the NLRB Supplemental Ethics Regulations to remove an out-of-date provision, 5 CFR 7101.101(b), which designates the Director of the NLRB's Division of Administration as the NLRB's DAEO and the Deputy Director of Administration as the NLRB's ADAEO.

The NLRB, in concurrence with OGE, is making this change because these provisions are inconsistent with the NLRB's current organizational structure. The Board restructured its headquarters offices in 2013 and 2016, resulting in a separate Ethics Office that is apart from the Division of Administration. The Board, in 2016, designated the head of the Ethics Office as the DAEO and submitted that designation to OGE. The Board notified the public of these organizational changes at the time they occurred in **Federal Register** notices. 81 FR 4069 (Jan. 25, 2016); 78 FR 44981 (July 25, 2013). The Board intends no change to its 2016 DAEO designation with this rulemaking.

The NLRB is also removing provisions in § 7101.101(b) that list some of the DAEO's responsibilities, which are similarly out of date. Detailed qualifications and responsibilities for DAEOs and ADAEOs at all agencies are found in OGE's regulations at 5 CFR 2638.104. Thus, removing the redundant provisions from paragraph (b) will eliminate confusion that could result from any inconsistencies between the two regulations.

The deletion of § 7101.101(b) will therefore update the NLRB's Supplemental Ethics Regulations so that they are no longer inconsistent with the NLRB's current organizational structure. This change will make the NLRB Supplemental Ethics Regulations consistent with those of most other executive branch agencies, which do not designate ethics officials or delineate their responsibilities in their supplemental ethics regulations.

The Board is also revising the introductory sentence of the redesignated § 7101.101(b) (formerly § 7101.101(c)) to read ''Agency's designee'' instead of ''Agency designees'' because the revised regulation solely refers to the DAEO, and no longer refers to both the DAEO and ADAEO.

II. Matters of Regulatory Procedure

Administrative Procedure Act

This rule is published as a final rule. The NLRB considers this rule to be a procedural rule that is exempt from notice and public comment, pursuant to 5 U.S.C. 553(b)(3)(A), as a rule of ''agency organization, procedure, or practice.''

Paperwork Reduction Act

The amended regulations contain no additional information-collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 7101

Conflict of interests, Government employees.

For the reasons set forth in the preamble, the NLRB amends 5 CFR part 7101 as follows:

PART 7101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL LABOR RELATIONS BOARD

■ 1. The authority citation for 5 CFR part 7101 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 29 U.S.C. 141, 156; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42457, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.402(c), 2635.803, and 2638.202(b).

§ 7101.101 [Amended]

■ 2. Amend § 7101.101 by

■ a. Removing paragraph (b) and redesignating paragraph (c) as paragraph (b);

■ b. Amending newly redesignated paragraph (b) by removing the words ''Agency's designees'' and adding in their place ''Agency designee.''

Dated: June 2, 2020.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2020–14544 Filed 7–17–20; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0617; Project Identifier MCAI–2020–00391–E; Amendment 39–21170; AD 2020–15–07]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Formerly Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36 and RB211–524H–T–36 model turbofan engines. This AD requires replacement of the low-pressure turbine (LPT) stage 1 disk before it reaches its new Declared Safe Cycle Limit (DSCL) or within 25 flight cycles after the effective date of this AD, whichever occurs later. This AD was prompted by a determination by the manufacturer that the affected LPT stage 1 disks cannot operate until their former published life limit. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 4, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 4, 2020.

The FAA must receive comments on this AD by September 3, 2020.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827, Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; website: *https://www.rolls-royce.com/contact-us.aspx.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0617.

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–2020–0617; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kenneth Steeves, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2020–0059, dated March 17, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

> A review of operational flight data revealed that some RB211–524 engines may have been operated beyond the currently valid datum flight profile (FP) published in the applicable Aircraft Maintenance Manuals. The purpose of the datum FPs is to establish the operational limits (life limits) within which the corresponding critical parts are allowed to remain installed. In addition, as this FP exceedance was investigated, it was realised that the current life limits of certain P/N corresponding to reworked LPT Stage 1 discs (time since new, or since entry into service following rework) could no longer be supported.
>
> This condition, if not corrected, could lead to disc failure, possibly resulting in engine in-flight shut-down and high energy debris release, with consequent damage to, and reduced control of, the aeroplane.
>
> Prompted by these findings, Rolls-Royce published worldwide (WW) communication, reference WW11575–1, which identified certain parts, some of which were believed to have exceeded their respective safe cyclic life, to collect information in relation to the history of affected parts and to inform current operators and owners of the affected parts of an imminent life reduction. Rolls-Royce also published the NMSB, providing instructions for timely removal from service of the affected parts.
>
> For the reasons described above, this AD requires removal from service of the affected parts. This AD also prohibits (re)installation of affected parts that have exceeded the new reduced limits.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0617.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Rolls-Royce plc Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AK422, Revision 1, dated March 2, 2020. The NMSB describes procedures for reducing the Declared Safe Cyclic Limit for LPT stage 1 disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD because it evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires replacement of the LPT stage 1 disk before it reaches its new DSCL or within 25 flight cycles

after the effective date of this AD, whichever occurs later.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Similarly, Section 553(d) of the APA authorizes agencies to make rules effective in less than 30 days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule. The manufacturer's review of operational flight data revealed that certain RB211–524 model turbofan engines may have been operated beyond the current valid datum flight profile (FP) published in the Aircraft Maintenance Manuals. The purpose of the datum FP is to establish the operational limits (life limits) within which the corresponding critical parts are allowed to remain installed. The investigation of this exceedance determined that the current published life limits established for the LPT stage 1 disk could no longer be supported for certain part and serial numbered LPT stage 1 disks that have undergone rework. The manufacturer has calculated a new DSCL for these disks. Exceeding the DSCL for these disks could lead to failure of the disk, in-flight shut down of the engine and high-energy release of debris from the engine, resulting in damage to the engine and to the airplane. Consequently, these disks require replacement within 25 flight cycles or before reaching their new life limit, whichever occurs later.

The FAA considers the removal of these LPT stage 1 disks from service to be an urgent safety issue. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2020–0617 and Project Identifier MCAI–2020–00391–E at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this final rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this final rule. Submissions containing CBI should be sent to Kenneth Steeves, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 22 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace LPT stage 1 disk	120 work-hours × $85 per hour = $10,200	$30,000	$40,200	$884,400

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–15–07 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate formerly held by Rolls-Royce plc): Amendment 39–21170; Docket No. FAA–2020–0617; Project Identifier MCAI–2020–00391–E.

(a) Effective Date

This AD is effective August 4, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (type certificate formerly held by Rolls-Royce plc) RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36 and RB211–524H–T–36 model turbofan engines with low-pressure turbine (LPT) stage 1 disks, part number (P/N) UL37606, UL37607, UL37608, UL37722 or UL37790, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a determination by the manufacturer that the current published life limits established for certain part and serial numbered LPT stage 1 disks that have undergone rework could no longer be supported. The FAA is issuing this AD to prevent failure of the LPT stage 1 disk. The unsafe condition, if not addressed, could result in uncontained release of high-energy debris from the engine, in-flight shutdown of the engine, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Before the LPT stage 1 disk reaches its Declared Safe Cycle Limit (DSCL) as specified in the Accomplishment Instructions, Paragraph 3., Tables 1 through 9, in Rolls-Royce plc Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AK422, Revision 1, dated March 2, 2020, or within 25 flight cycles after the effective date of this AD, whichever occurs later, remove the LPT stage 1 disk from service and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, a part eligible for installation is any LPT stage 1 disk that is new or has not reached its DSCL as specified in the Accomplishment Instructions, Paragraph 3., Tables 1 through 9, in the Rolls-Royce Alert NMSB RB.211–72–AK422, Revision 1, dated March 2, 2020.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Kenneth Steeves, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov.*

(2) Refer to European Union Aviation Safety Agency AD No. 2020–0059, dated March 17, 2020, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0617.

(k) Material Incorporated by Reference

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

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

(i) Rolls-Royce plc Alert Non-Modification Service Bulletin RB.211–72–AK422, Revision 1, dated March 2, 2020.

(ii) [Reserved]

(3) For Rolls-Royce plc service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827, Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; website: *https://www.rolls-royce.com/contact-us.aspx.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued on July 10, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15563 Filed 7–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0359; Airspace Docket No. 15–AAL–5]

RIN 2120–AA66

Establishment of Class E Airspace, Sleetmute, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Sleetmute Airport, Sleetmute, AK, to accommodate new area navigation (RNAV) procedures. This action ensures the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800

Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes new Class E airspace extending upward from 700 feet above the surface of the earth at Sleetmute Airport, Sleetmute, AK, in support of IFR operations.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (FR) (85 FR 23931; April 30, 2020) for Docket No. FAA–2020–0359 to establish Class E airspace at Sleetmute Airport, Sleetmute, AK, in support of IFR operations at the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in Title 14 Code of Federal Regulations (14 CFR) 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface of the earth at Sleetmute Airport, Sleetmute, AK. The Class E airspace is established to within 6 miles of the airport and 2 miles each side of the 166° bearing from the airport extending from the 6-mile radius to 19 miles south of the Airport. This area provides airspace for aircraft as they descend through 1,500 feet and support IFR operations at Sleetmute Airport, Sleetmute, AK.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Sleetmute, AK [New]

Sleetmute Airport, AK
(Lat. 61°42′02″ N, long. 157°09′57″ W)

That airspace extending upward from 700 feet above the surface within 6 miles of the Sleetmute Airport, Sleetmute, Alaska, and that airspace 2 miles each side of the 166 ° bearing from the airport extending from the 6-mile radius to 19 miles south of the Sleetmute Airport.

Issued in Seattle, Washington, on July 14, 2020.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–15544 Filed 7–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0110]

RIN 1625–AA00

Safety Zone; Duwamish River, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

navigable waters within a 100-yard radius of the West Seattle Freeway Bridge Light List Number 16870.2. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by inspection and repair work on the West Seattle Bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Puget Sound.

DATES: This rule is effective from 5:30 a.m. on July 20, 2020, through 9:30 a.m. on July 28, 2020. During this effective period, the rule will be enforced from 5:30 a.m. to 9:30 a.m. on July 20, 2020, July 21, 2020, July 27, 2020 and July 28, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0110 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Ish Looney, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the current damaged state of the West Seattle Bridge requires immediate action to respond to the potential safety hazards associated with emergency bridge inspection and repair work. It is impracticable to publish an NPRM because we must establish this safety zone by July 20, 2020.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with emergency stability inspection and repair of the West Seattle Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Puget Sound (COTP) has determined that potential hazards associated with bridge repairs starting July 20, 2020, will be a safety concern for anyone navigating on the West Duwamish Waterway within a 100-yard radius of West Seattle Bridge Light List Number 16870.2. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being inspected and repaired.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 5:30 a.m. to 9:30 a.m. on July 20, 2020, July 21, 2020, July 27, 2020 and July 28, 2020. The safety zone will cover all navigable waters within a 100-yard radius of the West Seattle Freeway Bridge Light List Number 16870.2 across the Duwamish West Waterway at mile 0.35. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the West Seattle bridge is being inspected and repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Duwamish River. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 4 days that will prohibit entry within a 100-yard radius of the West Seattle Freeway Bridge Light List Number 16870.2 to ensure the safety of all vessels navigating in the vicinity of inspection and repair work on the West Seattle Bridge. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–0110 to read as follows:

§ 165.T13–0110 Safety Zone; Duwamish River, Seattle, Washington.

(a) *Location.* The following area is a safety zone: All navigable waters within a 100-yard radius of the West Seattle Freeway Bridge Light List Number 16870.2 on the Duwamish River to ensure the safety of all vessels navigating in the vicinity of inspection and repair work on the West Seattle Bridge.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in part 165, subpart C, no persons or vessels may enter or remain in the safety zone created in this unless authorized by the Captain of the Port or their designated representative. For permission to enter the safety zone, contact the on-scene designated representative or Joint Harbor Operations Center via VHF CH16 or at 206–217–6002. Those in the safety zone must comply with all lawful orders or directions given to them by the Captain of the Port or their designated representative.

(d) *Enforcement periods.* This section will be enforced from 5:30 a.m. to 9:30 a.m. on July 20, 2020, July 21, 2020, July 27, 2020, and July 28, 2020.

Dated: July 15, 2020.

L.A. Sturgis,

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

[FR Doc. 2020–15670 Filed 7–17–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0436]

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones surrounding vessels involved in Coast Guard training exercises in Hood Canal, WA, from August 17, 2020, through August 21, 2020. This enforcement is necessary to ensure the safety of the maritime public and vessels near training exercises. During the enforcement period, entry into the safety zones is prohibited, unless authorized by the Captain of the Port or her Designated Representative.

DATES: The regulations in 33 CFR 165.1339 will be enforced from 8 a.m. on August 17, 2020, through 5 p.m. on August 21, 2020.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email CWO2 William Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones around vessels involved in Coast Guard training exercises in Hood Canal, WA, set forth in 33 CFR 165.1339, from 8

a.m. on August 17, 2020, through 5 p.m. on August 21, 2020. Under the provisions of 33 CFR 165.1339, no person or vessel may enter or remain within 500 yards of any vessel involved in Coast Guard training exercises while such vessel is transiting Hood Canal, WA, between Foul Weather Bluff and the entrance to Dabob Bay, unless authorized by the Captain of the Port or her Designated Representative. In addition, the regulation requires all vessel operators seeking to enter any of the zones during the enforcement period to first obtain permission. You may seek permission by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at 206–217–6001.

You will be able to identify participating vessels as those flying the Coast Guard Ensign. The Captain of the Port may also be assisted in the enforcement of the zone by other federal, state, or local agencies. The Captain of the Port will issue a general permission to enter the safety zones if the training exercise is completed before 5 p.m. on August 21. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Local Notice to Mariners.

Dated: July 15, 2020.

L.A. Sturgis,

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

[FR Doc. 2020–15671 Filed 7–17–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE–2018–0005]

Pacific Ocean at Naval Base Guam Telecommunication Site, Finegayan Small Arms Range, on the Northwestern Coast of Guam; Danger Zone

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers (Corps) is amending its danger zone regulations to establish a danger zone in the Pacific Ocean adjacent to the existing Finegayan Small Arms Range at Naval Base Guam telecommunication site on the northwestern coast of Guam. The danger zone is located entirely within the Pacific Ocean, comprising 892 acres and extending 2.36 miles into the ocean from the high tide line. Establishment of the danger zone will intermittently prohibit vessels from lingering in the danger zone when the small arms range is in active use in order to ensure public safety.

DATES: Effective August 19, 2020.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, at *David.B.Olson@usace.army.mil* or 202–761–4922.

SUPPLEMENTARY INFORMATION: In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers (Corps) is amending its danger zone regulations to establish a permanent danger zone in the Pacific Ocean adjacent to the Finegayan Small Arms Range (FSAR) on Guam. The danger zone will be added at 33 CFR 334.1415. The danger zone is needed for the Department of Defense to meet its mission under 10 U.S.C. 5062, which is to maintain, train, and equip combat-ready military forces, deterring aggression, and maintaining freedom of the seas. Due to the strategic location of Guam and the Department of Defense's ongoing reassessment of the Western Pacific military alignment, there has been an increase in the importance of the FSAR as a training and testing venue. The danger zone is necessary to protect the public from hazards associated with small arms training.

The proposed rule was published in the **Federal Register** on December 13, 2018 (83 FR 64053). The *regulations.gov* docket number was COE–2018–0005. Concurrently, a local public notice for the proposed danger zone was sent out from the Honolulu District. In response to the proposed rule, 45 comments were received. The comments are summarized below, with the Corps' responses to those comments.

Several commenters requested a time extension for the public comment period. Twenty-two commenters requested either a public hearing with the Corps or public meetings with representatives of the Navy and/or Corps. The commenters requested these meetings to better understand the impacts of the FSAR and the proposed danger zone, and to have an open dialogue and discussion.

The Corps determined that 30 days was sufficient to provide comments on the proposed danger zone regulation. The Corps' regulations at 33 CFR part 327 allow district engineers to conduct public hearings for the purpose of acquiring information which will be considered in evaluating a proposed action that requires a decision by the Corps. A public hearing gives the public an opportunity to present their views, opinions, and information on a proposed action. The district engineer has the discretion to not hold a public hearing if he or she determines that there would be no valid interest to be served by a public hearing, or a public hearing would not result in interested parties presenting information that could not be provided to the Corps via comments submitted in response to a proposed rule or a proposed permit action. The Corps district carefully reviewed all of the requests for a public hearing or public meetings, as well as the comments received in response to the proposed rule, and concluded that a public hearing would not identify issues or concerns that were not already identified and discussed in the comments submitted in response to the proposed rule and the district's public notice. Therefore, the district engineer decided not to hold any public hearings or public meetings for this proposed rule.

A couple of commenters requested the Corps prepare an environmental impact statement (EIS) for the proposed rule. Several commenters expressed concerns with the 2010 Mariana Islands Range Complex Environmental Impact Statement/Overseas Environmental Impact Statement and the 2015 Mariana Islands Training and Testing Environmental Impact Statement/Overseas Environmental Impact Statement and compliance with federal laws, including the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, and the National Historic Preservation Act. Some commenters requested that additional studies be conducted, as well as additional assessments of the impacts, to better understand the effects of the Mariana Islands Range Complex and training activities on natural resources, historical and cultural resources, the economy, and to the people of Guam. One commenter said that specific sections of these EIS documents should be referenced and stated the public notice, or the public notice should be considered incomplete. Several commenters requested a review of

cumulative impacts. One commenter asked how the proposed danger zone relates to the future Marine Corps base. One commenter wanted to know how the Corps will mitigate any impacts to the environment.

For the purposes of the National Environmental Policy Act (NEPA), the federal action being undertaken by the Corps is the promulgation of the danger zone regulation under its authorities at 33 U.S.C. 1 and 3 and the procedures in 33 CFR part 334. The Corps is responsible for assessing the impacts of the proposed danger zone on the human environment, and for preparing appropriate NEPA documentation for its decision on whether to issue the final rule for the danger zone. To comply with NEPA requirements, the Corps prepared an environmental assessment for this rulemaking action and concluded that the establishment of the danger zone would not have a significant impact on the quality of the human environment and therefore does not require the preparation of an EIS. A copy of the environmental assessment is available from the Corps district office. The establishment of this danger zone would not result in work, structures, or construction within the Pacific Ocean, or any modification to any vegetation, habitat, or structures in the Pacific Ocean, on the shore, or on the land. Therefore, it will not have any impacts on natural resources or historical and cultural resources. With respect to impacts to people on Guam, the danger zone is intended to protect the public from hazards that may result from the use of the FSAR at the Naval Base Guam telecommunication site. The boundaries of the danger zone will be plotted by National Oceanic and Atmospheric Administration on its nautical charts, which will help alert users of those navigable waters to the danger zone.

For the establishment and operation of the FSAR itself, the Navy is the Federal agency responsible for compliance with applicable federal laws, which may include Section 7 of the Endangered Species Act, the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act, and the Coastal Zone Management Act. The Navy's documents demonstrating compliance with these laws and concurrences from the agencies administering these laws can be obtained from the Marianas Islands Training and Testing website at *https://mitt-eis.com.*

Cumulative impacts were evaluated in the environmental assessment prepared by the Corps district for this final rule. The establishment of a future Marine Corps base on Guam is a separate action that is outside of the Corps' rulemaking action for the establishment of this danger zone. Therefore, the Corps is not required address that potential future action in its NEPA documentation. Since the danger zone will be in effect only when the FSAR is in use and the establishment of the danger zone will promote public safety and will not have any physical environmental effects, impacts to the human environment have been minimized. The Corps has determined there is no need or requirement for mitigation beyond incorporating into the rule text measures to minimize impacts to maritime traffic and fishing activities.

Multiple commenters expressing concern about potential impacts of the danger zone on Guam's fishing industry. Multiple individuals provided comments about impacts to commercial tourism operations, subsistence fishing, and recreational fishing. One commenter stated that the danger zone would create additional restrictions to subsistence and artisanal fishers. Several commenters wanted to better understand how the establishment of a danger zone would impact the movement of the fishing community up and down the coast, and whether fishermen would be forced to move into less safe waters outside the danger zone. Many commenters wanted to know how often access to the proposed danger zone would be restricted.

The Corps' regulations require that danger zones and restricted areas provide public access to the area to the maximum extent practicable and not cause unreasonable interference with or restrict the food fishing industry (see 33 CFR 334.3(a) and (b), respectively). The regulations require the Corps to consult with the Regional Directors of the U.S. Fish and Wildlife Service and National Marine Fisheries Service regarding impacts to the food fishing industry. The Corps district sent each agency a letter dated May 6, 2019, requesting comments in relation to the food fishing industry. Neither agency responded to those letters.

The establishment of a danger zone would intermittently restrict commercial, public, and private vessels from entering or lingering in the danger zone to ensure public safety during small arms training activities at the FSAR. Although the danger zone would restrict use of the waters within its boundaries while the small arms range is in use, it would not restrict access through the danger zone to fishing grounds to the north or south. While the small arms range is in use, the Navy would halt training activities to allow vessels to expeditiously transit through the danger zone. When the range is not in use, the waters within the danger zone boundaries would be open to fishing.

Upon establishment of the danger zone, nautical charts will be updated to identify the boundaries of the danger zone for mariner awareness and route planning. A Notice to Mariners will also be issued each time the range is active. The Corps has determined that the Navy has provided for public access to the area to the maximum extent practicable. Additionally, the Corps has determined, based on the Navy allowing fishing vessels to transit through the danger zone, that there will not be unreasonable interference or restrictions to the food fishing industry.

The Corps received multiple comments about the impacts of the danger zone to recreation and access, including impacts to the native Chamorro population as well as tourism operations. Several people wanted to know if the restrictions associated with the danger zone would result in economic impacts. Some commenters expressed concern about how the danger zone may affect local property owners.

The Corps' regulations state that danger zone regulations shall provide for public access to the area to the maximum extent practicable. This danger zone will intermittently restrict commercial, public, and private vessels from entering or lingering in the danger zone to ensure public safety during small arms training activities. Although the danger zone would restrict use of the waters within its boundaries while the small arms range is in use, it would not restrict access through the danger zone to areas north or south. While the small arms range is in use, the Navy would halt training activities to allow vessels to expeditiously transit through the danger zone. When the range is not in use, the danger zone would be open to normal maritime activities. Therefore, it will only have intermittent impacts on recreation and access for the public, including the native Chamorro population. Based on previous operations of the FSAR, the Corps has determined that the establishment of the danger zone regulation would have no economic impact on Guam's tourism industry or cruise vessel operations. The danger zone is located completely in the waters of the Pacific Ocean. The Corps has determined that the establishment of the danger zone would cause no disruption in access to homes or businesses.

Multiple commenters expressed concerns about potential effects to cultural and historical resources. Several commenters expressed their belief that Chamorro cultural values and practices would be jeopardized by the proposed establishment of the danger zone. Several commenters wanted to know if the range would limit access to ancient and sacred historical sites that are regularly visited by the Chamorro people. One commenter wanted to know if the danger zone would have any implications on the ''2011 Programmatic Agreement'' and whether public access to Haputo Reef, Double Reef, and Tweed's Cave would be affected by the proposed danger zone. Others provided information about the existing cultural and historic sites near the FSAR. Several others had specific questions about how it would affect traditional fishing grounds. A couple of individuals asserted that Chamorro traditional fishing grounds should not be inaccessible to the Chamorro people. One commenter wanted to know how the danger zone would affect Chamorro medicinal plant and coconut crab collecting practices.

The danger zone restricts the use of navigable waters to protect the public during small arms training activities. It does not involve any actions that have the potential to cause effects to historic properties, cultural resources, or sacred cultural sites. There would be no construction, structures, or in-water work associated with the establishment of the danger zone. The Corps acknowledges that there may be temporary disruptions to accessing traditional fishing grounds when the range is in use and has determined that these disruptions would be minimal, and are necessary for safety. When the range is not in use, the danger zone will be open and the waters available to public water users.

The danger zone is not associated with the 2011 Programmatic Agreement. Public access to Haputo Beach, Double Reef, and Tweed's cave is available via the Joint Region Marianas Public Access Plan for Historic and Cultural Sites when the range is not in use. In addition, coconut crab collection is not authorized on Department of Defense property.

Multiple commenters voiced concerns about potential effects to upland and in-water plants and animals in and adjacent to the danger zone, including the fruit bat, fish, corals, sea turtles, and other aquatic species. Several commenters expressed concerns about potential impacts to threatened and endangered species and Essential Fish Habitat. One commenter wanted to know if the danger zone would negatively impact the presence and propagation of coconut trees or any other endemic or native plants and trees.

The establishment of the danger zone will not result in a modification to any vegetation, habitat, or structures in the Pacific Ocean, on the shore, or on the land. Establishment of the danger zone will not have any effect on land-based plants and animals. If humans are not able to loiter in the danger zone while the firing range is operational, then there may be less human impact on marine ecosystems within the boundaries of the danger zone. Therefore, the restrictions imposed by the establishment of the danger zone are likely to have negligible or mildly beneficial impacts on marine life. The establishment of the danger zone will have no effect on marine species and habitat, including coral species, listed under the Endangered Species Act and it will have no adverse effect on Essential Fish Habitat. Although the Corps has the authority to establish danger zones to protect the public from potential dangers imposed by target practice, bombing, rocket firing or other especially hazardous operations, the Corps does not regulate boating activities in general, and does not have the authority to control environmental effects that may be caused by boating activities.

The Corps received comments expressing concern about the safety risks associated with the operation of the danger zone. A couple of commenters wanted more information about how the limits of the firing range, extending into the ocean up to 2.36 nautical miles from the shore, were determined. A couple of commenters inquired about the efficacy of the red flag and strobe light. One commenter asked if the red flag that would be used to communicate with mariners during the daytime and strobe light that would be used to communicate with mariners during the nighttime could be seen under all weather conditions in the entirety of the proposed danger zone. A commenter wanted to know what other methods of alerting the public that the firing range was in use were considered. One commenter asked if fishermen could be notified in advance to help better plan their trip. One individual inquired about installing a warning system at Gregorio D. Perez Marina where most boaters launch.

The danger zone boundaries were established to include all areas where a potential hazard exists for a projectile not being contained by the earthen berms at the FSAR, although this type of event has a very low probability of occurring. Danger zones are established for this reason to ensure safe range operations. The parameters of the danger zone were determined by the maximum distance a small arms round can travel. The Navy has no plans to expand the footprint of the existing ranges, increase weapons caliber, or use these ranges for bombing, rocket firing, or other especially hazardous operations. Targets would not be placed within the danger zone. These ranges would continue to be used in the same capacity as they were used since the 1970s.

Similar to navigation lights/aids on buoys and approach lighting for airfields, the strobe light (nighttime), would be visible under all weather conditions that would be conducive to small boat and small arms range operations. The red flag (daytime) method of identifying an active danger zone is currently in use at the Naval Base Guam Known Distance and Multi-Purpose Ranges and has proven to be an effective method of alerting the public of small arms range operation. The red flag and strobe light were the only methods of alerting the public that were considered by the Navy. The strobe light was added for the FSAR as an additional method of alerting the public during nighttime operations of the range. The red flag and strobe light have been proven effective in alerting the public and have been proven as feasible methods of identifying the danger zones as being active. It should also be noted that an added measure of safety is taken in that small arms range operating procedures require a lookout to be present during range operations as a positive means to verify the danger zone is clear. If a fisherman or other vessel inadvertently enters the danger zone area, range operations would cease until the danger zone is clear. In addition, small arms range operating procedures require specially qualified range supervisors and operators to oversee small arms range operations. These specially qualified personnel ensure all small arms range safety procedures are followed and provide an added layer of safety to prevent errant bullets from leaving the confines of the small arms range berms.

A Notice to Mariners will be issued each time the range is active. These notices are issued to notify mariners that an established danger zone is active. In addition, after this final rule is issued, nautical charts will be updated by the National Oceanic and Atmospheric Administration's Office of Coast Survey to identify the boundaries of the danger zone for mariner

awareness and route planning. Due to the many safety layers and advanced notification actions mentioned above, which have been proven effective, the Navy is not planning a warning system located at Gregorio D. Perez Marina.

Multiple commenters expressed concern with the potential for the firing range and danger zone to contribute to contamination of the air and water. Specific concerns included the introduction of lead, antimony, copper, zinc, nickel, arsenic, and other contaminants into the environment that could pose an environmental or human health threat. One commenter wanted to know if contaminants from the danger zone would impact the Haputo Ecological Reserve.

The establishment of a danger zone in the Pacific Ocean adjacent to the FSAR is an administrative procedure that restricts navigable access to a portion of the ocean during small arms training activities to protect public safety. There will be no construction, structures or in-water work associated with the establishment of the danger zone. The establishment of the danger zone by the Corps will not result in the release of contaminants. The operation of the FSAR itself, including the potential environmental impacts caused by rounds fired from the FSAR, falls outside of the Corps' regulatory authorities. Activation of the danger zone itself during small arms training activities would not result in any physical effects to air or water quality, or any physical effects to Haputo Ecological Reserve.

Several commenters expressed concerns about erosion, accretion, and noise associated with the danger zone. One commenter asked whether the danger zone would violate the conditions to the 1983 Memorandum of Understanding with the Government of Guam that created the Haputo Ecological Reserve.

The establishment of the danger zone involves no construction, structures or in-water work associated with the establishment of the danger zone. Therefore, the establishment of this danger zone will not affect erosion, accretion, or noise. In compliance with the Coastal Zone Management Act, the 1983 Memorandum of Understanding committed the Navy to the establishment of two Ecological Reserve Areas (ERAs) as mitigation for the adverse environmental impacts anticipated to accrue from the construction of an ammunition wharf at Adotgan Point in outer Apra Harbor, what has since become known as Kilo Wharf. The two ERAs to be established were the Orate Peninsula Cliff ERA and the Haputo ERA. While there were several conditions associated with the establishment of the Orate Peninsula ERA, none were established for the Haputo ERA aside from the requirement to take ''all possible measures'' to ''preserve its quality for the people of Guam, now and for the future.'' It was further stipulated that ''it be protected from development of any kind and from the taking or destruction of its natural and historic resources.'' At the time the ERA was designated, the FSAR had been in existence for nearly a decade, and it has operated since with little change in frequency or manner of use. There are no changes in the size, location, operation of the range, the type of small arms utilized, or the tempo of operations being proposed. As a result, the establishment of the danger zone would not violate the conditions of the 1983 Memorandum of Understanding with the Government of Guam that created the Haputo ERA.

Multiple commenters asked whether there are practicable alternatives to the establishment of a danger zone and what alternatives were evaluated. A couple commenters asked if there were upland alternatives or if private land or private ranges could be used. One commenter asked if a system could be designed or constructed to prevent ammunition from entering the area of the proposed danger zone whereby a danger zone would not be necessary.

The FSAR has been in existence since 1975, and the establishment of this danger zone is necessary to protect the public during small arms training activities. It was not necessary to evaluate alternative sites because the danger zone is needed at this particular site. As discussed above, the boundaries of the danger zone were established to address the potential area where a small arms projectile could travel, to protect the public during small arms training exercises.

Procedural Requirements

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

The Corps determined this final rule is not a significant regulatory action. This regulatory action determination is based on the rule text governing the danger zone, which allows any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The danger zone is necessary to protect public safety during use of the small arms range. To minimize impacts to maritime traffic, the Navy will stop firing when the range is in use to allow vessels to transit through the danger zone. When the range is not in use, the danger zone will be open to normal maritime traffic and all activities, including anchoring and loitering. After considering the economic impacts of this danger zone regulation on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared for the establishment of this danger zone. The Corps has concluded that the establishment of the danger zone will not have a significant impact to the quality of the human environment and, therefore, preparation of an EIS is not required. The final EA and Finding of No Significant Impact may be reviewed at the District Office listed at the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, small governments will not be significantly and uniquely affected by this rulemaking.

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

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1415 to read as follows:

§ 334.1415 Pacific Ocean, adjacent to the Finegayan Small Arms Range at Naval Base Guam Telecommunication Site, on the northwestern coast of Guam; danger zone.

(a) *The area.* Coordinates are bounded by the following four points: Point A (13°34′57″ N; 144°49′53″ E) following the high tide line to Point B (13°35′49″ N; 144°47′59″ E), Point C (13°34′57″ N; 144°47′45″ E), and Point D (13°34′48″ N; 144°49′50″ E). The datum for these coordinates is NAD–83.

(b) *The regulation.* (1) Vessels or persons shall expeditiously transit through the danger zone when the small arms range is in use. Vessels shall not be permitted to anchor or loiter within the danger zone while the range is in use. Range activities shall be halted until all vessels are cleared from the danger zone. When the range is not in use, the danger zone shall be open to normal maritime traffic and all activities to include anchoring and loitering.

(2) When the range is in use, the person(s) or officer(s) in charge shall display a red flag from a conspicuous and easily-seen location along the nearby shore to signify that the range is in use and will post lookouts to ensure the safety of all vessels transiting through the area. If the range is in use at night, a strobe light shall be displayed from the same conspicuous and easily-seen location in lieu of flags. The range shall not be used when visibility is equal to or less than the maximum range of the weapons being used at the facility.

(c) *Enforcement.* The restrictions on public access in this section shall be enforced by the Commander, Joint Region Marianas, and such agencies as the Commander may designate in writing.

Approved:

Thomas P. Smith,

Chief, Operations and Regulatory Division Directorate of Civil Works.

[FR Doc. 2020–14131 Filed 7–17–20; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0321; FRL–10009–81–Region 9]

Air Plan Conditional Approval and Disapproval; Arizona; Maricopa County; Power Plants, Fuel Burning Equipment, and Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing conditional approvals for two revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP) concerning fuel burning equipment and internal combustion engines. The EPA is also finalizing a disapproval for one revision to the Maricopa County portion of the Arizona SIP concerning power plants. This action was proposed in the **Federal Register** on December 30, 2019, and concerns emissions of oxides of nitrogen (NO_X) from combustion sources.

DATES: This rule is effective on August 19, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0321. 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: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *gong.kevin@epa.gov.*

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

Table of Contents

I. Proposed Action

On December 30, 2019 (84 FR 71862), the EPA proposed action on the following rules that were submitted for incorporation into the Arizona SIP. Table 1 lists the rules on which the EPA is finalizing action, with the dates they were revised by the Maricopa County Air Quality Department (MCAQD), the dates they were submitted by the Arizona Department of Environmental Quality (ADEQ), and the type of action that the EPA is finalizing for each rule.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Revised	Submitted	Action
322	Power Plant Operations	November 2, 2016	June 22, 2017	Disapproval.
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	November 2, 2016	June 22, 2017	Conditional Approval.
324	Stationary Reciprocating Internal Combustion Engines (RICE).	November 2, 2016	June 22, 2017	Conditional Approval.

1. Rule 322

We proposed to disapprove Rule 322 because the rule does not satisfy the requirements of section 110 and part D of the Clean Air Act (CAA or Act). The deficient provisions include the following:

a. Air Pollution Control Officer discretion to approve alternative control strategies as reasonably available control technology (RACT) without further approval from the EPA.

b. NO_X emission limits for steam generating units used for electricity generation that were less stringent than RACT.

c. Overly broad exemptions from certain requirements during emergency fuel use operations.

d. Air Pollution Control Officer discretion to extend compliance deadlines for applicable units.

e. Absence of a compliance determination requirement, such as a regular stack testing requirement.

2. Rules 323 and 324

We proposed to conditionally approve these rules pursuant to CAA section 110(k)(4) because, although rule deficiencies preclude full SIP approval pursuant to section 110(k)(3), the rules largely comply with the relevant CAA requirements, and the MCAQD and the ADEQ have committed to provide the EPA with a SIP submission within one year of this final action that will include specific rule revisions that would adequately address the deficiencies.

Our proposed action contains more information on the rules, their deficiencies, the MCAQD and ADEQ commitments, and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received a request to clarify certain aspects of the proposed rulemaking from the MCAQD including the scope of the rulemaking, the context of our stringency analysis for NO_X emission limits, and the necessary testing requirements. The MCAQD's questions on our proposed rulemaking and our clarifications are included in a memorandum to the rulemaking docket. These comments did not change our assessment of the rules. No adverse comments were received, and no comments were submitted through *www.regulations.gov.*

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. As authorized in section 110(k)(3) and 301(a) of the Act, the EPA disapproves Rule 322 for inclusion into the Arizona SIP. As a result, offset sanctions will be imposed unless the EPA approves a subsequent SIP revision that corrects the rule deficiencies within 18 months of the effective date of this action. Highway sanctions will be imposed unless the EPA approves a subsequent SIP revision that corrects the rule deficiencies within 24 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA and 40 CFR 52.31. Additionally, section 110(c) requires the EPA to promulgate a federal implementation plan (FIP) within 24 months unless we approve subsequent SIP revisions that correct the rule deficiencies.

Secondly, as authorized in sections 110(k)(4) and 301(a) of the CAA, the EPA conditionally approves Rules 323 and 324 into the Arizona SIP. If the MCAQD and the ADEQ submit the necessary rule revisions by the specified deadline, and the EPA approves the submission, then the identified deficiencies will be cured. However, if the MCAQD, through the ADEQ, fails to submit these revisions within the required timeframe, the conditional approval will be treated as a disapproval for those rules for which the revisions are not submitted. This action incorporates the conditionally approved submitted rules into the Arizona SIP, including those provisions identified as deficient.

IV. Incorporation by Reference

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

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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

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

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this SIP disapproval and conditional approval does not in-and-of itself create any new information collection burdens, but simply disapproves and conditionally approves certain State requirements for inclusion in the SIP.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP disapproval and conditional approval does not in-and-of itself create any new requirements but simply disapproves and conditionally approves certain pre-existing State requirements for inclusion in the SIP.

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. This action disapproves and conditionally approves pre-existing requirements under State or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

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: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this SIP disapproval and conditional approval does not in-and-of itself create any new regulations, but simply disapproves and conditionally approves certain pre-existing State requirements for inclusion in the SIP.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 24, 2020.

John Busterud,

Regional Administrator, Region IX.

For the reasons stated in the preamble, EPA is amending Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 D—Arizona

■ 2. Amend § 52.119 by adding paragraph (c)(2) to read as follows:

§ 52.119 Identification of plan—conditional approvals.

* * * * *

(c) * * *

(2) The EPA is conditionally approving portions of the Arizona SIP revisions submitted on June 22, 2017. The conditional approval is based upon the February 25, 2019 commitment from the State to submit a SIP revision consisting of rule revisions that will cure the identified deficiencies within twelve (12) months after the EPA's conditional approval. If the State fails to meet its commitment, the conditional approval will be treated as a disapproval with respect to the rules for which the corrections are not made. The following MCAQD rules are conditionally approved:

(i) Rule 323, *Fuel Burning Equipment from Industrial/Commercial/ Institutional (ICI) Sources* and;

(ii) Rule 324, *Stationary Reciprocating Internal Combustion Engines (RICE);*

■ 3. In § 52.120 amend Table 4 in paragraph (c) by revising the entries for ''Rule 323'' and ''Rule 324'' to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Regulation III—Control of Air Contaminants				

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	* *	*	*	* *
Rule 323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	11/02/2016	7/20/2020, [INSERT **Federal Register** CITATION].	Submitted on June 22, 2017.
Rule 324	Stationary Reciprocating Internal Combustion Engines (RICE).	11/02/2016	7/20/2020, [INSERT **Federal Register** CITATION].	Submitted on June 22, 2017.
*	* *	*	*	* *

* * * * *

■ 4. Amend § 52.133 by adding paragraph (h) to read as follows:

§ 52.133 Rules and regulations.

* * * * *

(h) Maricopa County Air Quality Department Rule 322 ''Power Plant Operations'', submitted on June 22, 2017, contains: An option for the Air Pollution Control Officer to apply alternative emission limits to applicable equipment, and alternative compliance deadlines, without Agency approval of those limits and deadlines into the Arizona State Implementation Plan; limits that have not been demonstrated to meet RACT; overly broad exemptions from certain requirements during emergency fuel use operations; and a lack of sufficient compliance determination requirements. Therefore, this rule is disapproved.

[FR Doc. 2020–14095 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0400; FRL–10011–87–Region 7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This final rule is effective on August 19, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0400. 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, *i.e.,* 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 information.

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

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

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I. What is being addressed in this document?

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

As explained in detail in the EPA's proposed rule, Missouri has demonstrated that removal of 10 CSR 10–2.360 will not interfere with attainment of the NAAQS, reasonable further progress [1] or any other applicable requirement of the CAA because the single source subject to the rule has permanently ceased operations and removal of the rule will not cause VOC emissions to increase. 85 FR 22378, April 22, 2020. Therefore, the EPA is finalizing its proposal to remove 10 CSR 10–2.360 from the SIP.

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

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

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened April 22, 2020, the date of its publication in the **Federal Register** and closed on May 22, 2020. During this period, the EPA received four comments. Three of the comments were not adverse and do not require a response from the EPA. The remaining comment is addressed in this document.

Comment: The commenter stated that they did not support this action because industrial cooking produces significant amounts of black carbon or soot and indoor air pollution, referring to cooking

[1] Reasonable further progress is not applicable to the Kansas City Area because the area is in attainment of all applicable ozone standards.

over open fires or on inefficient cookstoves. The commenter also requested that a comprehensive study should be conducted for each existing bakery in the Kansas City Area that is currently operating under Missouri's SIP rule 10 CSR 2.360 before any deregulation. The commenter also stated that the rule should be changed to apply only to existing bakeries and to exclude any overlap with the NSR permitting program.

Response: The regulation being rescinded applies to commercial bakery ovens, not cookstoves. Commercial bakery ovens differ from cookstoves in important ways. Simple cookstoves burn solid fuels such as coal, wood, and animal dung.[2] These cookstoves emit large amounts of pollutants, including particulate matter (PM), carbon monoxide (CO), metals, hydrocarbons, oxygenated organic compounds, and chlorinated organic compounds, depending on fuel and stove types.

By contrast, commercial bakery ovens burn gaseous fuels like natural gas.[3] The primary pollutant produced in the commercial bakery process is VOC's from the yeast metabolism and emitted when the dough is exposed to the high temperatures of the bakery oven. The emissions are vented outdoors often through elevated stacks.

This rule only controlled VOC emissions from commercial bakery ovens and does not impact emissions from cookstoves.

The commenter requests a study of other bakeries in the Kansas City Area operating under 10 CSR 10–2.360. As we stated in the proposal, the only source that was subject to the rule, has been shut down since 2001 and was dismantled. No new commercial bakery oven facilities have commenced operation in the area since Missouri developed this rule. As stated in the proposal, air quality in the Kansas City area has also steadily improved. The air monitoring data for the area can be found at *https://www.epa.gov/air-trends/air-quality-design-values.*

The commenter proposes that the rule should be changed to only apply to existing sources so that there is no overlap with NSR permitting. As stated in the proposal and above, there are no sources currently subject to the rule. New sources and existing sources who meet certain criteria when modifying their facility are subject to NSR permitting. The NSR rules are contained in a separate portion of the Clean Air Act and work together with RACT rules, such as this one, to ensure the air quality goals of the Clean Air Act are met.

[2] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673244/.*

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

IV. What action is the EPA taking?

The EPA is taking final action to approve Missouri's request to remove 10 CSR 10–2.360 from the SIP.

V. Incorporation by Reference

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

VI. 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: July 1, 2020.

James Gulliford,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

§ 52.1320 [Amended]

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

[FR Doc. 2020–14653 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0155 and EPA–HQ–OPP–2019–0383; FRL–10008–84]

Hexythiazox; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing tolerances for residues of the ovicide/miticide hexythiazox in or on Caneberry, Subgroup 13–07A, by increasing the current tolerance from 1 part per million (ppm) to 3 ppm; and on Date, dried, by increasing the current tolerance from 1.0 ppm to 3 ppm. This regulation also establishes a tolerance for residues of the ovicide/miticide hexythiazox in or on Tea, dried at 15 ppm. Gowan Company and the Tea Association of the USA, Inc. requested these tolerances and tolerance revisions under the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a.

DATES: This regulation is effective July 20, 2020. Objections and requests for hearings must be received on or before September 18, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2017–0155 and EPA–HQ–OPP–2019–0383, are available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805.

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID numbers EPA–HQ–OPP–2017–0155 and EPA–HQ–OPP–2019–0383 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 18, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID numbers EPA–HQ–OPP–2017–0155 and EPA–HQ–OPP–2019–0383, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 11, 2020 (85 FR 7708) (FRL–10005–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a

pesticide petition (PP 9F8737) by Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. The petition requested that 40 CFR 180.448 be amended by increasing the existing tolerances for residues of the ovicide/miticide hexythiazox, (4*R*,5*R*)-*rel*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide, in or on caneberry, subgroup 13–07A to 3.0 parts per million (ppm) and date, dried to 3.0 ppm.

In addition, in the **Federal Register** of August 30, 2019 (84 FR 45702) (FRL–9998–15), EPA issued another document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8756) by the Tea Association of the USA, Inc., 362 5th Avenue, Suite 1002, New York, NY 10001–2251. This petition requested that 40 CFR part 180.448 be amended by establishing tolerances for residues of the ovicide/miticide hexythiazox, (4*R*,5*R*)-*rel*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide, in or on tea, dried at 15.0 ppm.

These documents referenced summaries of the petitions prepared by the Gowan Company and the Tea Association of the USA, Inc., which are available in the referenced dockets, *http://www.regulations.gov.* There were no substantive comments received in response to either notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for hexythiazox including exposure resulting from the tolerances established by this action. A summary of EPA's assessment of exposures and risks associated with hexythiazox follows.

In the **Federal Register** on October 30, 2017 (82 FR 50084) (FRL–9968–12), EPA published a final rule amending an existing tolerance for residues of the ovicide/miticide hexythiazox in or on Hop, dried cone based on the Agency's determination that aggregate exposure to hexythiazox is safe for the U.S. general population and all population subgroups, including infants and children. That document contains a summary of the toxicological profile and points of departure (PODs), assumptions for exposure assessment, and the EPA's determination regarding the children's safety factor which have not changed.

The toxicological endpoints table included in the last rule included inhalation exposure scenarios because EPA had concluded that there was a potential for residential handler inhalation exposure from uses on the label. EPA now assumes that products requiring personal protective equipment (PPE) on the label are not intended for homeowner use and there is no residential exposure associated with hexythiazox. Therefore, the aggregate exposure assessment no longer includes residential handler exposures, and the inhalation point of departure is no longer relevant for the FFDCA safety determination of hexythiazox. More detailed information on the risk assessment supporting the October 30, 2017 **Federal Register** can be found in the document entitled, ''Hexythiazox: Human Health Risk Assessment for Amended Use on Hops'' by going to *http://www.regulations.gov.* The referenced document is available in docket ID number EPA–HQ–OPP–2017–0155.

An acute dietary risk assessment is not required since no endpoint attributable to a single oral exposure was identified from the available toxicity database. Thus, there are no acute dietary risk estimates of concern for the U.S. general population or any population subgroup, including infants and children. EPA conducted an updated chronic dietary exposure assessment, taking into consideration exposures from already established tolerances as well as the new and modified tolerances in this action. Chronic risks are below the Agency's level of concern: 97% of the chronic population adjusted dose (cPAD) for children 1–2 years old, the population group with the highest exposure. Hexythiazox is classified as ''Likely to be Carcinogenic to Humans.'' Based on the results of the chronic assessment, which is protective of potential carcinogenicity, EPA does not expect exposure to hexythiazox to pose a cancer risk. Using the exposure assumptions described for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate margins of exposures above the level of concern of 100 for all scenarios assessed and are not of concern.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the U.S. general population, or to infants and children, from aggregate exposure to hexythiazox residues. More detailed information on the subject action to amend the existing tolerances in or on Caneberry, Subgroup 13–07A and on Date, dried, and to establish a tolerance in or on Tea, dried can be found in the document entitled, ''Hexythiazox: Human Health Risk Assessment for Amended Tolerances on Caneberry Subgroup 13–07A and Dates, Dried and Establishment of a Tolerance Without U.S. Registration for Residues in Tea'' by going to *http://www.regulations.gov.* The referenced document is available in the dockets established by this action, which are described under **ADDRESSES**. Locate and click on the hyperlinks for docket ID numbers EPA–HQ–OPP–2017–0155 and EPA–HQ–OPP–2019–0383.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate High-Performance Liquid Chromatograph/Ultraviolet Detection (HPLC/UV) analytical method is available for the enforcement of tolerances for residues of hexythiazox and its metabolites containing the PT–1–3 moiety in crop and livestock commodities. This method is listed in the U.S. EPA Index of Residue Analytical Methods under hexythiazox as method AMR–985–87. Hexythiazox has been tested FDA Multiresidue protocols C through E and the findings have been forwarded to the FDA. Hexythiazox metabolites were not recovered through protocols C through E.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Ft. Meade, MD 20755–5350; telephone number: (410) 305–

2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL on tea at 15 ppm, which harmonizes with the U.S. tolerance on tea. Codex has also established an MRL for date at 2 ppm. The U.S. tolerance is not harmonized with this MRL because the U.S. method for measuring residues includes the metabolites, whereas the Codex MRL only includes measurement of the parent compound. The Codex has not established an MRL for residues of hexythiazox on raspberry, a representative commodity for caneberry subgroup 13–07A.

V. Conclusion

Therefore, tolerances are amended for residues of the ovicide/miticide hexythiazox, (4*R*,5*R*)-*rel*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide, in or on Caneberry, subgroup 13–07A at 3 parts per million (ppm) and Date, dried at 3 ppm; and a new tolerance is being established in or on Tea, dried at 15 ppm.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, 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) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. 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 in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.448 amend the table in paragraph (a) by revising the entries for ''Caneberry subgroup 13–07A'' and ''Date, dried fruit'' and adding in alphabetical order an entry for ''Tea, dried'' to read as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Caneberry, Subgroup 13–07A ..	3
* * * * *	
Date, dried	3
* * * * *	
Tea, dried [1]	15
* * * * *	

[1] There are no U.S. registrations for this commodity as of July 20, 2020.

* * * * *

[FR Doc. 2020–14394 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0523; FRL–10010–91]

Quinclorac; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the tolerance for residues of quinclorac in or on rice, grain. BASF Corporation requested this tolerance amendment under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 20, 2020. Objections and requests for hearings must be received on or before September 18, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0523, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0523 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 18, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0523, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 28, 2019 (84 FR 57685) (FRL–10001–11), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F8770) by BASF Corporation, 26 Davis Drive, Research Triangle Park, North Carolina 27709. The petition requested that 40 CFR part 180.463 be amended by raising the existing tolerance for residues of the herbicide quinclorac, in or on rice, grain to 10.0 parts per million (ppm). That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what was requested, by amending the tolerance of quinclorac in or on rice, bran to 30 ppm. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish or amend a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to

give special consideration to exposure of infants and children to the pesticide chemical residue in establishing or amending a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for quinclorac including exposure resulting from the tolerance amended by this action. EPA's assessment of exposures and risks associated with quinclorac follows.

On December 4, 2017, EPA published in the **Federal Register** a final rule establishing tolerances for residues of quinclorac in or on several commodities based on the Agency's conclusion that aggregate exposure to quinclorac is safe for the general population, including infants and children. *See* 82 FR 57144 (FRL–9970–05). Because certain elements of EPA's safety assessment have not changed since that rulemaking, EPA is incorporating by reference portions of that rulemaking into this document—in particular, the toxicological profile and points of departure, cumulative risk statement, and the Agency's determination regarding the children's safety factor. In addition, because the residential exposures and drinking water exposures have not changed, those sections are also incorporated by reference, but the Agency did conduct updated dietary and aggregate risk assessments in order to incorporate the higher residues of quinclorac on rice.

The dietary exposure assessment was updated, assuming 100% crop treated (PCT), tolerance-level residues, an empirical processing factor (rapeseed oil, 1.5x) and HED's 2018 default processing factors, and the highest estimated drinking water concentrations (EDWCs) from acute/chronic ground water exposure. EPA's aggregate exposure assessment incorporated this revised dietary exposure, as well as exposure in drinking water and from residential sources, although those latter exposures are not impacted by the amended tolerance on rice, grain and thus have not changed since the last assessment.

Acute dietary risks are below the Agency's level of concern: 2.6% of the acute population adjusted dose (aPAD) for females age 13 to 49, the only population subgroup for which an acute endpoint was selected. Chronic dietary risks are below the Agency's level of concern: 11% of the chronic population adjusted dose (cPAD) for infants <1 year of age, the population subgroup with the highest exposure. Residential handler inhalation exposures for adults as well as post-application incidental oral exposures for children from registered uses of quinclorac in residential areas were assessed previously and no risks of concern were identified. Using the exposure assumptions described for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate margins of exposures above the level of concern of 100 for all scenarios assessed and are not of concern. There are no uses resulting in intermediate-term residential exposures.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to quinclorac residues. Further information about EPA's risk assessment and safety analysis for residues of quinclorac can be found in the document entitled, ''Quinclorac: Human Health Risk Assessment for Rice Commodity Tolerance Increases'' by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2019–0523.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods (gas chromatography/electron capture detector (GC/ECD) and liquid chromatography with tandem mass spectrometry (LC/MS/MS)) are available for enforcing quinclorac tolerances on plant and livestock commodities.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. Codex has established an MRL for quinclorac in or on rice at 10 ppm. This MRL is the same as the tolerance amended for quinclorac in the United States. Codex has not established an MRL for quinclorac in or on rice bran. Therefore, harmonization is not an issue for this commodity.

C. Revisions to Petitioned-For Tolerances

As a result of the tolerance increase on rice grain, the tolerance of the processed commodity rice, bran also needs to be increased. EPA used the highest average field trial value for rice reflecting the proposed foliar broadcast use, and the rice, bran processing factor to determine the needed tolerance of 30 ppm in or on rice, bran.

V. Conclusion

Therefore, tolerances are modified for residues of quinclorac in or on rice, grain to 10 ppm; and rice, bran to 30 ppm.

VI. Statutory and Executive Order Reviews

This action modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, 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) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. 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 in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 12, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.463 amend paragraph (a)(1) by designating the table and revising in newly designated Table 1 to paragraph (a)(1) the entries for ''Rice, bran'' and ''Rice, grain'' to read as follows:

§ 180.463180.463 Quinclorac; tolerances for residues.

(a)(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Rice, bran	30
Rice, grain	10
* * * * *	

* * * * *

[FR Doc. 2020–14395 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0571; FRL–10010–64]

Magnesium Sulfate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of magnesium sulfate anhydrous (CAS Reg. No. 7487–88–9); magnesium sulfate monohydrate (CAS Reg. No. 14168–73–1); magnesium sulfate trihydrate (CAS Reg. No. 15320–30–6); magnesium sulfate tetrahydrate (CAS Reg. No. 24378–31–2); magnesium sulfate pentahydrate (CAS Reg. No. 15553–21–6); magnesium sulfate hexahydrate (CAS Reg. No. 17830–18–1); and magnesium sulfate heptahydrate (CAS Reg. No. 10034–99–8), collectively referred to as magnesium sulfate, when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at an end-use concentration not to exceed 4400 parts per million (ppm). Ecolab, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of exemptions from the requirement of a tolerance for magnesium sulfate. This regulation eliminates the need to establish a maximum permissible level for residues of magnesium sulfate when used in accordance with these exemptions.

DATES: This regulation is effective July 20, 2020. Objections and requests for hearings must be received on or before September 18, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0571, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0571 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 18, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0571, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 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.*

II. Petition for Exemption

In the **Federal Register** of February 4, 2020 (85 FR 6129) (FRL–10003–17), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11325) by Ecolab, Inc., 1 Ecolab Place, St. Paul, MN 55102. The petition requested that 40 CFR 180.940(a) be amended by establishing exemptions from the requirement of a tolerance for residues of magnesium sulfate when used as an inert ingredient at an upper limit of 4,400 ppm in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. That document referenced a summary of the petition prepared by Ecolab, Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit V.B.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that EPA has determined that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but it does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established. Consistent with FFDCA section 408(c)(2)(A) and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to magnesium sulfate, including exposure resulting from the exemptions established by this action. EPA's assessment of exposures and risks associated with magnesium sulfate follows.

A. Toxicological Profile

Magnesium and sulfate are both abundant in the natural enviroment and are necessary for human life. Magnesium sulfate is commonly found in food and water, including as a naturally occuring element or as an additive. EPA has evaluated the available toxicity data for magnesium sulfate and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by magnesium sulfate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Available studies on magnesium sulfate include an oral toxicity study, a dermal irritation study, a dermal sensitization study, a combined oral repeat dose reproduction/developmental toxicity screening test, and a 1-year inhalation cancer study in rats. No adverse effects of treatment were seen at the highest dose tested in the repeat dose oral study in rats at the NOAEL of 450 mg/kg/day. In addition, there was no evidence of carcinogenicity or neuropathological changes or effects reported in any of the studies. Magnesium sulfate was also tested for genotoxic and/or mutagenic effects using bacterial reverse mutation tests and *in vitro* mammalian chromosome aberration tests. The agency does not believe magnesium sulfate will be carcinogenic or neurotoxic.

All studies showed low acute and repeat dose toxicity and no reproductive/developmental toxicity. The primary health effect associated with magnesium sulfate is an osmotic laxative effect at high doses. The laxative effect is transient, and recovery is rapid and is usually observed only when following acute exposures to high concentrations above the limit dose of 1,000 mg/kg/day.

B. Toxicological Points of Departure/Levels of Concern

No toxicological endpoint of concern for magnesium sulfate has been identified in the database.

C. Exposure Assessment

1. *Dietary exposure from food, feed uses, and drinking water.* In evaluating dietary exposure to magnesium sulfate, EPA considered exposure under the current and proposed exemption from the requirement of a tolerance. Magnesium sulfate is currently exempt from the requirement of a tolerance under 40 CFR 180.910 for use as an inert ingredient in pesticide formulations used pre- and post-harvest. Dietary exposure to magnesium sulfate may occur from eating foods treated with pesticide formulations containing this inert ingredient and drinking water containing runoff from soils containing the treated crops. In addition, magnesium sulfate is used as a food additive and a dietary supplement. However, no toxicological endpoint of concern was identified for magnesium sulfate and therefore, a quantitative assessment of dietary exposure is not necessary.

2. *Non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Residential exposure to magnesium sulfate may occur based on its use as an inert ingredient in pesticide formulations registered for residential uses. Additional non-dietary exposure may occur from use of magnesium sulfate in pharmaceutical products and cosmetics. However, no toxicological endpoint of concern was identified for magnesium sulfate and therefore a quantitative residential exposure assessment for magnesium sulfate was not conducted.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found magnesium sulfate to share a common mechanism of toxicity with any other substances, and magnesium sulfate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that magnesium sulfate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of the FFDCA requires EPA to retain an additional tenfold margin of safety in the case of threshold effects to ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. As noted in Unit IV.B., there is no indication of threshold effects being caused by magnesium sulfate. Therefore, this requirement does not apply to the present analysis. Moreover, due to the lack of any toxicological endpoints of concern, EPA conducted a qualitative assessment of magnesium sulfate, which does not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on magnesium sulfate, EPA has determined that there is a reasonable certainty that no harm to the general population or any population subgroup, including infants and children, will result from aggregate exposure to magnesium sulfate residues. Therefore, the establishment of exemptions from the requirement of a tolerance under 40 CFR 180.940(a) for residues of magnesium sulfate when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum end-use concentration of 4,400 ppm is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Response to Comments

One comment was submitted generally opposing the establishment of these tolerance exemptions and chemical use overall. Although the Agency recognizes that some individuals believe that chemicals should be banned, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish exemptions from the requirement of a tolerance when it determines that the exemption is safe. Upon consideration of the validity, completeness, and reliability of the available data as well

as other factors the FFDCA requires EPA to consider, EPA has determined that this exemption from the requirement of a tolerance is safe. The commenter provided no information to support a conclusion that the exemption was not safe.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are established under 40 CFR 180.940(a) for residues of magnesium sulfate anhydrous (CAS Reg. No. 7487–88–9); magnesium sulfate monohydrate (CAS Reg. No. 14168–73–1); magnesium sulfate trihydrate (CAS Reg. No. 15320–30–6); magnesium sulfate tetrahydrate (CAS Reg. No. 24378–31–2); magnesium sulfate pentahydrate (CAS Reg. No. 15553–21–6); magnesium sulfate hexahydrate (CAS Reg. No. 17830–18–1); and magnesium sulfate heptahydrate (CAS Reg. No. 10034–99–8) when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at an end-use concentration not to exceed 4,400 ppm.

VII. Statutory and Executive Order Reviews

This action establishes tolerance exemptions under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, 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) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. 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 in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.940, amend the table in paragraph (a) by adding, in alphabetical order, ''Magnesium sulfate anhydrous'', ''Magnesium sulfate heptahydrate'', ''Magnesium sulfate hexahydrate'', ''Magnesium sulfate monohydrate'', ''Magnesium sulfate pentahydrate'', ''Magnesium sulfate tetrahydrate'', and ''Magnesium sulfate trihydrate'' to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
*	*	*
Magnesium sulfate anhydrous	7487–88–9	When ready for use, the end-use concentration is not to exceed 4400 ppm.
Magnesium sulfate heptahydrate	10034–99–8	When ready for use, the end-use concentration is not to exceed 4400 ppm.
Magnesium sulfate hexahydrate	7830–18–1	When ready for use, the end-use concentration is not to exceed 4400 ppm.
Magnesium sulfate monohydrate	14168–73–1	When ready for use, the end-use concentration is not to exceed 4400 ppm.
Magnesium sulfate pentahydrate	5553–21–6	When ready for use, the end-use concentration is not to exceed 4400 ppm.
Magnesium sulfate tetrahydrate	24378–31–2	When ready for use, the end-use concentration is not to exceed 4400 ppm.
Magnesium sulfate trihydrate	15320–30–6	When ready for use, the end-use concentration is not to exceed 4400 ppm.
*	*	*

* * * * *

[FR Doc. 2020–14401 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2010–0636; FRL–10011–18–Region 2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hormigas Ground Water Plume Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is publishing a direct final Notice of Deletion of the Hormigas Ground Water Plume Superfund Site (Site), located in Caguas, Puerto Rico, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA, with the concurrence of the Commonwealth of Puerto Rico (Commonwealth), through the Department of Natural and Environmental Resources (DNER), has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 18, 2020 unless the EPA receives adverse comments by August 19, 2020. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2010–0636, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email: bosque.adalberto@epa.gov.*
- *Phone:* Public comment by phone may be made by calling (787) 977–5819 and following the directions provided for public comment.
- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2010–0636. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. 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, will be publicly available only in the hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.*

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on the EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT: Dr. Adalberto Bosque Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, U.S. Environmental Protection Agency, City View Plaza II—Suite 7000, 48 RD, 165 Km. 1.2, Guaynabo, PR 00968–8069, (787) 977–5825, email: *bosque.adalberto@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The EPA Region 2 is publishing this direct final Notice of Deletion of the Hormigas Ground Water Plume Superfund Site, from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund

(Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses procedures that the EPA is using for this action. Section IV of this document discusses the Hormigas Ground Water Plume Superfund Site and demonstrates how it meets the deletion criteria. Section V of this document discusses the EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the Commonwealth prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) The EPA has provided the Commonwealth 30 working days for review of this document and the parallel Notice of Intent to Delete prior to their publication today, and the Commonwealth, through Department of Natural and Environmental Resources, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major newspaper known as Primera Hora. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, the EPA will publish a timely document of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist the EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides the EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Hormigas Ground Water Plume Site (CERCLIS ID PRN000206359) is located between the municipalities of Caguas and Aguas Buenas in east-central Puerto Rico, within the area of two former public water supply wells, the Hormigas and Eufracia wells. Volatile organic compounds (VOCs) were detected above federal Safe Drinking Water Act Maximum Contaminant Levels (MCLs) in the Eufracia public water supply well in 2006. Groundwater samples collected and analyzed by the Puerto Rico Aqueduct and Sewer Authority from the Hormigas public water system revealed the presence of tetrachloroethene in the Eufracia public supply well at levels as high as 29 micrograms per liter (µg/L). In February 2009, the Eufracia public supply well was ordered closed by the Puerto Rico Department of Health. Subsequently, the Hormigas public supply well was also closed, thus shutting down the entire Hormigas water supply system. Currently, the community is served by the Cidra public supply system, which is located outside of the impacted area.

The Site was proposed to the NPL on October 21, 2010 (75 FR 64976) and added as final to the NPL on March 10, 2011 (76 FR 13084). The EPA added the Site to the NPL because of the VOCs that were found in groundwater that was the potable drinking water source for the Cañaboncito and Caguitas communities. The VOCs are classified as site-related contaminants because they were detected in the Eufracia public supply well at elevated levels. The EPA funded a remedial investigation (RI) to assess site conditions and evaluate alternatives, if necessary, to address those conditions and select a remedy.

Remedial Investigation and Feasibility Study (RI/FS)

During 2013–2016, the RI was performed to define the nature and extent of contamination in Site media by collecting and analyzing samples and then comparing analytical results to federal, Commonwealth, and Site-specific screening criteria. During the RI, the VOC contamination in the Eufracia well previously identified in 2006 had dissipated to such a degree that no exceedances of MCLs were noted. Furthermore, no VOC source areas were identified in soils, and no residual contaminant plume was found. The EPA concluded in the RI that the VOCs detected prior to 2010 were attributable to a highly localized, short-term release, and that natural processes within the aquifer (*e.g.,* biodegradation and dispersion) caused the VOC residues to decrease during the intervening period when the EPA's RI was being performed. Because no Site-related contamination was found, the EPA determined that no action was necessary to protect public health or welfare or the environment. The DNER concurs with the EPA's recommendation. On September 28, 2016, a ''No Action'' Record of Decision was issued for the Site. No additional monitoring or operation and maintenance of a remedy is required. Five-year reviews will not be required.

On September 19 and 20, 2017, Hurricane Maria severely damaged the Commonwealth. Coming just two weeks after Hurricane Irma, the storm significantly damaged local infrastructure and interrupted the provision of essential services to the people of Puerto Rico. As part of the Commonwealth's recovery efforts, the EPA assisted by investigating for potential on-site and off-site environmental impacts and structural/physical damages from the 2017 hurricanes to existing NPL sites located

in Puerto Rico. Synoptic gauging of groundwater levels was performed at the Site on October 26, 2018, to support evaluation of hydrogeologic impacts as a result of the hurricanes. One round of sampling was performed from October 27 to 31, 2018, with samples collected from the former public supply wells (the Hormigas and Eufracia wells) and two wells the EPA had installed as part of the RI. Post-Hurricane Maria VOC results revealed that concentrations of site-related contaminants remained consistent with previous sampling results conducted during the RI.

Community Involvement

Public participation activities for the Site have been satisfied as required pursuant to sections 113(k) and 117 of CERCLA, 42 U.S.C. 9613(k) and 9617. As part of the remedy selection process in 2016, the public was invited to comment on the proposed ''No Action'' remedy. All other documents and information that the EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above and at the EPA's website for the Site: *https://www.epa.gov/superfund/hormigas-ground-water-plume.* The public is provided the opportunity to comment on this proposed action.

Determination That the Site Meets the Criteria for Deletion in the NCP

The EPA, with the concurrence of the Commonwealth through the DNER, has determined that no further response is appropriate. The criteria for deletion from the NPL, as set forth at 40 CFR 300.425(e), are met. A RI/FS has shown that the release poses no significant threat to public health or the environment, and, therefore, taking remedial measures are not appropriate. The Commonwealth, through the DNER in a December 19, 2019 letter, concurred with the proposed deletion of the Site from the NPL.

V. Deletion Action

The EPA, with concurrence of the Commonwealth through the DNER, has determined that no further response action under CERCLA is appropriate. Therefore, the EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, the EPA is taking it without prior publication. This action will be effective September 18, 2020 unless the EPA receives adverse comments by August 19, 2020. If adverse comments are received within the 30-day public comment period, the EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Peter Lopez,

Regional Administrator, Region 2.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Appendix B to Part 300—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended by removing the entry ''PR'', ''Hormigas Ground Water Plume'', ''Caguas''.

[FR Doc. 2020–15644 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2020–0005; Internal Agency Docket No. FEMA–8637]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674–1087.

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

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Butler, Township of, Adams County	421247	July 7, 1975, Emerg; August 19, 1985, Reg; July 22, 2020, Susp.	July 22, 2020	July 22, 2020.
Carroll Valley, Borough of, Adams County.	422635	December 4, 1975, Emerg; September 2, 1988, Reg; July 22, 2020, Susp.	.....do	Do.
Cumberland, Township of, Adams County.	421249	November 6, 1974, Emerg; September 30, 1981, Reg; July 22, 2020, Susp.	.....do	Do.
Hamiltonban, Township of, Adams County.	421252	October 15, 1975, Emerg; July 4, 1988, Reg; July 22, 2020, Susp.	.....do	Do.
Littlestown, Borough of, Adams County	421244	March 6, 1975, Emerg; June 25, 1976, Reg; July 22, 2020, Susp.	.....do	Do.
Menallen, Township of, Adams County	421256	December 11, 1975, Emerg; July 4, 1988, Reg; July 22, 2020, Susp.	.....do	Do.
Mount Joy, Township of, Adams County	421257	July 24, 1975, Emerg; July 4, 1988, Reg; July 22, 2020, Susp.	.....do	Do.
Mount Pleasant, Township of, Adams County.	421258	July 2, 1975, Emerg; December 1, 1981, Reg; July 22, 2020, Susp.	.....do	Do.
Straban, Township of, Adams County ..	421259	January 13, 1975, Emerg; July 16, 1981, Reg; July 22, 2020, Susp.	.....do	Do.
Union, Township of, Adams County.	421261	March 17, 1976, Emerg; December 4, 1985, Reg; July 22, 2020, Susp.	.....do	Do.
Region VII				
Iowa:				
Andover, City of, Clinton County	190034	N/A, Emerg; July 9, 2013, Reg; July 22, 2020, Susp.	.....do	Do.
Calamus, City of, Clinton County	190711	N/A, Emerg; August 9, 2011, Reg; July 22, 2020, Susp.	.....do	Do.
Camanche, City of, Clinton County	190086	February 9, 1973, Emerg; December 18, 1984, Reg; July 22, 2020, Susp.	.....do	Do.
Clayton, City of, Clayton County	190072	February 24, 1975, Emerg; March 16, 1989, Reg; July 22, 2020, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Clayton County, Unincorporated Areas	190858	May 3, 1976, Emerg; May 1, 1990, Reg; July 22, 2020, Susp.	.....do	Do.
Clinton, City of, Clinton County	190088	June 11, 1974, Emerg; September 17, 1980, Reg; July 22, 2020, Susp.	.....do	Do.
Clinton County, Unincorporated Areas ..	190859	July 2, 1975, Emerg; September 1, 1990, Reg; July 22, 2020, Susp.	.....do	Do.
DeWitt, City of, Clinton County	190568	N/A, Emerg; October 27, 1995, Reg; July 22, 2020, Susp.	.....do	Do.
Elkader, City of, Clayton County	190073	October 3, 1974, Emerg; September 29, 1978, Reg; July 22, 2020, Susp.	.....do	Do.
Elkport, City of, Clayton County	190074	December 24, 1974, Emerg; August 1, 1986, Reg; July 22, 2020, Susp.	.....do	Do.
Fort Madison, City of, Lee County	190184	April 11, 1974, Emerg; May 3, 1982, Reg; July 22, 2020, Susp.	.....do	Do.
Garber, City of, Clayton County	190076	March 7, 1975, Emerg; August 1, 1986, Reg; July 22, 2020, Susp.	.....do	Do.
Garnavillo, City of, Clayton County	190580	N/A, Emerg; August 9, 2011, Reg; July 22, 2020, Susp.	.....do	Do.
Goose Lake, City of, Clinton County	190734	N/A, Emerg; November 9, 2011, Reg; July 22, 2020, Susp.	.....do	Do.
Grand Mound, City of, Clinton County ..	190586	N/A, Emerg; November 9, 2011, Reg; July 22, 2020, Susp.	.....do	Do.
Guttenberg, City of, Clayton County	190077	May 1, 1974, Emerg; March 4, 1980, Reg; July 22, 2020, Susp.	.....do	Do.
Keokuk, City of, Lee County	190185	March 27, 1974, Emerg; March 1, 1978, Reg; July 22, 2020, Susp.	.....do	Do.
Lee County, Unincorporated Areas	190182	September 11, 1978, Emerg; June 15, 1981, Reg; July 22, 2020, Susp.	.....do	Do.
Lost Nation, City of, Clinton County	190611	N/A, Emerg; July 22, 2014, Reg; July 22, 2020, Susp.	.....do	Do.
Low Moor, City of, Clinton County	190766	N/A, Emerg; January 12, 2017, Reg; July 22, 2020, Susp.	.....do	Do.
Luana, City of, Clayton County	190767	February 18, 2011, Emerg; June 2, 2011, Reg; July 22, 2020, Susp.	.....do	Do.
Marquette, City of, Clayton County	195182	April 16, 1971, Emerg; January 19, 1972, Reg; July 22, 2020, Susp.	.....do	Do.
McGregor, City of, Clayton County	195183	April 9, 1971, Emerg; January 19, 1972, Reg; July 22, 2020, Susp.	.....do	Do.
Montrose, City of, Lee County	190186	August 8, 1975, Emerg; February 18, 1981, Reg; July 22, 2020, Susp.	.....do	Do.
North Buena Vista, City of, Clayton County.	190082	N/A, Emerg; August 3, 2011, Reg; July 22, 2020, Susp.	.....do	Do.
Saint Olaf, City of, Clayton County	190084	March 10, 1975, Emerg; August 1, 1986, Reg; July 22, 2020, Susp.	.....do	Do.
Strawberry Point, City of, Clayton County.	190662	N/A, Emerg; October 19, 2010, Reg; July 22, 2020, Susp.	.....do	Do.
Toronto, City of, Clinton County	190118	N/A, Emerg; July 22, 2014, Reg; July 22, 2020, Susp.	.....do	Do.
Welton, City of, Clinton County	190089	October 25, 1977, Emerg; August 5, 1985, Reg; July 22, 2020, Susp.	.....do	Do.

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

Katherine B. Fox,

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

[FR Doc. 2020–14861 Filed 7–17–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 170 and 171

RIN 0955–AA01

21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program

Correction

In rule document 2020–07419, beginning on page 25642 in the issue of Friday, May 1, 2020, make the following corrections:

§ 170.403 [Corrected]

■ 1. On page 25947, in § 170.403, in the first column, in the fourteenth line, ''November 2, 2020'' should read ''June 30, 2020''.

§ 170.405 [Corrected]

■ 2. On page 25949, in § 170.405, in the second column, in the eleventh and twelfth lines from the bottom, ''November 2, 2020'' should read ''June 30, 2020''.

[FR Doc. C1–2020–07419 Filed 7–17–20; 8:45 am]

BILLING CODE 1301–00–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket No. 18–86; FCC 19–81, FCC 20–60; FRS 16772]

Streamlining Licensing Procedures for Small Satellites

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission is streamlining its rules to facilitate the deployment of a class of satellites known as small satellites, which have relatively short duration missions. The Commission also announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the revisions to the Commission's rules.

DATES: Effective August 19, 2020.

FOR FURTHER INFORMATION CONTACT: Merissa Velez, International Bureau, Satellite Division, at 202–418–0751. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, 202–418–2918, or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* IB Docket No. 18–86; FCC 19–81, adopted on August 1, 2019, and released on August 2, 2019. The full text of this document is available on the Commission's website at *https://www.fcc.gov/document/streamlining-licensing-procedures-small-satellites-1.* This document also includes a summary of the Commission's subsequent *Order,* IB Docket No.18–86, FCC 20–60, adopted on May 8, 2020, and released on May 11, 2020. The full text of this document is available on the Commission's website at *https://www.fcc.gov/document/fcc-adopts-small-satellite-rules-effective-date-clarification-order.*

This document additionally announces that, on February 27, 2020, OMB approved, for a period of three years, the information collection requirements relating to the part 25 rules contained in the Commission's Report and Order, FCC 19–81, also published in this document. The OMB Control Number is 3060–0678. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comment on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW, Washington, DC 20554. Please include OMB Control Number 3060–0678 in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

I. Introduction

Recent technological innovation has spurred an increasing use of what have been colloquially termed ''small satellites'' or ''small sats'' for a wide variety of missions, ranging from short-term experimental missions conducting scientific experiments to longer term commercial communications and remote sensing missions. There are a number of ways of defining small satellites, but they are most often associated with small size (some based on the ''CubeSat'' standard [1]), short duration missions, and relatively low cost. Many small satellites have been part of government missions, but an ever-increasing number of non-governmental missions by companies, academic institutions, and others have used small satellites. The Communications Act of 1934, as amended, requires the issuance of a license for communications to and from the United States or from any U.S. satellite, and applications requesting a license or authorization to operate with small satellites represent a growing percentage of the number of satellite applications received by the Commission.

We take action to make available a new, optional licensing process for these small satellites. This will enable small satellite applicants to choose a streamlined licensing procedure and thereby take advantage of an easier application process, a lower application fee, and a shorter timeline for review than currently exists for applicants. We will refer to this alternative as the ''part 25 streamlined small satellite process.'' In so doing, we limit the regulatory burdens borne by applicants and offer potential radiofrequency interference protection for critical communication links, while promoting orbital debris mitigation and efficient use of spectrum. This action will support and encourage the increasing innovation in the small satellite sector and will help preserve U.S. leadership in space-based services and operations.

II. Background

The Commission's part 25 satellite licensing rules, primarily used by commercial systems, group satellites into two general categories—geostationary-satellite orbit (GSO) systems and non-geostationary-satellite orbit (NGSO) systems—for purposes of application processing.[2] This categorization is similarly reflected in the Commission's fee structure. As a result, an application for a single commercial NGSO small satellite with a planned two-year mission would be subject to the same application process and fee as an application for an NGSO communications system consisting of

[1] The ''CubeSat'' design is a standardized interface consisting of approximately 10 cm x 10 cm x 10 cm units. The scalable standard unit specification enables CubeSats to be fully enclosed in specifically developed deployment mechanisms and helps to provide greater access to launch services.

[2] Under part 25 of the Commission's rules, applications for satellites and satellite systems are filed either as GSO space station applications or NGSO space station or constellation applications. *See, e.g.,* 47 CFR 25.114(a).

hundreds or more satellites to be replenished on a regular basis.

On April 17, 2018 (83 FR 24064 (May 24, 2018)), the Commission released a notice of proposed rulemaking (NPRM or Small Satellite NPRM) proposing to modify the Commission's part 25 satellite licensing rules to create a new category of application specific to small satellites. The Commission sought comment on criteria that would define this new category and proposed that applicants meeting the criteria could take advantage of a simplified application, faster processing, and lower fees, among other things. The proposed streamlined licensing process was developed based on the features and characteristics that typically distinguish small satellite operations from other types of satellite operations, such as shorter orbital lifetime and less intensive frequency use. The NPRM detailed this small satellite procedure, which would serve as an optional alternative to existing procedures for authorization of small satellites. The NPRM also provided background information on the Commission's other processes for licensing and authorizing small satellites, including under the experimental (part 5) and amateur (part 97) rules, although no changes were proposed to either of those parts.

The NPRM also sought comment on topics related to spectrum use by small satellites. The Commission asked for comment on typical small satellite frequency use characteristics, how to facilitate compatibility with Federal operations, use of particular spectrum for inter-satellite links by small satellites, and other issues related to operations by small satellites in frequency bands including the 137–138 MHz, 148–150.05 MHz, and 1610.6–1613.8 MHz bands.

Finally, the NPRM sought comment on the appropriate application fee that would apply to the proposed optional part 25 streamlined process. The Commission proposed a $30,000 application fee. It noted that any changes to the annual regulatory fees applicable to the small satellites authorized under the streamlined process would be addressed through the separate annual proceeding for review of regulatory fees.

On May 21, 2018 (83 FR 36460 (July 30, 2018)), the Commission adopted its fiscal year (FY) 2018 notice of proposed rulemaking addressing regulatory fees, which sought comment on whether to adopt a new regulatory fee category for small satellites authorized under the proposed streamlined part 25 process, and if a new fee category were to be adopted, what the regulatory fee should be. The Commission adopted its FY 2018 schedule of regulatory fees in a Report and Order on August 28, 2018 (83 FR 47079 (Sept. 18, 2018)) (FY 2018 Report and Order), in which the Commission noted that it was deferring consideration of a new regulatory fee category and the appropriate regulatory fee for small satellites until the Commission adopted a definition of ''small satellites'' in the instant proceeding.

III. Report and Order

A. Adoption of a Streamlined Small Satellite and Small Spacecraft Process

Commenters to the NPRM overwhelmingly support the adoption of a new streamlined licensing process for small satellites within part 25 of the Commission's rules. Commenters agree that the current part 25 process can be overly burdensome for some companies seeking to launch small satellites into space.

We adopt here a streamlined version of part 25 for small satellite licensing. Applicants seeking authorization of small satellites can choose to take advantage of this streamlined small satellite process,[3] rather than using the other existing applicable licensing procedures. The goal of this small satellite process is to enable satellites that have shorter missions, less intensive spectrum use, and lower risk of producing orbital debris to be licensed on a streamlined basis.

Under the existing regime, some applicants may seek to operate a commercial system under the Commission's experimental licensing program because of the large cost difference between the experimental application fee and part 25 application fee, notwithstanding the fact that the experimental licensing regime is limited to non-commercial uses. The streamlined process adopted here avoids this issue, and is not limited to commercial or non-commercial applications. At the same time, applicants for experimental satellites whose planned operations fall within the scope of part 5 may continue to apply under the part 5 experimental licensing process.

Part 25 licenses and authorizations are typically applied for by commercial systems, and the adoption of this streamlined part 25 process provides increased opportunity for commercial small satellite systems to apply for a part 25 license. In addition, other operators may apply for a streamlined part 25 small satellite license should they choose to do so. For example, an operator with a planned mission to test new technology would have the choice of applying under either part 5 or part 25. If protection of communications links from harmful interference is important to the mission, that operator may choose to apply under part 25. Part 25 also offers the opportunity to provide commercial operations.

Commenters suggest that the Commission clarify how the proposed rules relate to other existing licensing and authorization processes, particularly those under parts 5 and 97 of the rules. For example, several commenters questioned whether satellite applicants would be prevented from applying for an experimental license under part 5 once the new part 25 rules are adopted. We emphasize that all of the existing options for satellite authorization will remain available, including the existing part 25, part 5 experimental, and part 97 amateur processes. No changes to those existing processes were proposed in the NPRM, and none are adopted here.

We adopt the NPRM proposal to make streamlined processing available to entities seeking access to the United States market using a non-U.S.-licensed space station, through a petition for declaratory ruling.[4] The Satellite Industry Association (SIA) and Commercial Smallsat Spectrum Management Association (CSSMA) express support for this proposal, provided that the foreign-licensed satellite or system is subject to the same requirements as U.S. applicants under the streamlined process and applicable reciprocity market-access requirements under the part 25 process. No commenters disagreed with the proposal. Although we use the term ''license'' at various points in this Order, the streamlined part 25 process will also be made available to applicants seeking U.S. market access, and conclude that such applicants will be subject to the small satellite streamlined process rules, application and regulatory fees under the new fee categories adopted for small satellites,[5] and the part 25 rules currently

[3] Wherever the context is clear, we may simply refer to this process as the ''small satellite process.''

[4] Entities seeking streamlined treatment would file a petition for declaratory ruling, rather than seeking to communicate with a non-U.S.-licensed space station through an earth station application.

[5] As discussed in further detail *infra,* we are adopting here a new application fee category for small satellites as part of the Commission's schedule of application fees, and this fee will be applicable to streamlined applicants petitioning for U.S. market access, in order to recover the costs of Commission processing of such applications. Similarly, we are adopting a new regulatory fee category for small satellites, which will include market access grantees.

applicable to entities requesting to access the United States market using a non-U.S.-licensed space station. We adopt minor revisions to § 25.137 of our rules, addressing non-U.S.-licensed space station application procedures, to add references to the streamlined small satellite process.

Some commenters requested that the Commission use terminology other than ''small satellite'' if the streamlined process includes criteria other than just satellite size. Given the number of criteria described below, it is unclear how all of these criteria could be reflected in a single title for the new streamlined process. As proposed, the rule section specifying the application procedures for the streamlined process, § 25.122, is titled ''Applications for streamlined small satellite authorization.'' We also adopt a definition of ''small satellite'' referencing the application rule section. Since all satellites authorized under this process will be small compared to the satellites historically licensed under part 25, we see no need to alter this title. To help avoid any confusion, however, we have referred to this process as the part 25 streamlined small satellite process, to make it clear that this new process is within part 25 of the Commission's rules.

As discussed below, we also make streamlined processing available to spacecraft with non-Earth orbit missions. Moon Express, Inc., the Commercial Spaceflight Federation, and the CSSMA suggest that if the streamlined process is made available to missions beyond Earth orbit, the Commission consider using the term ''spacecraft'' or ''small spacecraft,'' instead of or in addition to the term small satellite. We agree with using the term ''small spacecraft'' to refer to the space stations that will operate beyond Earth's orbit, and adopt a corresponding definition.[6]

B. Characteristics of a Satellite or System Qualifying for Streamlined Processing

In the NPRM, the Commission proposed a series of criteria that would define the types of operations that qualify for the small satellite process. The NPRM sought comment on these proposed eligibility criteria as well as any additional criteria that should be considered.

We received numerous comments on specific eligibility criteria, but almost all commenters agreed with the general proposal to establish a set of criteria to categorize part 25 small satellites for processing. The Boeing Company (Boeing), however, recommends that small commercial satellites, for purposes of the streamlined licensing process, be defined by a ''single, controlling characteristic, the nature of their orbital and spectrum sharing rights and obligations.'' Boeing believes that so long as the underlying principle that small commercial satellite licensees must, to the extent technically feasible, share orbital and spectrum resources with all other small commercial satellites, the Commission is unlikely to need to adopt many additional regulations governing the characteristics of such satellites. In a later section, we discuss Boeing's specific comments on the rights and sharing obligations of small satellites licensed under the streamlined process. We do not believe, however, that having a single characteristic regarding orbital and spectrum sharing rights is sufficient to establish the category of systems that may apply under the streamlined process. While the ability to share with other operations is a characteristic that the Commission will review, and an important one from an application processing perspective, the other characteristics proposed in the NPRM and discussed below are also important to ensure that the applications can be reviewed in a timely manner and support some of the benefits of the streamlined process to operators.[7]

We summarize below the characteristics of satellites/systems that we have concluded may be eligible for streamlined processing. These characteristics support processing on a streamlined basis. For example, the demonstration that the requested small satellite operations are compatible with existing operations and do not materially constrain future satellite operations supports exempting these satellites from the Commission's processing round procedures. In the text that follows, we address each of these characteristics/criteria in turn, including the specific rationale for each.

- Ten or fewer satellites under a single license. No limitation on the number of applications that may be filed.
- Maximum in-orbit lifetime of any individual satellite is six years, including time to de-orbit the satellite.
- All operations under a license will be completed within six years.
- Maximum mass of any individual satellite will be 180 kg, including propellant (''wet mass'').
- Satellite(s) will be deployed below 600 km altitude or have the capability to perform collision avoidance and de-orbit maneuvers using propulsion.
- Satellite(s) will release no planned debris.
- Satellite operator has assessed and limited the probability of debris being generated due to an accidental explosion resulting from the conversion of energy sources on board the satellite into energy that fragments the spacecraft.
- Probability of in-orbit collision between any satellite and large objects is 0.001 or less as calculated using current National Aeronautics and Space Administration (NASA) software or other higher fidelity model.
- Any individual satellite is 10 cm or larger in its smallest dimension.
- Satellite(s) will have a unique telemetry marker.
- Probability of casualty resulting from uncontrolled atmospheric re-entry of any satellite is zero, as calculated using current NASA software or other higher fidelity model.
- Licensees must have the capability to eliminate harmful interference when necessary under the terms of the license or other applicable regulations. In particular, satellites must have the capability for immediate cessation of emissions on telecommand.
- Radiofrequency operations will be compatible with existing operations in the requested frequency bands and not materially constrain future operations of other satellites in those frequency bands.

We note that several of these qualifying characteristics overlap with issues discussed in a separate proceeding addressing the Commission's rules on orbital debris mitigation generally—Mitigation of Orbital Debris in the New Space Age. The Commission adopted a notice of proposed rulemaking (84 FR 4742 (Feb. 19, 2019)) (Orbital Debris NPRM) in that proceeding in November 2018 and comments and reply comments were recently filed. The criteria we adopt here are based upon the record developed specifically in the docket for this proceeding. In the event that we reassess certain orbital debris risks as part of the separate, dedicated orbital debris proceeding, these criteria will be modified as necessary or appropriate to

[6] We therefore will refer to the process as the ''streamlined small spacecraft process'' when discussing an aspect of the streamlined process that would apply uniquely to these missions. Except as specified, *see, e.g.,* section III.B.10, the rules adopted will apply to both streamlined small satellites and streamlined small spacecraft.

[7] Accordingly, in some instances we anticipate that granting individualized waiver requests of the qualifying criteria would require too much individualized analysis and slow the regulatory process, thereby undermining the purpose of the rule(s).

conform to rules that would be generally applicable to Commission-authorized space stations, to ensure regulatory congruity.

1. Number of Satellites

We adopt the proposal in the NPRM to limit the number of satellites that can be authorized under an individual streamlined part 25 license to 10. This number has broad support among commenters as a limit on the number of small satellites under a single license. And though Boeing argues we should allow up to 30 satellites in a single application, that would allow a substantially larger constellation (and require a more intensive review) than what most small satellite applicants appear to desire—and in any event could be functionally achieved by applicants by applying for multiple licenses at the same time.

We also conclude that it is not necessary to place a limitation on the number of streamlined licenses that may be obtained by a single entity because of the other criteria that must be met for an applicant to qualify for streamlined processing. If multiple licenses are sought by the same entity, or an entity and affiliated entities, the Commission will have the opportunity to review each application to see if the proposed operations continue to meet the qualifications for streamlined processing, including, as described below, not materially constraining other operations in the requested frequency band. The grant of one application does not guarantee that subsequent applications will also be granted. We adopt here a requirement that applicants for the streamlined process identify related applications or grants, to help assist the Commission's understanding of a particular system or series of satellites or systems.

CSSMA, Audacy Corporation (Audacy), Analytical Space, the Commercial Spaceflight Federation, and other commenters argue that a limit on the number of streamlined process applications is unnecessary and may stifle innovation. CSSMA, for example, states that ten satellites may not be sufficient for all operators that are developing their technology while engaging commercially with customers, and notes that CSSMA has members that build and/or operate satellites for others and might seek several licenses, one for each system, under the streamlined process. We agree and believe the approach we adopt here—which does not place a limitation on the number of licenses that can be granted to a single entity—will accommodate innovative small satellite system concepts and business models.

Some commenters such as ORBCOMM and SpaceX express concern that applicants could unfairly manipulate the process and create larger satellite constellations that would otherwise not warrant streamlined treatment. ORBCOMM argues that the Commission should clarify that an applicant cannot file for multiple small satellite system licensees, thereby evading the ''more rigorous review of a conventional application.'' ORBCOMM, SpaceX, and others further argue that failure to limit a single company from obtaining licenses for multiple systems runs the risk of greater collision and interference issues, thereby rendering streamlined treatment inappropriate. While a theoretical possibility, when viewed in the context of the criteria established for the small satellite licensing process, these concerns are unlikely to be realized in practice. In particular, the six-year orbital lifetime and 600-kilometer maximum altitude (absent propulsion) criteria both correlate with lower collision risk, and the small size of these satellites also correlates with lower risk. Each application will be considered individually and placed on public notice.

What is more, we will require each streamlined process applicant to demonstrate in its application that its proposed operations can co-exist with other operations in the requested frequency band and will not materially constrain future entrants seeking to use the band. If a satellite system begins to amass significant and ongoing operations through a series of streamlined applications, there may come a point at which the scope of those operations will start to materially constrain future entrants seeking to use the same frequency bands, or cause issues in sharing with existing operators, and at that time the Commission would not approve the next additional application for satellites that are conducting those types of operations.

Moreover, there will be an application fee associated with each license application, which after a certain number of licenses will equal the cost of applying for a regular part 25 license. CSSMA argues, for example, that with a $30,000 application fee, without ability to replenish those satellites, the fees are still substantial, and after a certain number of satellites, become cost prohibitive as compared to a full part 25 license application, which has a 15-year term. While we recognize there are other benefits to the streamlined process, such as a grace period for the bond, we believe these benefits are unlikely to motivate an applicant to file numerous applications under the streamlined process in a situation where the cumulative filing fees are higher than the application fee for a regular part 25 NGSO system application. So long as the applicant meets the criteria of the small satellite streamlined process, however, we will leave it up to the applicant to decide what approach best fits its business model or desired operational parameters.

To the extent that some commenters raise concerns regarding the number of small satellites in orbit as a general matter, we believe this issue, along with the related issue of the mitigation of orbital debris are better addressed through the Commission's separate proceeding on orbital debris.

By declining to cap the number of satellites that may be applied for by a single entity under the streamlined process, the Commission will also limit the potential for requests to waive any cap on the number of satellites, which would be inconsistent with streamlined processing. Boeing, for example, suggested a limit of 30 satellites per license, but proposed that the Commission consider streamlined applications for modestly more numbers of small satellites if good cause is shown to support a particular business case. It is worth noting that the approach adopted here will avoid this type of particularized analysis or request to waive limits on the number of satellites in a single license, since applicants will be able to apply for another license for additional satellites.

Aside from the comments on limiting the number of licenses than can be obtained under the streamlined process addressed above, we did not receive any additional comments specific to our proposal that there would be no limit on the number of pending applications or licensed-but-unbuilt systems for streamlined applicants. We adopt the NPRM proposal that no such limits apply.

Transition to Standard Part 25. Several commenters suggest that the Commission establish a transition mechanism for an operator who may wish to build on a larger constellation over time and switch from operating under the streamlined authorization process to the standard part 25 authorization process. We decline to specify a detailed mechanism for transitioning a small satellite license or licenses to a standard part 25 license. However, this would not preclude an operator from, for example, obtaining a license under the small satellite

licensing process, and subsequently, during the term of that license, applying for and obtaining a standard part 25 license under which the small satellite would complete the period of operations specified in its original license. The Commission has followed a similar approach involving satellites first licensed for experimental operations, but which later are incorporated into commercial operations under a standard part 25 license. The experimental license is terminated once commercial operations begin. An operator may use information and operational characteristics from its streamlined small satellite operations to inform and support a regular part 25 application, but that application will be analyzed on its own merits, and as part of a processing round where appropriate. We emphasize that operators may apply for a standard license at any time they believe it would be better suited to their operational or business needs.

2. Planned In-Orbit Lifetime

We adopt a slightly modified version of the NPRM proposal, which was that applicants for the part 25 streamlined small satellite process certify that the total in-orbit lifetime is planned to be five years or less, including the time it takes for the satellites to deorbit. We will require that applicants seeking to use the streamlined process certify that the maximum in-orbit lifetime of any individual satellite in the system will be six years or less, including time to deorbit. While the NPRM proposed a five-year planned orbital lifetime, we find that adding an additional year to the satellite lifetime will provide some additional flexibility, requested by some commenters, while remaining consistent with the short duration nature of a streamlined authorization. As the Commission observed in the NPRM, applicants seeking to operate a small satellite for longer can seek a license or market access grant under our existing part 25 NGSO procedures, which provide for longer license terms.

A number of commenters argue that the five-year limit proposed in-orbit lifetime is too short, particularly where the five years includes the time for the satellite(s) to deorbit. CSSMA, for example, argues that orbital lifetime limits restrict launch opportunities and that an overly conservative limit may make the streamlined process commercially impracticable. CSSMA proposes a limit that leaves sufficient commercially practicable launches available to applicants, and that the in-orbit lifetime should apply on a satellite-by-satellite basis and not to all satellites under a given license, to allow for launch delays, launch spacing, and technology iteration all on one license. Additionally, several commenters urge us to consider the five-year in-orbit lifetime proposal as only including the period of the satellites' active transmission and not the non-transmitting orbital decay period. Other commenters supported the five-year orbital lifetime certification as proposed. These commenters state that the requirement will help minimize the risk of orbital collisions.

While this orbital lifetime certification may narrow the scope of orbital placement options for certain small satellites or shorten a satellite's lifetime more than what the satellite is technologically capable of achieving, the goal of this rulemaking has been to tailor a streamlined licensing process to a subset of satellite operations—those that are of short duration and present a relatively low risk of creating orbital debris. As noted in the NPRM, the International Telecommunication Union (ITU) has recently identified one to three years to be the typical operational timeline for a CubeSat-type mission of short duration. The planned in-orbit lifetime certification we adopt of six years is twice what the ITU identified and should provide sufficient flexibility for a wide variety of small satellite operations. Adding an additional year to the proposed in-orbit lifetime strikes a balance between providing additional flexibility and helping to ensure that these satellites are out-of-orbit well within accepted international guidelines and that the operational timeline for these satellites is consistent with the relatively short-term spectrum use we intend to facilitate under this process. We disagree with the CSSMA's argument that this lifetime certification would not enable commercial viability for small satellite missions. Although a six-year lifetime limit may rule out a few launch opportunities to higher altitudes that would not correspond to the satellites passively deorbiting within six years, many small satellites currently take advantage of launch opportunities to altitudes from which they do deorbit within six years. Moreover, removal of spacecraft from the environment in a timely manner is an effective means for preventing in-orbit collisions. We find that the benefits of having these streamlined-licensed satellites removed from low-Earth orbit in a timely fashion outweigh any potential costs to operators, particularly where those operators are benefitting from the lower fee and faster processing associated with the streamlined part 25 procedures.

Commercial Spaceflight Federation suggests that where an applicant chooses a satellite design that will have a lifetime beyond five years, the streamlined process allow for a transition to a regular part 25 license for a long-term authorization. We decline to adopt a new transition process specifically to address these circumstances. While we understand the desire among prospective applicants for maximum operational and launch flexibility, the procedure is designed to cover applications for missions of shorter duration, less intense frequency use and lower risk from an orbital debris perspective, which can be processed in a streamlined fashion under part 25. Operations presenting other characteristics, such as longer duration, are more appropriately processed under a regular part 25 authorization.

The NPRM sought comment on whether a satellite that would not passively deorbit within the proposed in-orbit lifetime could still satisfy the qualifying criteria if it had the capability to maneuver itself to a lower orbit that would ensure re-entry within the proposed lifetime. The certification we adopt is based upon the satellite having a planned in-orbit lifetime of six years, and we conclude this may be achieved by either placing the satellite into an orbit from which it will passively deorbit within six years, or through a satellite design that ensures deorbiting within six years by active means, such as propulsion. In support of the certification, we will require applicants to provide a description of the planned deorbit methodology in the application. This description will support the applicant's certification.

3. License Term

We modify the NPRM proposal slightly to adopt a six-year, rather than five-year license term for satellites authorized through the part 25 streamlined process. This is consistent with the six-year planned satellite lifetime, described above.[8]

As proposed, additional satellites covered by the same license, but launched at a later date, will also fall

[8] We clarify that the satellite in-orbit lifetime discussed in the last section applies to each individual satellite, whereas the license term applies to operations under the license. *See, e.g.,* CSSMA Comments at 9. For example, for a constellation of two satellites, if there were only three years left in the license term when the second satellite begins operations, that satellite could be in-orbit for up to six years, including time to deorbit, but would need to cease its operations within three years, consistent with the remaining term of the license.

into the license timeline of the first satellite's placement into orbit. This is consistent with the goal of this proceeding to create a streamlined process for short duration operations. Under the rules adopted, operations under any individual license will be limited to six years. We conclude that this shorter license term is commensurate with the shorter, less intensive frequency use that will be licensed in a streamlined fashion. Applicants seeking ongoing operations of a longer duration may consider the standard part 25 license process.

CSSMA proposes that the license term for a streamlined small satellites commence upon ''bringing into use the authorized frequencies,'' consistent with ITU Radio Regulations Article 11, and not when a ''satellite is placed into its authorized orbit,'' as proposed in the NPRM. CSSMA is concerned that as proposed, the term of the license would begin to be calculated even where a satellite was rendered non-functional due to launch anomalies. We adopt our proposal in the NPRM with a slight modification so that the license term will be calculated from the time when the first satellite is placed into its authorized orbit and begins operating.[9]

A number of commenters also express concern that launch delays could end up shortening the license term for subsequent satellites in a constellation. We have not adopted a limit on the number of licenses that can be applied for, however. Thus, in instances where there is an unforeseen launch delay that would shorten the operations of subsequent satellites within the original license, an operator can decide whether it makes sense to apply for a new license for those additional satellites or operate them within the remaining term of the initial license.[10] Some operators may choose at the outset to seek multiple licenses, each for one satellite operating with a six-year license term. This type of arrangement will give operators more flexibility, while allowing the Commission to assess the proposed operations under each license application in case operations under cumulative licenses begin to fall outside the scope of what was envisioned as part 25 streamlined small satellite operations. Moreover, for coordination and planning purposes, other operators will know that all operations under a particular license will conclude within six years, regardless of whether the applicant has launched additional satellites under the license. We find that this approach is in the public interest, as it combines flexibility for operators with Commission oversight ensuring that all operations authorized in this manner are consistent with criteria of the streamlined process, which is designed for operations of short duration.

SpaceX and Iridium propose proportionally shorter license terms for licensees whose satellites' operational lifetime is of a significantly shorter duration and, in addition to ORBCOMM, raise concerns of increased risk of collision and orbital debris with increased numbers of satellites. In response to these concerns, we first note that the Commission will retain the discretion to specify a shorter license term, pursuant to § 25.121(b) of the Commission's rules, which remains unchanged. Second, in the Orbital Debris NPRM, the Commission sought comment on issues related to orbit selection, including satellites that may remain in orbit for a long period of time relative to the time needed to perform its mission. This issue is not unique to small satellites and will be addressed more fully in the Commission's ongoing orbital debris proceeding. Any requirements adopted there may be made applicable to all applicants, including applicants under parts 5, 25, and 97.

License Extensions and Replacement Satellites. We adopt the proposal in the NPRM that licenses granted under these new rules will be valid only for the original satellite(s) launched and operated by the licensee without the possibility for replacement, *e.g.,* replenishment of a constellation. Several commenters support the NPRM proposal not to permit replacement satellites. CSSMA and other commenters request, however, that the Commission allow an extension process and replacements for the original licensed satellites to account for launch delays or other events outside of the applicant's control. We decline to adopt a process for license extensions on a routine basis for launch delays, for the reasons described above, but we do not rule out the possibility of license extensions in other limited circumstances outside of the control of the applicant, such as a loss of a satellite due to a launch failure. Additionally, we envision that if a satellite is lost due to a documented launch failure, that satellite could be ''replaced'' within the terms of the license grant.[11] Iridium argues that we should consider developing provisions to terminate a license to prevent additional launches of small satellites with designs used in satellites that have previously failed in space. Given the financial incentives that licensees have to ensure that their satellites are functional, we do not find it necessary to adopt a rule specific to the streamlined process that would terminate a license in certain instances related to prior satellite failures. To the extent that Iridium's concern relates to design reliability more generally, however, we note that that issue was raised as part of the Commission's Orbital Debris NPRM, and licenses issued through the small satellite licensing process may be subject to additional requirements based upon the outcome of that proceeding.

4. Deployment Orbit and Maneuverability

We will require that applicants certify that their satellite either will be deployed below 600 km or have sufficient propulsion capabilities to perform collision avoidance maneuvers and deorbit within the six-year in-orbit lifetime. Based on satellite technical characteristics as specified in FCC part 25 and experimental licensing files, 600 km roughly corresponds to the maximum altitude from which it is feasible for a CubeSat or other small

[9] This is slightly different from CSSMA's proposal, as it includes operations of the spacecraft using any frequencies, not just particular Commission-authorized frequencies. There may be instances, for example, where a non-U.S.-licensed satellite is operational but has not yet used specific frequencies authorized by the Commission. This satellite would be considered operational for purposes of calculating the license term. A satellite that is non-functional on arrival in orbit will not count toward satisfying the Commission's milestone requirements, as we describe below. *See infra* section III.F. The one-year grace period for posting of the bond begins thirty days after the license grant is issued.

[10] As with other part 25 licensees, operators of small satellites licensed under the streamlined process must comply with § 25.173 of the Commission's rules, which includes a requirement to notify the Commission within 15 days after completing in-orbit testing whether a space station's measured performance is within authorized limits, whether the space station has been placed in its authorized orbit or orbital location, and whether it is capable of using its assigned frequencies. *See* 47 CFR 25.173. This reporting requirement applies to each licensed satellite.

[11] For example, a particular license might cover launch and operation of up to ten satellites. If one or more of the satellites is lost during a launch failure, those lost satellites would not count toward the total of ten, since they were never launched or operated. Thus, the licensee could still launch additional satellites to replace those that were lost without seeking additional authorization. This would not be a ''replacement'' satellite as described in § 25.113(i) of the Commission's rules, however, since the license granted by the Commission pursuant to the streamlined small satellite streamlined would not include provision for planned replenishment of the constellation. *See* 47 CFR 25.113(i); Appendix A, Final Rules. As noted in the *NPRM,* in-orbit spares would also not be authorized under a small satellite license. *NPRM,* 33 FCC Rcd at 4166, n.105. *See* 47 CFR 25.113(h); Appendix A, Final Rules.

satellite to passively reenter Earth's atmosphere within six years. We do not adopt a requirement that small satellites without propulsion capabilities authorized under the streamlined process be deployed from or below 400 km, roughly the altitude of the International Space Station (ISS), at this time. We believe that issues related to all satellites transiting through the ISS orbit—both those licensed under the small satellite licensing process and those authorized under the regular part 25 process—can be better addressed on a more holistic basis in the context of Commission's current orbital debris proceeding.

In the NPRM, the Commission proposed that satellites authorized under the streamlined process would either be deployed to an orbit below 400 km, or have propulsion. A majority of commenters suggested that the proposed certifications regarding deployment were too restrictive and either proposed alternate certifications or suggested that there be no deployment-related certifications as part of the streamlined application process. According to several commenters, the proposed limitations would make the streamlined process of little value to many commercial applicants. Some commenters suggested that there are alternative means for protecting the ISS, including working with the ISS program as technology develops to determine what should be required of satellites deployed above the ISS. Other commenters support the 400-km certification. Iridium states that without adequate means of maneuverability, there is an increased risk of collision in more congested portions of low-Earth orbit, and suggests that the Commission may wish to require a more significant showing concerning the adequacy of maneuverability and deorbit systems, or process applications to launch small satellites under the standard part 25 licensing procedure. SES/O3b agrees with the proposed certification as well, and notes that other satellite operators may need to expend time and resources assessing the efficacy of alternative means of collision avoidance.

The Commission's initial proposal for a deployment certification would have, in some instances, limited the lifetime of a streamlined-licensed satellite to a period shorter than the certified maximum in-orbit lifetime. Although some commenters support the 400-km standard for certifications, CSSMA notes that even with the originally proposed five-year orbital lifetime, many types of small satellites could go above 400 km and still meet the orbital lifetime requirement with passive or other means. In lieu of 400 km, we therefore adopt a deployment certification that is based on the planned orbital lifetime of these small satellites. This will allow the streamlined small satellites to deploy at altitudes up to where it is feasible that they meet the in-orbit lifetime requirement of six years through passive deorbiting—an altitude of roughly up to 600 km. Of course, the exact altitude can vary widely based on a number of factors, including area-to-mass ratio, orbit, and solar activity, but we find that using 600 km as an upper altitude limit is a useful benchmark for now, which will in many instances be consistent with a six-year in-orbit satellite lifetime. We recognize that there may be some satellites that can deploy above 600 km and still re-enter the atmosphere within six years, but 600 km represents an upper end that is a useful reference altitude for purposes of streamlined processing. This maximum 600-km deployment certification will give operators more flexibility than the proposed 400-km certification, but will help to ensure that the satellites authorized on a streamlined basis will have relatively short in-orbit lifetimes. Similar to the in-orbit lifetime certification, this deployment certification may rule out some rideshare launch opportunities for small satellites lacking propulsion, if those satellites are licensed under the streamlined process. However, we find that this is a reasonable trade-off to ensure that satellites licensed on a streamlined basis will have a shorter in-orbit lifetime.

In response to those commenters supporting the proposed 400-kilometer certification, we emphasize that as adopted, the streamlined small satellite process will only apply to qualifying applicants that have certified that, among other things, the authorized satellite(s) will deorbit within six years. Applicants will also certify that the risk of in-orbit collision with other large objects is 0.001 or less as calculated using NASA software or other higher fidelity models. These certifications and others applying to streamlined licensees will help to ensure that streamlined-licensed operations are associated with lower risk from an orbital debris perspective, and so we find that adopting a 600-kilometer certification is appropriate at this time for the streamlined process, pending additional discussion as part of the Commission's orbital debris proceeding, which would cover all Commission-authorized satellites.

Additionally, SpaceX asks that the Commission adopt more rigorous certifications for applicants seeking streamlined processing. SpaceX suggests that the Commission require that in order to qualify for streamlined processing, a small satellite applicant must certify that its satellite(s) have sufficient propulsion capabilities to perform collision avoidance maneuvers, regardless of deployment altitude. SpaceX expresses concern that a large number of non-maneuverable small satellites could present a significant space safety concern for NGSO systems operating at altitudes below the ISS and complicate deployment of any spacecraft that transits through the sub-ISS altitudes, such as satellites destined for higher orbits, as well as manned missions or space tourism activities. According to SpaceX, a ''steady rain of uncontrolled deorbiting smallsats'' would present a significant collision concern for all of these spacecraft during operations below the altitude of the ISS. We conclude that we do not need to adopt additional, more stringent requirements to protect other operators specifically from streamlined-licensed satellites at this time. These concerns appear to go beyond simply those satellites licensed on a streamlined basis, and instead relate to broader concerns about a safe operating environment in low-Earth orbit (LEO). We conclude that these concerns can also be addressed as part of the Commission's separate proceeding on orbital debris, which makes a number of proposals and seeks comment on various topics related to safe operations in LEO for all satellites.

In adopting an altitude certification at this time, we will maintain the Commission's proposal that the small satellites may be deployed above a particular altitude—now 600 km—if the operator certifies that the satellites have sufficient propulsion capabilities to perform collision avoidance maneuvers and deorbit within the in-orbit lifetime term. In the NPRM, the Commission tentatively concluded that more limited maneuvering capabilities, such as those relying primarily on drag, would be insufficient to support deployment at higher altitudes under the streamlined small satellite process, as those methods will likely require closer Commission review. Numerous commenters argue that applicants be provided some flexibility in incorporating maneuverability in their satellite design, without specifically identifying propulsion as a requirement for streamlined small satellites deployed above a particular altitude. Phase Four, for example, suggests that the Commission use the phrase ''mobility''

rather than propulsion, since several subsystems work in concert to execute collision avoidance maneuvers, and propulsion systems are not the only types of systems that can change a satellite orbit. Boeing notes that techniques other than propulsion have been used and are being developed to permit small satellites to proactively maneuver without the use of propulsion, and thus enable collision avoidance. These commenters rightly point out that alternatives to propulsion are available, but do not address the Commission's concern that these types of methods are likely to require closer Commission review and analysis concerning effectiveness and other issues, which is antithetical to processing these applications on a streamlined basis. For example, while drag augmentation devices may increase the area-to-mass ratio of a space structure and consequently reduce its orbital lifetime, the larger collision cross-section may increase the probability of collision during the orbital decay period. If an operator wishes to undertake operations using these types of technologies above the deployment altitude specified here, then it should consider a regular part 25 authorization or other alternative licensing process where appropriate. We recognize that mobility technologies will continue to evolve, but at this juncture, we find that determining whether a particular satellite does or does not have propulsion is a more effective shorthand for purposes of streamlined processing than analyzing specific satellite maneuverability details. The certification we adopt in this proceeding does not represent a requirement that all small satellites have propulsion, but instead will enable the Commission to process applications on a streamlined basis, with the knowledge that the satellites will generally re-enter Earth's atmosphere within a short period of time.

Our conclusion regarding the eligibility criteria for this process does not change our view regarding the importance of minimizing disruptions to the ISS and protecting crewed spacecraft. In the NPRM, the Commission observed that deployment of satellites lacking maneuvering capabilities to orbits from which they will eventually transit through the ISS altitude range increases the likelihood that the ISS will need to conduct avoidance maneuvers, potentially disrupting ISS operations. Accordingly, we adopt the NPRM proposal that applicants under the streamlined process must describe in narrative form the design and operational strategies that will be used to avoid collision with crewed spacecraft. We conclude that adopting a narrative informational requirement will help to ensure that small satellite operators take operations of the ISS and other crewed spacecraft into consideration in planning small satellite activities in orbit.[12] The information provided will also be on the record for evaluation by any interested parties. We also note that the Commission sought comment on issues related to crewed spacecraft in the Orbital Debris NPRM, and will generally address further issues specific to crewed spacecraft in the context of that proceeding.

5. Maximum Spacecraft Size

We adopt the proposal of the NPRM for a maximum mass requirement of 180 kg for any Earth-orbiting satellite that would be authorized under the streamlined process. This upper mass limit is consistent with past small satellite license applications and with NASA demarcation of the small satellite category, as discussed in the NPRM. A number of commenters agree with the mass standard for Earth-orbiting missions.

Other commenters disagreed with the mass proposal or suggested that we should not use mass as a qualifying factor. ORBCOMM suggests that the Commission base its calculation on spectrum and orbit use as opposed to mass. It argues that a satellite with the mass of 180 kg is capable of using a large amount of radiofrequency spectrum and could create interference, especially when considering constellations of satellites of this mass. We disagree with this suggestion because the other criteria for small satellites—particularly the requirement that small satellites are compatible with existing operations and will not materially constrain future operations of other satellites in the requested frequency bands—will help to ensure that small satellites can co-exist with other operators.

Boeing and Analytical Space argue that a maximum mass criterion is superfluous and unnecessary considering the other eligibility characteristics set forth in this proceeding. The Commercial Spaceflight Federation suggests using a measurement of the cross-surface section area instead of mass for determining size, arguing this method is more relevant to orbital debris mitigation. We find that this maximum mass characteristic is useful to demarcate a particular type of licensee—a small satellite. Spacecraft are generally grouped according to their mass and mass is also easier to measure in many respects than cross-surface section area, which may change depending on what parts of the spacecraft are deployed following launch. Alongside the other qualifying characteristics, a maximum mass helps to act as a check on the types of operations that may be licensed in a streamlined fashion.

We conclude that 180 kilograms is a good approximation of small satellite size for this purpose, to help filter out any systems that are not appropriate for streamlined processing while allowing for variety in spacecraft design. Consistent with how NASA describes a ''small spacecraft'' in the document we referenced in the NPRM, we adopt 180 kilograms as a ''wet mass'' limit, which means that it includes propellant.

6. Trackability

The Commission proposed that applicants under the streamlined process would certify that each authorized satellite would have physical dimensions greater than 10 cm x 10 cm x 10 cm to ensure trackability and that each satellite would be identifiable by unique telemetry markers allowing it to be distinguished from other space stations or objects. This size is generally consistent with the 1U (one unit) CubeSat form factor and the vast majority of small satellites launched to date have been this size or larger.[13] All commenters addressing this issue support a trackability requirement, but they disagree on what specifically the requirement should entail. Some commenters argue that rather than minimum dimensions the requirement should be a ''functional'' trackability requirement, which could allow even smaller satellites to be authorized as technology advances and smaller space objects become more readily trackable. Others argue that the 10 cm x 10 cm x 10 cm requirement should be adopted as a ''safe harbor,'' but that satellites with smaller dimensions should be permitted if the applicant provides a demonstration of trackability.

[12] For streamlined applicants whose satellite or satellites will have any means of maneuverability, we will also retain the current requirement in part 25 to indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites.

[13] Consistent with the Commission's proposal to apply a minimum size generally consistent with the stowed CubeSat specification, *i.e.,* 10 cm x 10 cm x 10 cm, we note that the minimum size does not include parts of the spacecraft that must be successfully deployed in order to increase the spacecraft size to the minimum specified for the streamlined process, *e.g.,* deployable antennas.

We believe that adopting a minimum size for satellites using the streamlined process will help ensure that small satellites are trackable while reducing the time needed to review and process applications. The 18th Space Control Squadron (18 SPCS) acknowledges that it currently tracks objects as small as 1U in size. We therefore adopt a certification requirement that each satellite authorized under the streamlined process must measure no less than 10 cm in its smallest dimension. Consequently, we do not see satisfying this requirement to be a substantial burden on potential applicants under the streamlined process. We note that the certification we adopt is a slight variant on the 10 cm x 10 cm x 10 cm minimum dimensions proposed in the NPRM, and requiring that the satellites be no smaller than 10 cm in their smallest dimension provides slightly more flexibility while achieving the same aim.[14]

We are not convinced by commenters who support a ''functional'' trackability requirement in lieu of adopting minimum dimensions. While we acknowledge that technologies exist that can improve the trackability of spacecraft, we continue to believe that assessing the effectiveness of these technologies will require additional review by the Commission, and that such review is inconsistent with a streamlined licensing process.

We also adopt the Commission's proposal to require a certification that the spacecraft have unique telemetry markers. We clarify that we expect that when a spacecraft transmits telemetry data to the ground it will include in that transmission some marker that allows the spacecraft to be differentiated from other spacecraft. This signal-based identification marker, which should be different from those of other objects on a particular launch, can assist with identification of a satellite for space situational awareness purposes. Several commenters support the proposal to require unique telemetry markers. University Small-Satellite Researchers and CSSMA seek clarification on the telemetry markers, with CSSMA suggesting that if they are ''merely a few bits of information in a satellite's telemetry it would perhaps not be an undue burden.''

CSSMA further states that it is not clear what interest would be served by being able to distinguish between satellites licensed under the streamlined process and all other space objects—as other licensed satellites would not be distinguishable amongst each other by a unique telemetry marker. As an alternative, CSSMA suggests that the Commission require that all satellites associated with any space station licensee be registered along with their International Designator, as it appears in all Joint Space Operations Center two-line element sets, with the Commission, so that an object and its orbit would be locked together permanently. ORBCOMM and Iridium propose that small satellite operators be required to obtain and share real time ephemeris data with other operators.

To the extent that there are additional technologies or methodologies available that could improve the identifiability of spacecraft, we encourage operators to implement such technologies, but will not require additional certifications at this point for an applicant to be eligible for the streamlined licensing process. We believe the issues raised by ORBCOMM and Iridium relating to sharing of ephemeris data, as well as other additional proposals or methodologies related to identification and new tracking technologies, are better addressed in connection with the Commission's recent NPRM regarding orbital debris mitigation. Although as CSSMA points out, this requirement will not apply to satellites other than those authorized under the streamlined process, we believe that measures to improve the identification of these small satellites are nonetheless appropriate. Again, the Commission is considering these topics as they relate to Commission-authorized satellites more generally, as part of the Orbital Debris NPRM.

7. Casualty Risk

We adopt the certification requirements as proposed in the NPRM regarding casualty risk, specifically that applicants for the part 25 streamlined process certify that their satellite(s) will be disposed of through atmospheric re-entry following conclusion of the mission, and certify that they have conducted a casualty risk assessment using the NASA Debris Assessment Software or another higher fidelity model, and that the assessment resulted in a human casualty risk of zero. Several commenters argued that a ''true zero'' casualty risk is likely impossible to achieve. We disagree. There are numerous instances, documented in FCC files, of satellites that can be reliably predicted to burn up completely upon re-entry. We also note, however, that the Commission has accepted methodologies used for assessing debris re-entry casualty risk that consider debris as presenting a casualty risk only if it has a kinetic energy of 15 joules or greater. Zero casualty risk, particularly with this methodology for assessment, is readily achievable for small satellites. This certification is generally consistent with applications that can be processed on a streamlined basis, as it typically indicates that no additional factual inquiry by the Commission or discussion of insurance and liability arrangements, for example, is necessary.

The University Small-Satellite Researchers suggest allowing case-by-case exemptions to the zero-casualty risk requirement for researchers who may need to use certain metals that do not fully disintegrate on re-entry into Earth's atmosphere, so long as they can demonstrate risk mitigation and obtain third-party liability insurance for any potential casualty risk. We believe that the level of analysis that would be required to undertake such review is not consistent with processing on a streamlined basis and decline to adopt such an exemption. Other commenters suggest that the same casualty risk standards should be used for small satellites in this streamlined process that are used for all other satellites and that the adoption of any new standards should be made in a separate rulemaking. As discussed above, we believe a zero casualty risk standard is appropriate for the part 25 streamlined process.

8. Cessation of Emissions

In the NPRM, the Commission sought comment on the proposal to require certification that each satellite has the ability to receive command signals and cease transmission upon receipt of a command. We conclude that applicants must certify that there will be adequate control of radiofrequency operations to immediately eliminate any harmful interference as may be necessary under the terms of our rules or the space station authorization. In particular, satellites must have the capability for immediate cessation of emissions upon receipt of a telecommand from the ground. The ability to immediately eliminate harmful interference may also require, for some operations, that transmissions are initiated only by ground command, where, for example, there are a limited number of earth stations communicating with the satellite or satellites.

CSSMA proposes that streamlined applicants certify compliance with the Commission's current rule on cessation of emissions, § 25.207, and provide analysis as to how they do so. Section 25.207 states that ''[s]pace stations shall be made capable of ceasing radio emissions by the use of appropriate

[14] A spherical object with a diameter of 10 cm, for example, could still meet this certification.

devices (battery life, timing devices, ground command, etc.) that will ensure definition cessation of emissions.'' According to CSSMA, this rule already provides a more flexible standard for cessation of emissions and achieves the same end as the proposed NPRM requirement. CSSMA and Boeing suggest that there are more reliable approaches to cessation of emissions than ground transmitting commands and argue that it may be appropriate to permit a small satellite to transmit for a certain period of time and refrain from resuming transmissions until the satellite receives another affirmative command from a ground station. SES/O3b does not object to retaining § 25.207 in its current state, but opposes further requirements that would prohibit transmissions absent an active command, instead suggesting that it is more important to know that under any failure mode the satellite will cease transmission after a certain period.

We note that § 25.207 of the Commission's rules has not been updated since it was adopted in 1965 and varies slightly from the current ITU Radio Regulation No. 22.1, which states that ''[s]pace stations shall be fitted with devices to ensure immediate cessation of their radio emissions by telecommand, whenever such cessation is required under the provisions of these Regulations.'' We are not modifying § 25.207 as a general matter in this proceeding. However, we find that it is appropriate to require that small satellites licensed under the streamlined process have the capability to immediately eliminate harmful interference when necessary, which must include the ability to cease radio emissions by telecommand. Depending on the system design, other means may also be necessary to ensure the immediate elimination of harmful interference, such as those described by CSSMA and Boeing, and operators should design their systems accordingly in order to satisfy the qualifying criterion for streamlined processing, although we will not prescribe specific designs.

We thus do not adopt the NPRM proposal that applicants in all instances operate via a ''passively safe'' system. We conclude that this broader standard of eliminating harmful interference allows for design flexibility alongside the backstop requirement to cease emissions by telecommand. The ability to eliminate harmful interference is important in any system, and particularly so in these systems which must share with existing operators and not materially constrain future operators in any particular frequency band.

9. Streamlined Small Spacecraft Process

We adopt the NPRM proposal to allow small spacecraft with planned non-Earth orbiting missions, such as commercial lunar missions, to file under the streamlined process. All commenters addressing the issue support the inclusion of a small spacecraft streamlined licensing process. Commenters provided various suggestions for changes to the eligibility requirements for the streamlined process in order to allow for successful small spacecraft missions while maintaining a streamlined administrative process. These suggestions include increasing the maximum mass, allowing deorbit by means other than atmospheric re-entry, and increased operational lifetimes.

Based on the record, we conclude that it is appropriate to exempt small spacecraft with planned non-Earth orbiting missions from several of the certifications required for most applicants under the streamlined process and make modifications to others. Specifically, applicants for these missions will be exempt from the certifications regarding disposal by atmospheric re-entry and deployment altitude. While we will not require a qualifying certification related to spacecraft disposal by atmospheric re-entry, we will ask that applicants for a streamlined small spacecraft license provide a brief description of their disposal plan, since there are multiple potential disposal scenarios. In addition, we modify the mass certification to specify a maximum mass for these spacecraft, including fuel, of 500 kilograms. This is consistent with the comments we received suggesting that we adopt a higher mass limit for non-Earth-orbiting small spacecraft systems.

We also received comments proposing that spacecraft applying under the small spacecraft streamlined process be subject to different license terms, for example, 10 or 25 years. SIA, on the other hand, proposed that there should not necessarily be different license terms for non-Earth-orbiting missions, as such missions are limited by component life, the deep space environment, and the initial launch trajectory. It is unclear whether such non-Earth-orbiting missions would in fact need a longer license term, and so we decline to adopt a different license term or spacecraft lifetime certification for small spacecraft at this time, and apply a maximum six-year license term. This maximum six-year license term and spacecraft lifetime, as described above, can be considered generally commensurate with short duration operations.[15] We may revisit this topic in the future once we have additional experience authorizing these missions, but at this time missions seeking longer license terms may apply under the Commission's other existing licensing processes.

10. Operational Debris and Collision Risk

In the NPRM, the Commission proposed that applicants for the streamlined process certify (1) that their satellite(s) will release no operational debris; (2) that the satellite operator has assessed and limited the probability of accidental explosions, including those resulting from the conversion of energy on board the satellite into energy that fragments the spacecraft; and (3) that the probability of an in-orbit collision between each satellite and any other large object[16] during the orbital lifetime of the space station is less than 0.001.

With respect to the first two certifications—release of operational debris and accidental explosions—all the commenters addressing these topics agreed with the proposed certifications. We therefore adopt the certifications as proposed in the NPRM, limiting eligibility for the streamlined licensing process to those satellites that release no operational debris during mission lifetime and requiring a certification from applicants that the satellite operator has assessed and limited the probability of accidental explosions, including those resulting from the conversion of energy sources on board the space station into energy that fragments the spacecraft. The NPRM also sought comment on whether a certification alone was adequate with respect to the probability of accidental explosions or on whether there may be circumstances in which a more detailed disclosure and review is appropriate. We did receive some comments relevant to this question of what demonstrations should be submitted to the Commission, specifically whether an Orbital Debris Assessment Report should be included with each streamlined application, and those comments are addressed in the section of this Order on application requirements.

[15] We reserve the right to issue a license with a shorter license term for planned operations of less than six years.

[16] A ''large object'' will be considered to be a space object larger than 10 cm in diameter. *See* NASA Standard at 4.5–1. NASA's Debris Analysis Software, for example, will calculate probability of accidental collision with space objects larger than 10 cm in diameter. *See* NASA Orbital Debris Program Office, Debris Assessment Software User's Guide, Version 2.1 at 3.5 (October 2016).

We also adopt the third proposed applicant certification on this topic, specifically that the probability of each satellite's risk of in-orbit collision with large objects is less than 0.001, noting that this certification is consistent with the technical guidance developed by NASA for its space missions. In the NPRM, we sought comment on whether the 0.001 metric was appropriate for satellites under the streamlined process, or whether a more stringent standard may be appropriate. A number of commenters agreed with a 0.001 probability of risk of in-orbit collision certification proposed in the NPRM. CSSMA agrees with the 0.001 risk of collision certification, but argues that the Commission should adopt this certification in lieu of limiting the orbital altitude or requiring propulsive capability. As described in the previous sections, the orbital altitude certification, and corresponding certification that streamlined-licensed satellites above that altitude must have propulsion, help to ensure that the operations authorized under the streamlined process are limited in duration and that the satellites will not remain in low-Earth orbit for long periods of time following the end of their useful lives. Although a low collision risk as calculated using available modeling tools is an important part of orbital debris mitigation, the other qualifying criteria we adopt also decrease the probability that such spacecraft will contribute to the creation of orbital debris, consistent with the public interest in the continued viability of operations in LEO.

In its comments, ORBCOMM suggests that there should be updates to the Commission's rules more broadly on the topic of orbital debris and space traffic management. ''Given the limits of using models to forecast potential collision risks,'' ORBCOMM states, the Commission should adopt robust space traffic management obligations that would apply to small satellite system operators and other NGSO satellite system operators. The Center for Space Standards and Innovation (CSSI) suggests that we consider reviewing the risk of collision in aggregate, rather than for each individual satellite. As noted, subsequent to the release of the Small Satellite NPRM, the Commission adopted the Orbital Debris NPRM, seeking comment on a wide variety of topics related to orbital debris and operations under part 25, among other things. The issues raised by both CSSI and ORBCOMM are discussed more broadly in the Orbital Debris NPRM. For purposes of this proceeding, we therefore adopt the certification regarding satellite risk of in-orbit collision with large objects as it was proposed in the NPRM, including that the certification will be on an individual satellite basis. This certification for streamlined small satellites may be modified, however, based on the outcome of the Orbital Debris NPRM.

11. Other Characteristics

Scope of Frequency Use. In the NPRM, the Commission sought comment on the typical frequency use characteristics of small satellites that would be authorized under the proposed streamlined process, and on the type and quantity of spectrum that would be needed for small satellites to operate and the extent to which transmissions requiring larger bandwidth could be conducted via inter-satellite links or alternatives such as optical links. CSSMA responded to the Commission's inquiry with fairly extensive information regarding typical current and future frequency use characteristics of small satellites, based on what it describes as its own internal review, taking into consideration its members' business plans and experiences. SpaceX suggests that we consider specifying bandwidth and power limits for systems seeking streamlined consideration to correspond with the expectations expressed by the Commission in the NPRM. Also, ORBCOMM suggests that the Commission should consider establishing a streamlined processing qualification envelope based more concretely on spectrum and orbit use.

We do not find that it is necessary, however, even given the potential capabilities of a 180 kg satellite and some of the upper ranges of data rates, power levels, and bandwidths described by CSSMA, to adopt generalized limitations on spectrum use for streamlined small satellites, other than the sharing requirements that have already been described. Contrary to the suggestions of SpaceX and ORBCOMM, we believe the other qualifying criteria of the streamlined process are sufficiently rigorous even without a limitation on bandwidths or power levels. Specifically, concerns regarding potential interference from a streamlined applicant, such as those expressed generally by ORBCOMM, can be addressed through the application process described, wherein an applicant must certify and describe how its operations can share with existing operations in the requested frequency band and not materially constrain future operations. So long as an applicant can make a sufficient demonstration that it can satisfy those qualifying characteristics, we do not see a reason to adopt a rule limiting the power or bandwidth that can be used by streamlined licensees as a general matter. Depending on the system design and frequency band requested, a satellite that will operate at a higher power and use a larger bandwidth than what might now be considered typical for a small satellite may have difficulty sharing with other operations. In that case, such a satellite would not be able to be licensed under the streamlined process. In other instances, perhaps there are system characteristics that would permit sharing despite the fact that a satellite would be operating at a relatively higher power and/or using a larger bandwidth.

Efficiency of Spectrum Use. SpaceX proposes that the Commission consider efficiency of spectrum use as an additional criterion for small satellite applicants seeking streamlined treatment, and suggests that the Commission give applicants proposing more spectrally-efficient systems ''more expedited consideration'' under the streamlined process. SpaceX expresses concern that some of the examples of indicia of sharing that the Commission listed in the NPRM, such as small satellites operating at only certain times during the day or only at specific geographic locations, would hamper another satellite system that sought to operate at the same times or in the same locations. SpaceX suggests that, within the streamlined process, the Commission prioritize what SpaceX describes as technologically innovative approaches such as use of phased array antennas, and adaptive beam-forming strategies allowing for satellites to target narrow coverage areas more precisely and reuse spectrum many times over to maximize throughput.

We decline to adopt a separate ''spectrum efficiency'' qualifying characteristic or to prioritize certain types of sharing within the streamlined process. We agree with SpaceX that spectral efficiency is important. However, the approach SpaceX identifies appears to relate to more general concerns applicable beyond the streamlined small satellite process, including the processing of NGSO-like applications in processing rounds. We continue to believe that more limited types of operations should be the focus of this proceeding. We do not believe anything would be gained by establishing some type of prioritization within the streamlined process for systems with certain types of technological capability related to spectrum efficiency, although we expect

that such systems will be more readily able to establish that they can operate without materially constraining other operators.

C. Application Requirements

We adopt our proposal from the NPRM to use the Form 312 and Schedule S as the basis for applications filed under the part 25 streamlined process. Commenters who addressed this issue generally support our proposals.

CSSMA suggests that we also consider allowing applicants to provide a range of operational altitudes and inclinations with their applications and to submit representative worst-case gain contour plots for antennas. SES/O3b opposed CSSMA's proposal, arguing that orbital parameters and antenna gain contour plots are necessary for existing operators to conduct an analysis of the potential for interference posed by the small satellite system. We decline to adopt CSSMA's proposal to relax the Schedule S requirements for small satellites. While we think that it is appropriate to streamline certain parts of our rules, we continue to believe that the requirements of Form 312 and Schedule S provide necessary basic information that allows the Commission to assess the suitability of the applicant for licensing and allows other operators to assess the risk of interference posed by the system, and we decline to make modifications to Schedule S. In the event that an applicant under the streamlined process has concerns or questions about how to fill out a certain part of Schedule S, the applicant may file a supplement explaining how it completed the form or otherwise inquire with staff about how best to proceed.

Additionally, several commenters suggested that we specifically require the submission of an Orbital Debris Assessment Report. An Orbital Debris Assessment Report is a report intended to document compliance with orbital debris mitigation requirements, using a format developed for NASA missions. It is described in the NASA Standard as having fourteen sections, some of which relate to the launch vehicle. Some applicants for experimental and part 25 licenses currently submit a version of an Orbital Debris Assessment Report with their application materials, consisting of information relevant to an FCC evaluation. The information typically contained in an Orbital Debris Assessment Report is submitted to satisfy the Commission's existing orbital debris disclosure requirements, and some information in an Orbital Debris Assessment Report may be beyond what is currently required by the Commission's rules. The Orbital Debris Assessment Report usually contains, for example, a section on assessment of spacecraft debris released during normal operations, which would include descriptive information on any object expected to be released, a section on potential for explosions, which would provide detailed plans regarding passivation and other issues, and a section on potential for in-orbit collisions, which would include a calculation using the NASA Debris Assessment Software. While the Orbital Debris Assessment Report format often includes sufficient information to satisfy FCC disclosure requirements, particularly for non-maneuverable spacecraft, it does not solicit information about some aspects of satellite operations, such as ''flight plans'' or the maintenance of orbital parameters via propulsion, that are identified in FCC rules. CSSMA and SIA suggest that we ask streamlined applicants to submit an Orbital Debris Assessment Report, ''prepared in a manner consistent with existing part 25 rules.'' CSSMA states that preparation of an Orbital Debris Assessment Report is not a significant burden to a satellite operator and provides all other operators and the Commission with detailed analysis of how the requirements are met. It notes that the free NASA Debris Assessment Software is available to assist with such analysis, and that the analysis is a critical element of ensuring the orbital debris mitigation guidelines are met. SIA notes that an Orbital Debris Assessment Report requirement would allow the Commission and other operators to review the assumptions and analysis that goes into the certifications. Relatedly, CSSI expresses concern that the standard applicant will not have the technical familiarity and subject matter expertise to certify their ability to assess collision probability. CSSI also states that the Commission should allow sophisticated applicants to use a higher fidelity approach to determining probability of collision in certain instances.

We adopt the certification process proposed in the NPRM. We decline to specify a single format, such as the Orbital Debris Assessment Report, for submitting information in response to orbital debris mitigation requirements, since we want to provide applicants with flexibility. However, certifications should not be made casually, and applicants should ensure that certifications are made only after appropriate planning and analysis. For that reason, it is advisable for applicants to prepare an Orbital Debris Assessment Report or similar document outlining the process used to verify the accuracy of certifications. We expect that all applicants will use the NASA Debris Assessment Software or other higher fidelity modeling tools to perform the calculations necessary to address the various certifications and will maintain documentation associated with each of the certifications for inclusion in the public application file upon request. Furthermore, because the certifications will not in all circumstances address all required disclosures under our debris mitigation rules, applicants will need to submit narrative information in addition to certifications.

D. Application Processing

There is general support in the record for the proposal to exempt streamlined small satellites from the NGSO processing round procedures. We adopt our proposals related to streamlined application processing based on our understanding of the characteristics and scope of operations that generally define small satellites. In particular, as noted in the NPRM, a small satellite is typically designed to serve its purpose within a limited, relatively short period of time, and these satellites have more limited frequency use characteristics than more traditional operations licensed under part 25. An applicant under the streamlined process will not be subject to processing round procedures or default service rules.[17]

Instead, we adopt the following qualifying requirement, generally as

[17] *See* 47 CFR 25.157 (consideration of applications for NGSO-like satellite operation); 47 CFR 25.127 (default service rules). ORBCOMM states that the *NPRM* proposed to use ''first-come, first-served'' approach for streamlined small satellites. ORBCOMM Comments at 6. While the new process is a first-come, first-served process in the sense that applications will be processed without establishing the ''cut-off'' dates used in processing rounds, the approach proposed and adopted here differs in some respects from the Commission's first-come, first-served procedures as applied in the geostationary-orbit satellite (GSO) context. *See* 47 CFR 25.158. In that context, FCC rules preclude subsequent operators seeking to operate at or close to the same particular orbital location with the same coverage and in the same frequency band. *See, e.g., Amendment of the Commission's Space Station Licensing Rules and Polices,* First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10795, para. 79 (2003) (68 FR 51499 (Aug. 27, 2003) and 68 FR 53702 (Sept. 12, 2003)); *compare Orbcomm License Corp.,* 23 FCC Rcd 4804, at n. 26 and para. 23 (applying a first-come first served approach, subject to accommodation of new licensees). By contrast, here there are no ''orbital locations'' as there are in GSO, and a small satellite operator filing subsequent to another small satellite operator in the same frequency bands will not be precluded, since the initial filer (and all subsequent filers) will have certified that its operations will not materially constrain future operators in the requested frequency bands.

proposed in the NPRM, designed to support the exemption for these small satellites from the part 25 processing round. An applicant will be required to (a) certify that operations of its satellites will not interfere with those of existing operators, (b) certify that it will not materially constrain future operators from using the assigned frequency band(s), and (c) provide a brief narrative description illustrating the methods by which both current and future operators will not be materially constrained. We expect that the spectrum demands of systems qualifying for the streamlined process will differ substantially from the requirements for full-time system availability that characterize the NGSO systems typically processed through a processing round. Examples of applications that might satisfy these sharing requirements may include scenarios in which a satellite operates with a limited number of earth stations and downlinks during relatively short periods of time, with the ability to effectively schedule transmissions such that future satellite entrants can be accommodated. Applications that fail to adequately satisfy the sharing demonstration will be subject to dismissal, without prejudice to refiling for processing under regular part 25 procedures. We note that even if an applicant's demonstration does satisfy this qualifying criteria for streamlined processing, that does not automatically mean the application for the requested frequency bands will be granted—the proposed radiofrequency (RF) operations will be subject to further review for compliance with the Commission's rules and policies, as with a regular part 25 application, and may require coordination with other operations in the band, whether those operations are commercial (including satellite and non-satellite) or Federal in nature, and may be subject to additional conditions as necessary.

We note that in the NPRM the Commission proposed that small satellite applicants be required to certify and demonstrate that they would not ''unreasonably preclude'' future operators from using the assigned frequency band(s). In comments, Boeing expresses concern that the ''unreasonably preclude'' certification standard may impose little or no practical obligation on licensees. We agree, and we find that requiring that applicants' planned operations not ''materially constrain'' future entrants from using the frequency band(s) imposes a clearer obligation on licensees vis-à-vis a future satellite operator in the same band(s). For example, under an ''unreasonably preclude'' standard an applicant could have sought to operate in such a way that would make it impractical for future entrants to operate in the frequency band, but may argue that the preclusion is somehow ''reasonable.'' Under a review of whether that same applicant would impose material constraints on future entrants into the frequency band, however, it would be clear that such operations would be imposing material constraints, and the applicant would not be able to argue that it satisfies the required certification. Thus, we find that the ''materially constrain'' standard provides more clarity to applicants in what the Commission will consider as an adequate certification and demonstration supporting exemption from the processing round procedures. In the NPRM, the Commission described an example scenario, where a satellite operates with a limited number of earth stations for purposes of downlinking sensing data during relatively short periods of time, but still may be able to accommodate future entrants using the same frequency bands. The Commission could find that such operations would not materially constrain future entrants from using the frequency bands, even if new entrants might be unable to use the frequencies for certain periods of time at certain locations when the earlier-licensed operator is communicating with its earth stations, and so would satisfy the requirements we adopt here.

Boeing further argues that even following authorization, a streamlined licensee should be required to make ''technically feasible'' changes to its system if required to facilitate sharing of scarce orbital and spectrum resources with other small commercial satellites. In Boeing's view, non-streamlined NGSO licensees are arguably subject to a higher standard of sharing with other operators than ''unreasonable preclusion,'' in that they are required to ''discuss their technical operations in good faith with an aim to accommodating both systems.'' So long as the applicant has provided the required certifications and narrative that describes the methodology by which the system is capable of sharing with other operations and will not materially constrain future entrants in the requested frequency band, we see no reason to impose additional generalized obligations—specifically the inclusion of a ''technically feasible'' requirement, as Boeing suggests, in addition to the proposed certifications. It is important to note, however, that we expect the methodology for sharing to include coordination in good faith with other operators, including, if necessary, acceptance of new constraints on operations, because failing to do so would in effect be ''materially constraining'' other operations. We expect that the system design will also provide a basis for capability to share, alongside the fact that no more than 10 satellites will be authorized under a single license and the total term for all operations under a license will not exceed six years.

Several commenters suggest criteria for examining the sufficiency of certifications concerning impact on other operations. Iridium states that eligible small satellite applicants should not be able to obtain a license based on conclusory assertions that they will operate on a non-interference, unprotected basis but should be required to explain the technical basis for their determination that there will be no harmful interference. We agree. The narrative statement supporting certification will require more than a conclusory assertion. A commitment to cease transmissions if interference is reported is not sufficient by itself. Instead, the narrative should provide a technical analysis to support the applicant's certification. Of course, the content and length of the narrative may vary depending on what frequency band is requested. The radio frequency environment in a particular requested frequency band, as well as the scope and type of operations contemplated by the applicant, will inform the content of the narrative description, including whether coordination is necessary with incumbent operators. Relatedly, ORBCOMM urges the Commission to require any new small satellite system applicant to complete spectrum and orbit resource coordination before any such applicant is authorized to operate any satellites under the streamlined procedures. In a frequency band where the only viable way to share with an existing operator is through operator-to-operator coordination, we would expect that the applicant would describe the status of that coordination process and reserve the right to grant the application only after that coordination is completed.

Additionally, SIA proposes that the Commission allow applicants for the streamlined process to identify ground station requirements or ground station options, rather than specify a complete ground station plan in the narrative. According to SIA, once an applicant knows its ground station plan, it can provide the plan in a supplemental filing and/or through direct communications with other operators

during the coordination process. We decline to adopt SIA's suggestion and will require that applicants provide ground station information along with their application. We appreciate SIA's interest in providing applicants with flexibility and recognize that ground station plans can sometimes change as system design evolves. However, ground station plans are an important part of the coordination process, including with Federal users. Other operators are likely to be interested in ground station plans as well, and therefore this information is an important part of the public record for a streamlined small satellite application. We believe that this information should be made available at the outset to the fullest extent possible, even if in some instances it may need to later be revised.

We received several comments suggesting that the Commission modify public notice procedures to its standard application review processes for small satellite applications. CSSMA proposes a reduction in the public notice period for the streamlined process to 15 days and proposes that the nature of comments be limited to only those that challenge the qualifications of an operator to use the streamlined process. We decline to adopt these proposals. Under our current part 25 rules, once public notice has been issued announcing that an application has been accepted for filing, interested parties have up to 30 days to file a petition to deny, petition for other form of relief or other objections or comments. We conclude that the amount of time gained from reducing the public notice period would not be worth establishing an entirely separate set of timelines for the comment period on these streamlined applications, and might unreasonably restrict the opportunity for meaningful comment on applications.

We also decline to limit the scope of issues that comments can address as requested by CSSMA. If an interested party has a concern about something outside the scope of the streamlined characteristics, for example, the orbital parameters of a particular system, or seeks clarification on what it views as an inconsistency within an application, that interested party should be able to raise those issues within the public notice process. We also note that applications will include narrative information that addresses matters other than eligibility for the small satellite licensing process. Restricting comment concerning this information and any issues it may raise would be unreasonable.

CSSMA further requests that we institute a period of 45 days for comments to be resolved between operators following the end of the public notice period, and that in the absence of an agreement, the Commission must act to dismiss the application or dismiss the petition to deny. We believe adding this formal timeline is also unnecessary. As the Commission has stated in various arenas, including for example, in the context of NGSO operator-to-operator coordination, we expect parties to coordinate in good faith. If questions arise as to whether a party is coordinating in good faith to resolve an issue, the matter may be quickly brought to the attention of the Commission, and we will intervene to make a decision. We do not find it necessary to adopt a rule on this topic, however, since the circumstances will differ for each individual scenario.

Additionally, the University Small-Satellite Researchers and CSSMA ask that we provide additional transparency by instituting a process to enable application tracking, following the submission of an application to the Commission, for example, through the International Bureau Filing System (IBFS), for both the streamlined process and regular part 25 applications. While we understand the desire for timely feedback both on any technical issues with an application as well as on application status, we believe that our existing system is adequate and decline to make changes to our application tracking systems as part of this proceeding.

E. Interference Protection Status

The NPRM proposed that systems authorized under the streamlined process would typically receive the level of interference protection they are entitled to under the relevant service allocation in the U.S. Table of Frequency Allocations (U.S. Table). In bands where part 25 licensees have been authorized pursuant to a non-streamlined process, *i.e.,* through a processing round, the Commission proposed that licensees under the streamlined process would be subject to some limitations on a frequency-band specific basis, including, in appropriate circumstances, that operations are on a non-interference basis with respect to part 25 systems authorized in a processing round. The Commission also sought comment on the interference protection status of streamlined small satellites vis-à-vis non-satellite services.

Commenters generally support adoption of the Commission's proposal that systems authorized under the streamlined process would typically receive the level of interference protection they are entitled to under the relevant service allocation in the U.S. Table of Frequency Allocations (U.S. Table), and we adopt this proposal. Small satellites authorized through the streamlined procedure will in general have status consistent with the relevant service as allocated in the U.S. Table and will be subject to the same rules as a regular part 25 licensee with respect to sharing with systems operating in frequencies allocated to other services, including non-satellite services. However, we will evaluate small satellite applications filed under the streamlined procedure on a case-by-case basis, and if necessary, may impose certain other conditions to minimize adverse effects of such operations on current or potential future use of the relevant bands by satellite and non-satellite services, including the protection of, or acceptance of interference from, satellite and non-satellite services. In evaluating the effects of small satellite operations on current or potential use of the relevant bands by other services, we will evaluate the proposed operations as we would those of any other system filed under Part 25. For operations in bands shared with Federal users, conditions may also be imposed as required per coordination of the requested operations with Federal users.

With respect to the status of streamlined licensees vis-à-vis regular part 25 licensees, we also adopt the Commission's proposal that streamlined small satellites will operate on a non-interference basis relative to regularly-authorized part 25 satellites [18] operating in the same service. Some commenters state that streamlined small satellite licensees should be required to protect all regularly authorized part 25 licensees operating in any service, even if they are operating in a service with a lower allocation status. In the unlikely event that a streamlined small satellite licensee is operating in a service that has a higher status afforded by the U.S. Table than a service being used by a regularly-authorized part 25 operator, however, we would not expect that the

[18] There is support in the record for requiring streamlined licensees to protect regular part 25 licensees or market access grantees operating in the same service, including those processed through a processing round, as well as those authorized through first-come, first-served procedures or granted waivers related to application processing. *See, e.g.,* Boeing Comments at 6. Thus, ''regularly-authorized'' part 25 licensees or grantees will be any satellites or systems authorized under part 25 not through the streamlined small satellite process. To the extent that any operator has concerns about interference to its authorized part 25 system, that operator may raise concerns regarding the application through the standard public notice process.

small satellite would be required to, for example, accept harmful interference from the regular part 25 operator.

F. Revised Bond Requirement

The NPRM sought comment on the proposal to adopt a one-year ''grace period,'' applicable to small satellite streamlined licensees, during which the licensees would not need to post the surety bond required under the Commission's rules. We adopt the NPRM proposal. As proposed and adopted, this grace period would begin 30 days after the license was granted. Under the existing rules, licensees for most NGSO systems are required to have a surety bond on file no later than 30 days following grant of a license or request for market access. The surety bond must initially require payment of $1 million in the event of default, and the amount payable under the bond must steadily escalate, to a maximum of $5 million. Under the rules, a licensee will be considered to be in default with respect to the bond if it fails to satisfy certain milestone requirements or surrenders its license before meeting an applicable milestone requirement. The part 25 milestone rules require that a recipient of an initial authorization for an NGSO system must launch 50% of the maximum number of space stations authorized for service, place them in their assigned orbits, and operate them in accordance with the station authorization no later than 6 years after the grant of the authorization. As adopted here for streamlined small satellite systems, if by the end of the one-year grace period this milestone has been met then no bond is required.

While several commenters agree with our proposal to modify the bond requirement by adopting a grace period for streamlined small satellites, a number of commenters argue that the bond requirement should be eliminated altogether for small satellites authorized under the streamlined process. Many of these commenters contend that spectrum ''warehousing'' is not implicated by the streamlined process, since spectrum would be authorized on a non-exclusive basis, and therefore there is no need for the bond and milestone requirements as a deterrent to speculative applications.

We are not convinced by the argument that there is no value to having any type of bond requirement for these systems. As the Commission recently noted in a separate proceeding, unused authorizations for spectrum-orbit resources can create unnecessary coordination burdens and uncertainty for other operators. This is true even where, as under the streamlined process, the satellite operators have effectively the same status relative to each other, and the frequency assignments are non-exclusive. While some commenters allege that the application fee presents a sufficient deterrent to speculative applications in this area, we disagree, since some applicants could view a Commission license grant as an asset worth the now-reduced application fee, even though their satellite or system is far from launch.

Boeing suggests that if we do decide to retain the bond for streamlined small satellite licensees, the grace period should be extended to two years. Boeing states that satellite operators may order long-lead items such as radio transmitters and receivers only after securing Commission authorization for particular frequency bands, and that the manufacturing time for these items combined with spacecraft assembly, testing, and scheduling of launch can easily exceed 12 months. We decline to extend the grace period to more than one year, as we believe the one-year time period provides a benefit to operators qualifying for the streamlined process and is consistent with the typically shorter development timelines for these satellites, while deterring speculative filings. Before the one-year mark, we believe a licensee should be able to assess if and when it will realistically be able to begin operations. Thus, we adopt the one-year grace period before an operator must file a bond.

Consistent with the NPRM proposal, we also conclude that following the one-year grace period, operators that have met the 50% milestone may still launch and operate additional satellites, provided that the satellite(s) can still satisfy the criteria for the streamlined process, including deorbit within the six-year license term. Licensees failing to begin operations during the one-year grace period may surrender their license to avoid the bond requirement, and would not be precluded from filing another license application. Finally, licensees launching and operating one or more satellites within the one-year grace period, but failing to launch and operate 50% of their authorized satellites within that period, may choose to either post a bond and be subject to the standard NGSO bond and milestone requirements,[19] or in the case of licenses that specify multiple satellites, accept an automatic reduction in the number of authorized satellites to the number actually in orbit as of the close of the grace period.

G. Technical Rules

We adopt the proposal from the NPRM that the existing generally applicable technical rules in part 25 also apply to small satellites authorized under the streamlined process. No commenters disagreed with this proposal.

H. Fees

Application Fees. We adopt the NPRM proposal and set an application fee for applicants under the part 25 streamlined process at $30,000. At this time, we believe this application fee is a reasonable estimate of the cost of processing these types of applications. Under a recent amendment to the Communications Act (the Act), the RAY BAUM'S Act of 2018, which became effective October 1, 2018, the Commission is directed to ''amend the schedule of application fees . . . if the Commission determines that the schedule requires amendment . . . so that such schedule reflects the consolidation or addition of new categories of applications.'' The Act states that ''[t]he Commission shall assess and collect application fees at such rates as the Commission shall establish in a schedule of application fees to recover the costs of the Commission to process applications.'' Our preliminary estimate of the cost of processing these types of applications is approximately $30,000. Processing these applications will include, among other things, review of the Form 312 and Schedule S, as well as review of the certifications and narrative for acceptability for filing, preparation of public notices, review of the applications on the merits and preparation of grant documents, including development of grant conditions. Applications will also require submission of ITU filings, and prior to grant many applications are likely to require coordination either with other Commission bureaus or offices and/or with Federal users. As more experience in processing these new streamlined small satellite applications is acquired, this fee may be reviewed in the future and adjusted as necessary. However, our expectation is that review of satellite applications filed under the proposed streamlined process will be less resource-intensive than the

[19] The applicable NGSO milestones and bond amount will be calculated from the time of license grant, thus, while a licensee has a one-year grace period from filing the bond, the licensee must secure a bond in the amount that is required one year into its license grant. *See* 47 CFR 25.165(a)(1). Similarly, the applicable milestone will be calculated beginning on the date of license grant. *See* 47 CFR 25.164(b)(1).

review of a regular part 25 NGSO application, given the streamlined application process we adopt here, including lack of processing rounds.

As noted, we are adopting our proposal to make streamlined processing available for entities seeking access to the U.S. market using foreign-licensed satellites through a declaratory ruling. While in the past application fees have not applied to foreign-licensed entities seeking access to the U.S. market through a declaratory ruling, here we are adopting an entirely new regulatory process designed for small satellites, and a fee category pursuant to the recent amendments to the Act. As noted, section 8 of the Act, as revised, requires that the Commission assess and collect application fees at such rates as to ''recover the costs of the Commission to process applications.'' This represents a change from the prior version of section 8 of the Act, which established a schedule of fees, including specific fee categories, by statute, and did not give the Commission authority to establish new categories of application fees. Here, where we are adding a new category to the fee schedule, pursuant to our authority under section 8 as revised, the new fee we are adding should recover the processing costs associated with such applications, which will include petition for declaratory ruling applications from entities seeking to access the U.S. market using foreign-licensed satellites through the small satellite process. These filings will include the same information as applications for U.S. licenses, and can be expected to incur comparable processing costs. Therefore, in order to comply with the statute as revised, we conclude that the $30,000 application fee will apply to entities seeking market access for small satellites under the streamlined process. The amendment of the fee schedule for small satellites and small spacecraft within the NGSO category is an amendment to the schedule as defined in section 8(c) of the Act, which, pursuant to section 9a(b)(2), must be submitted to Congress at least 90 days before it becomes effective.

In adopting this new application fee category and application fee amount as part of this proceeding, we make an important observation. The Commission will be undertaking, as part of a separate proceeding, a comprehensive review of its application fees, which may consider, among other things, the appropriate methodologies for calculating application fees. We believe it is nonetheless appropriate to adopt a fee here, as it will permit us to begin processing applications under the small satellite process—which should ultimately yield more data on what Commission resources are required for application processing in this area. We understand there is additional work to be undertaken in this area regarding specific methodologies for calculating fees, and that, as noted above, modifications may be necessary to the $30,000 fee adopted here as such methodologies are implemented, and the Commission gains experience processing these types of applications. The existing fee for NGSO part 25 systems, $471,575.00, is plainly not an appropriate fee for much-less-resource-intensive review required for these systems.

No commenter opposed the proposed fee, and several commenters argued that there were powerful policy reasons for adopting a lower fee for small satellite applications. We recognize these policy rationales, while noting that the basis of our adoption of the $30,000 fee is the estimated cost of processing the application. The University Small-Satellite Researchers would have the Commission go further, and urge us to make the streamlined process viable for educational and scientific missions and to place the application fees for small satellite applicants from educational institutions on par with the fee structure for part 5 experimental licenses. The University Small-Satellite Researchers contend that the Commission should consider holistically the aggregate impact of both the application fee and multiple years of regulatory fees on small satellite missions. According to the University Small-Satellite Researchers, aggregating the proposed application fee along with the proposed regulatory fee for a two-year mission could result in a fee that could represent more than 15 percent of the budget of an educational satellite mission. They suggest that these costs are likely to be prohibitive for even well-resourced missions and therefore the additional interference protections and other benefits of the streamlined part 25 process will not be sufficient to enable educational institutions to shoulder the additional costs. We emphasize that the part 5 experimental licensing process will remain available for academic and research missions. We appreciate that even the much-reduced $30,000 application fee can be significant for research missions, but we disagree with the suggestion that the Commission create a separate application fee category for a subset of licensees, such as educational institutions, within the NGSO streamlined small satellite fee category. Under section 8 of the Act, the Commission is directed to set application fees that cover the costs of the Commission to process applications, and unlike in section 9 of the Act, addressing regulatory fees, there is no general exemption from application fees for a nonprofit entity. No commenters argue that the Commission's cost in processing a certain educational or research subset of the part 25 streamlined applications will be significantly less than for a different type of small satellite streamlined application.

SIA proposes that the Commission reevaluate the streamlined process application fees one year after the process takes effect, and consider a lower application fee for those providing a non-commercial service at that time. ORBCOMM expresses concerns that the $30,000 fee is disproportionately low as compared with the regular NGSO satellite system fee, but similarly suggests that the Commission commit to re-evaluating the application filing fees once it has gained experience under the new streamlined processing rules, and notes that the lower fee may be acceptable in the interim. EchoStar/Hughes also suggests that once the fee is selected, the Commission revisit it within a year to determine if it properly reflects the costs of application review and processing. As noted, the Commission will be undertaking a review of application fees Commission-wide, which will provide an opportunity to reassess, if necessary, the fee amount we adopt here.

Regulatory Fees. The NPRM also noted that entities authorized to operate NGSO systems under part 25 must pay an annual regulatory fee, and proposed that comments regarding regulatory fees, as applicable to small satellites, be filed in the proceeding(s) conducted for annual review of those fees. Regulatory fees are reviewed by the Commission on an annual basis. In the regulatory fee proceeding for FY 2018, the Commission sought comment on a new regulatory fee category for small satellites and the appropriate fee associated with that category. The Commission proposed a fee that would be 1/20th of the regulatory fee applicable to part 25 NGSO systems. The Commission received a number of comments regarding the proposed category and regulatory fee as part of the FY 2018 regulatory fee proceeding. In the FY 2018 Report and Order addressing regulatory fees, the Commission deferred consideration of a new regulatory fee category, and the appropriate regulatory fee, for small satellites until a definition of ''small

satellites'' was adopted in this proceeding.

On May 8, 2019 (84 FR 26234 (June 5, 2019)), we adopted a notice of proposed rulemaking addressing the assessment and collection of regulatory fees for FY 2019. Since the definition of ''small satellites'' had not yet been adopted, we did not propose a category for ''small satellites'' in the FY 2019 NPRM. In this proceeding we have established a definition of small satellites, and we also define and establish the new regulatory fee category applicable to such ''small satellites.'' The regulatory fee for part 25 space stations applies to licensed and operational geostationary orbit space stations and non-geostationary orbit satellite systems. The new ''small satellite'' subcategory would apply to licensed and operational satellite systems authorized under the new process adopted in this proceeding.[20] Since we are creating a new category in the regulatory fee schedule that is separate from the existing fee categories, the regulatory fee will also apply to grantees of U.S. market access, similar to the small satellite application fee. Historically, the Commission has not applied regulatory fees to non-U.S.-licensed space stations granted access to the U.S. market. RAY BAUM's Act of 2018 revised section 9, effective October 1, 2018. The new category we adopt for small satellites is created pursuant to this new version of section 9. In creating a new category, we thus establish that the existing regulatory fee for ''Space Stations (Non-Geostationary Orbit)'' will not apply to the operations authorized under the small satellite process. This adoption of a fee subcategory for small satellites within the NGSO category is an amendment to the schedule as defined in section 9(d) of the Act, which, pursuant to section 9a(b)(2), must be submitted to Congress at least 90 days before it becomes effective.

We defer consideration of the regulatory fee amount for this new category to the Commission's future regulatory fee proceedings for several reasons. First, the Commission is charged with ensuring that regulatory fees will result in the collection of an amount that can reasonably be expected to equal amounts appropriated by Congress for each fiscal year. Unlike application fees, with regulatory fees the Commission allocates the total amount to be collected among the various regulatory fee categories, and a change in the regulatory fee schedule applicable to one category may affect the regulatory fees applicable to other categories. The future regulatory fee proceeding will also address how the regulatory fee will be calculated and applied to market access grantees. Second, as a practical matter there will still be ample time to assess and adopt the appropriate fee amount in the separate proceeding before any small satellites authorized under the small satellite process would be required to pay regulatory fees. For example, the annual regulatory fees due and payable in September of this year (the FY 2019 regulatory fees) for space stations must only be paid for space stations or systems that were both licensed and operational on or before the first day of the fiscal year (October 1, 2018). It is unlikely that any space stations authorized under the streamlined small satellite process will be licensed and operational on or before the first day of FY 2020 (October 1, 2019). As such, the earliest such operators are likely to be subject to regulatory fees is FY 2021—fees which would be due and payable in September 2021.

I. Frequency Considerations for Small Satellites

1. Compatibility and Sharing With Federal Users

In the NPRM, the Commission noted that many of the frequency bands where small satellites have been authorized, and where there are non-Federal allocations for services such as earth exploration-satellite service (EESS) and space operations, are shared with Federal users. The U.S. Table is divided into the Federal Table of Frequency Allocations and the non-Federal Table of Frequency Allocations, and some bands are allocated to both Federal and non-Federal uses. Additionally, some footnotes to the U.S. Table specify that use of a particular frequency band is subject to successful coordination with Federal uses of the band. As noted in the NPRM, there are procedures that generally guide frequency coordination with Federal users. The Commission sought comment on any rules that could be adopted by the Commission specific to these frequency bands that would better enable small satellite operators to consider, in advance of coordination, whether they may be able to operate in these bands while still protecting Federal operations. The Commission sought comment on any approaches that could streamline sharing and on how the establishment of rules or other requirements on a band-specific basis might help to facilitate compatibility among separate systems and development of new types of shared and efficient uses of space and spectrum resources. The Commission noted that such rules would not necessarily replace the need to coordinate with Federal systems on a case-by-case basis, but could potentially help to streamline sharing.

In response to the Commission's inquiry, CSSMA and SIA offered several suggestions for improving coordination with Federal users, including:

- Creation of a database, on a band-by-band basis, that would reflect the ''knowable'' information about spectrum usage in each band.
- Mandatory pre-coordination meetings between applicants and representatives of all Federal agencies affected by a newly-filed application with the Commission.
- Formal coordination beginning concurrently with public notice.

CSSMA and SIA argue that failure of Federal agencies to act in a timely manner prejudices commercial companies by causing missed launches, lower service levels to customers, and time-to-market disadvantages.

These suggestions go beyond service rules or other requirements on a band-specific basis and contain broader suggested changes regarding processes, not currently the subject of part 25 rules and in large part involving the processes of other agencies. The suggestions also go beyond processes affecting small satellites and would potentially affect other satellite license applicants as well. We therefore decline to address these processes through rule changes within this small-satellite focused rulemaking proceeding.

CSSMA also argues that if there is not meaningful change to the coordination process, then it recommends that critical bands be divided into sub-bands, with one sub-band available exclusively to the Federal side of U.S. Table and one sub-band available exclusively to the non-Federal side of the U.S. Table. We do not have enough information at this time to thoroughly consider CSSMA's recommendation regarding division of frequency bands into sub-bands. Such a proposal would need to be addressed on a frequency band-specific basis, likely through a separate rulemaking proceeding or proceedings, and as such, is beyond the scope of this rulemaking.

2. Spectrum Assignments for Streamlined Small Satellites

The Commission sought comment on whether the proposed streamlined process should be limited to specific

[20] Accordingly, this new category would include small spacecraft non-Earth orbit missions as well. *See* section III.A. (noting that we refer to the ''small satellite'' process for practical purposes, but we adopt both a streamlined ''small satellite'' and streamlined ''small spacecraft'' process).

frequency bands, whether the Commission should adopt a non-exclusive list of frequencies available for streamlined processing, or whether the Commission should simply consider small satellite frequency assignments on a case-by-case basis, bearing in mind the relevant frequency allocations. The NPRM highlighted several frequency bands for potential identification for use by streamlined small satellites (137–138 MHz, 148–150.05 MHz, and 1610.6–1613.8 MHz), and sought comment on the accommodation of small satellites in those bands, as well as frequency bands that could be identified for small satellite inter-satellite links.

We decline in this proceeding to adopt any new limitation on or lists of available frequencies and will consider frequencies on a case-by-case basis, subject to the same analysis for compliance with Commission rules and policies as other part 25 applicants. We anticipate, however, that applications for small satellite systems under the streamlined procedures generally will be limited to bands where there currently is an allocation for satellite services in the U.S. Table of Allocations and in the International Table of Allocations, and that applications for other bands would require a request for waiver and an accompanying justification, as described below. Further, if such waiver requests are granted, these systems would be authorized on a non-interference basis. To the extent that any commenters argue for limitations on the frequency bands available for the streamlined process, they generally argue that frequency bands subject to a processing round or otherwise used by NGSO fixed-satellite service (FSS), mobile-satellite service (MSS), or other operations requiring full-time uninterrupted availability of spectrum should not be listed as available for streamlined processing. SpaceX and SES/O3b argue that the complexities of operations in these bands yield limited or nonexistent ability to share spectrum with all existing and future operators. On the other hand, EchoStar/Hughes does not object to small satellites operating in frequency bands allocated for FSS operations, so long as they are required to operate on a secondary, non-harmful interference basis with respect to other satellite operations. CSSMA argues that applicants should be able to apply for any frequency band that matches their category of service.

We disagree with commenters who argue that small satellites should be per se excluded from operating in frequency bands where a processing round has occurred or where there is an allocation for FSS or MSS or another service in which systems typically require full-time availability of the assigned spectrum. We do not think it is productive to adopt an outright limitation on applications requesting operations in those bands in case sharing can in some instances be accomplished because of the limited nature of the small satellite operations or other factors. We also received a number of comments on the topic of whether we should create a non-exclusive list of frequencies available for streamlined small satellites. Several commenters suggest that a list of frequencies available for small satellite could be useful either in the rules or in a different format to provide guidance and flexibility, but CSSMA argues that a non-exclusive list of frequencies could be potentially misleading. We agree with CSSMA that such a list could be potentially misleading if applicants were to view those frequencies as quick or guaranteed options for authorization, when in fact the frequency bands most often used by small satellites to date often require coordination with Federal users and other operators. We believe operations authorized under this process may represent more varied and potentially more unique scenarios in terms of spectrum use as compared with operations we have historically authorized under part 25, but note that applicants' proposed radiofrequency obligations will be subject to Commission rules and policies, including applicable coordination obligations and potential conditions, and thus qualifying for the small satellite process does not guarantee that requested operations will be granted.

Commenters raised concerns with designation of specific frequencies for use by small satellite systems, and we conclude that a case-by-case approach, analyzed under the Commission's rules and policies on a band-specific basis, is best suited to address the varied factual scenarios that may be presented under the new process. Accordingly, we are not adopting any changes to the Table of Frequency Allocations at this time or other rule modifications regarding use of specific frequencies. Given the different types of operations that may be undertaken by ''small satellites,'' we believe that in this instance it would be premature to adopt the rule changes prior to updates at the ITU. We are not foreclosing future proceedings, however, to implement ITU spectrum allocations.

Drawing on our experience with small satellites to date, including experiments that may transition to commercial operations, we expect that in some instances small satellite license applications may request operations not consistent with the current International Table of Allocations. In the NPRM, the Commission observed that there may be benefits associated with such operations by small satellites in certain circumstances. Under current rules, a part 25 application is deemed not acceptable for filing if it requests authority to operate a space station in a frequency band that is not allocated internationally for such operations under the ITU Radio Regulations, regardless of whether a waiver is requested. We modify this rule to provide an exception, so that such streamlined small satellite applications requesting to operate in bands not allocated internationally, and which include an appropriate waiver request, can be considered on their merits without being deemed unacceptable for filing. There may be cases where, for example, an operator is using equipment that has been shown to successfully operate on a non-interference basis under a previous experimental license or licenses. We anticipate that we may see requests for inter-satellite link operations between small satellites and the satellites in the Globalstar or Iridium systems, for example. We will continue to treat applications for these or other space-to-space operations as non-conforming with respect to the Table of Allocations where the applicant requests to operate in satellite frequency bands allocated only for operations in the space-to-Earth or Earth-to-space directions, noting that this matter is under additional study at the ITU.

If an applicant were to request authorization for a non-conforming operation, that applicant would be required to submit a request for a waiver of the Table of Allocations, § 2.106, along with sufficient justification to support that waiver request. This process is not intended to alter the allocation status in these bands. We would also expect applicants to provide a sufficient electromagnetic compatibility analysis to support an FCC finding that the intended use of the frequency assignment will not cause harmful interference to all other stations operating in conformance with the ITU Radio Regulations. The applicant must also state its willingness to accept an assignment on a non-interference, unprotected basis. Status as a small satellite for purposes of streamlined processing in no way guarantees that a waiver of the Table of Allocations will be granted. We anticipate that these types of uses under part 25 would be

extremely limited and we would expect that such applicants would be engaged contemporaneously in activities to work toward modification of the International Table of Allocations at the ITU. Similarly, if an applicant were to request authorization for a small satellite system in a band where there is no satellite allocation in the U.S. Table of Allocations, such applications would require a waiver request and an accompanying justification. For administrative efficiency, we encourage entities that are considering making a request for authorization for a non-conforming operation to discuss the request with Commission staff prior to filing.

J. Other Issues

Responsibility for Securing Licenses. SpaceX asks the Commission to make clear that small satellite operators and their agents bear the responsibility for securing all necessary licenses prior to launch, and for providing accurate information to launch providers as to the status of such licenses. In its comments, SpaceX describes the role that parties such as small satellite aggregators, rideshare coordinators, or satellite integrators increasingly play in making launch arrangements on behalf of small satellite customers. SpaceX notes that as a launch services provider, its contracts with these types of aggregators require that all of the small satellite payloads subject to that contract have secured all relevant licenses, and that it must be able to rely on such assurances from the aggregators. This topic appears to go beyond the scope of this part 25-specific rulemaking, and relate to authorization of satellites generally, whether those satellites are authorized under the part 25 streamlined process or not. Thus, we decline in this proceeding to adopt any rules relating to this issue. We note, however, that the Commission sought comment on issues related to multi-satellite deployments as part of its recent NPRM on orbital debris mitigation, including whether we should include in our rules any additional information requirements regarding these launches.

Rules Concerning Amateur and Experimental Satellites. The Commission did not seek comment in the NPRM on any modifications or updates to the rules governing experimental or amateur satellite licensing. The streamlined part 25 small satellite process adopted in the Report and Order is an alternative to existing license processes and does not replace or modify the authorization procedures for satellites currently contained in part 5, 25, or 97 of the Commission's rules. Nevertheless, we received a number of comments in response to the NPRM, particularly regarding the rules applicable to amateur satellite operations, suggesting that aspects of those rules be improved or clarified. These comments address topics outside the scope of this proceeding, and we decline to adopt any of the requested rule modifications or updates at this time.

IV. Procedural Matters

Regulatory Flexibility Act.—Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.* (RFA), the Commission's Final Regulatory Flexibility Analysis in the Report and Order is attached as Appendix B.

Paperwork Reduction Act.—This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, other Federal agencies, and the general public are invited to comment on the modified information collection requirements contained in this document. 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.

In this document, we have assessed the effects of reducing the application burdens of small satellite applicants, and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

In addition, this document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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 these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

It is ordered, pursuant to pursuant to sections 4(i), 7, 8, 9, 301, 303, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 158, 159, 301, 303, 308, 309, that the Report and Order *is adopted,* the policies, rules, and requirements discussed herein *are adopted,* and parts 1 and 25 of the Commission's rules *are amended* as set forth in Appendix A.

It is further ordered that the Report and Order contains new or modified information collection requirements that require review and approval by the Office of Management and Budget under the Paperwork Reduction Act, and *will become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date, except for the amendments to the schedules of application and regulatory fees. The amendments to the application fee schedule *will become effective* no earlier than 90 days following notification to Congress, in accordance with 47 U.S.C. 159A(b)(2). The amendment to the regulatory fee schedule *will become effective* following the adoption of a fee amount for the category as part of a separate Commission rulemaking proceeding, and no earlier than 90 days following the subsequent notification to Congress, in accordance with 47 U.S.C. 159A(b)(2).

It is further ordered that the Commission *shall notify* Congress of the amendments to the application fee schedule and regulatory fee schedule pursuant to 47 U.S.C. 158(c) and 47 U.S.C. 159(d), see 47 U.S.C. 159A(b)(2).

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Commission *shall send* a copy of the 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).

Final Regulatory Flexibility Analysis

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 April 2018 in this proceeding. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Proposed Rules

The Report and Order adopts a number of proposals relating to the Commission's rules and policies regarding the licensing of small satellites. Adoption of these changes will, among other things, make the licensing process more accessible, decrease processing times, limit regulatory burdens, and offer protection for critical communication links, while promoting orbital debris mitigation and efficient use of spectrum.

The Report and Order adopts several changes to 47 CFR parts 1 and 25. Principally, it:

(1) Establishes a new, optional licensing and market access process within part 25 for ''small satellites'' and ''small spacecraft.'' Satellites and systems licensed under this new streamlined process will meet several qualifying criteria, which are consistent with the goals of enabling faster review of applications in order to facilitate the deployment and operation of these systems.

(2) Modifies the Commission's part 25 processing procedures applicable to qualifying small satellite systems, so that unlike most part 25 NGSO satellite systems, qualifying small satellite systems will not be subject to processing rounds.

(3) Amends the Commission's satellite surety bond policies to provide a one-year grace period, applicable to small satellite streamlined licensees, during which the licensees would not need to post the surety bond required under the Commission's rules.

(4) Adopts a new application fee category for the streamlined small satellite license and market access applicants in the amount of $30,000, and adopts a new regulatory fee category for streamlined small satellite licensees and market access grantees.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were filed that specifically addressed the IRFA.

C. 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 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. 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

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 and policies, 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 Small Business Administration (SBA). Below, we describe and estimate the number of small entity licensees that may be affected by adoption of the final rules.

Satellite Telecommunications and All Other Telecommunications

The rules would affect some providers of satellite telecommunications services. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: ''Satellite Telecommunications'' and ''All Other Telecommunications.'' Under both categories, a business is considered small if it had $32.5 million or less in average annual receipts.

The first category of Satellite Telecommunications ''comprises establishments 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.'' For this category, Census Bureau data for 2012 show that there were a total of 333 satellite telecommunications firms that operated for the entire year. Of this total, 299 firms had annual receipts of under $25 million, and 12 firms had receipts of $25 million to $49,999,999.

The second category of Other Telecommunications is comprised of entities ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year. Of this total, 1,415 firms had annual receipts of under $25 million. Some of these ''Other Telecommunications firms,'' which are small entities, are earth station applicants/licensees, but since we do not adopt changes to our licensing rules specific to earth stations, we do not anticipate that these entities would be affected.

We anticipate that our rule changes may have an impact on some space station applicants and licensees. While traditionally space station applicants and licensees only rarely qualified under the definition of a small entity, some small satellite applicants and licensees applying under the streamlined process adopted in the Report and Order may qualify as small entities.

E. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Report and Order adopts several rule changes that would affect compliance requirements for space station operators. As noted above, some of these parties may qualify as small entities.

The rules adopted generally lower the compliance burden on all affected entities, including small entities. The streamlined small satellite process adopted in the Report and Order is optional, and so will not create any

additional burden in terms of compliance requirements. Entities seeking to apply under existing procedures may do so. The streamlined small satellite process lowers the compliance burden by, among other things, giving qualifying applicants the opportunity to provide information by certifications rather than by narrative in many instances, and to obtain an exemption from the Commission's processing round procedures. The Report and Order also decreases the part 25 application fees applicable to qualifying small satellites and establishes a new category for small satellite regulatory fees.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing 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.''

In the Report and Order, the Commission relaxes or removes requirements on NGSO satellite operators who qualify for the streamlined small satellite process. Applicants may submit information in the form of certifications, rather than providing detailed narrative information, in a number of instances. The application requirements for applicants seeking to apply under the streamlined small satellite process have been moved to a new rule section for easier reference. The Report and Order considers the various qualifying characteristics proposed in the NPRM, as well as possible alternatives proposed in the comments. In several instances, based on the record, the Report and Order adopts relaxed qualifying criteria. Further, small satellite applicants will not be subject to the Commission's processing round procedures, and small satellite operators will have a grace period before they must post a surety bond. The Report and Order also adopts an application fee for streamlined small satellite applicants that is significantly reduced from the fees that would be currently applicable to applicants and licensees for NGSO systems currently under part 25.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Small Satellite Rules Effective Date Clarification Order

The Order clarifies the effective date of certain rule changes adopted as part of the Report and Order released by the Commission on August 2, 2019 in the proceeding *Streamlining Licensing Procedures for Small Satellites.*

The Report and Order established that the effective date for the amendment to the application fee schedule, § 1.1107, would be ''no earlier than 90 days following notification to Congress,'' in accordance with 47 U.S.C. 159A(b)(2). On October 28, 2019 the Commission notified Congress of the amendment to the Commission's application fee schedule, as provided in the Report and Order. The 90-day notification period, as specified in 47 U.S.C. 159A(b)(2), concluded on January 27, 2020.

Given the satisfaction of the Congressional notification period, *it is ordered* that the amendment to the application fee schedule specified in the Report and Order will be effective 30 days after the upcoming publication of the Report and Order in the **Federal Register**.

Paperwork Reduction Act OMB Approval

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on February 27, 2020, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 25.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0678.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0678.

OMB Approval Date: February 27, 2020.

OMB Expiration Date: February 28, 2023.

Title: Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage By, Commercial Earth Stations and Space Stations.

Form Number: FCC Form 312, FCC Form 312–EZ, FCC Form 312–R and Schedules A, B and S.

Respondents: Business or other for-profit entities and Not-for-profit institutions.

Number of Respondents and Responses: 6,524 respondents; 6,573 responses.

Estimated Time per Response: 0.5–80 hours.

Frequency of Response: On occasion, one time, and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

Total Annual Burden: 44,992 hours.

Total Annual Cost: $16,612,586.

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On August 2, 2019, the Commission released a Report and Order, FCC 19–81, in IB Docket No. 18–86, titled ''Streamlining Licensing Procedures for Small Satellites'' (Small Satellite Report and Order). In this Report and Order, the Commission adopted a new alternative, optional licensing process for small satellites and spacecraft, called the ''Part 25 streamlined small satellite process.'' This new process allows qualifying applicants for small satellites and spacecraft to take advantage of an easier application process, a lower application fee, and a shorter timeline for review than currently exists for applicants under the Commission's existing part 25 satellite licensing rules. The Commission limited the regulatory burdens borne by applicants, while promoting orbital debris mitigation and efficient use of spectrum. The Commission's action supports and encourages the increasing innovation in the small satellite sector and helps to preserve U.S. leadership in space-based services and operations. This information collection will provide the Commission and the public with necessary information about the operations of this growing area of

satellite operations. While this information collection represents an overall increase in the burden hours, the increase is due to an anticipated overall increase in number of applications as a result of additional applications being filed under the streamlined process adopted in the Small Satellite Report and Order. This information collection represents a decrease in the paperwork burdens for individual operators of non-geostationary orbit (NGSO) satellites who may now qualify for streamlined processing as small satellites, and serves the public interest by streamlining the collection of information and allowing the Commission to authorize small satellites and spacecraft under the new process established in the Report and Order.

Specifically, FCC 19–81 contains new or modified information collection requirements listed below:

(1) Space station application requirements for qualifying small satellites and small spacecraft have been specified in new §§ 25.122 and 25.123, respectively. These new sections, including the certifications, incorporate some existing information requirements from other sections, but eliminate the need for small satellite and spacecraft applicants to provide much of the information that part 25 space station applicants would typically be required to provide in narrative format under § 25.114(d). The new or modified informational requirements in §§ 25.122 and 25.123 are listed as follows:

a. For small satellite applications filed under § 25.122, a certification that the space stations will operate in non-geostationary orbit, or for small spacecraft applications filed under § 25.123, a certification that the space station(s) will operate and be disposed of beyond Earth's orbit.

b. A certification that the total in-orbit lifetime for any individual space station will be six years or less.

c. For small satellite applications filed under § 25.122, a certification that the space station(s) will either be deployed at an orbital altitude of 600 km or below, or will maintain a propulsions system and have the ability to make collision avoidance and deorbit maneuvers using propulsion. This certification will not apply to small spacecraft applications filed under § 25.123.

d. A certification that each space station will be identifiable by a unique signal-based telemetry marker distinguishing it from other space stations or space objects.

e. A certification that the space station(s) will release no operational debris.

f. A certification that the space station operator has assessed and limited the probability of accidental explosions resulting from the conversion of energy sources on board the space station(s) into energy that fragments the spacecraft.

g. A certification that the probability of a collision between each space station and any other large object (10 centimeters or larger) during the orbital lifetime of the space station is 0.001 or less as calculated using current NASA software or other higher fidelity model.

h. For small satellite applications filed under § 25.122, a certification that the space station(s) will be disposed of through atmospheric re-entry, and that the probability of human casualty from portions of the spacecraft surviving re-entry and reaching the surface of the Earth is zero as calculated using current NASA software or higher fidelity models. This certification will not apply to small spacecraft applications filed under § 25.123.

i. A certification that operations of the space station(s) will be compatible with existing operations in the authorized frequency band(s) and will not materially constrain future space station entrants from using the authorized frequency bands.

j. A certification that the space station(s) can be commanded by command originating from the ground to immediately cease transmissions and the licensee will have the capability to eliminate harmful interference when required under the terms of the license or other applicable regulations.

k. A certification that each space station is 10 cm or larger in its smallest dimension.

l. For small satellite applications filed under § 25.122, a certification that each space station will have a mass of 180 kg or less, including any propellant. For small spacecraft applications filed under § 25.123, a certification that each space station will have a mass of 500 kg of less, including any propellant.

m. A description of means by which requested spectrum could be shared with both current and future operators (*e.g.,* how ephemeris data will be shared, antenna design, earth station geographic locations) thereby not materially constraining other operations in the requested frequency bands.

n. For space stations with any means of maneuverability, including both active and passive means, a description of the design and operation of maneuverability and deorbit systems, and a description of the anticipated evolution over time of the orbit of the proposed satellite or satellites.

o. In any instances where spacecraft capable of having crew aboard will be located at or below the deployment orbital altitude of the space station seeking a license, a description of the design and operational strategies that will be used to avoid in-orbit collision with such crewed spacecraft shall be furnished at the time of application. This narrative requirement will not apply to space stations that will operate beyond Earth's orbit.

p. A list of the FCC file numbers or call signs for any known applications or Commission grants related to the proposed operations (*e.g.,* experimental license grants, other space station or earth station applications or grants).

(2) The informational requirements listed in § 25.137 for requests for U.S.-market access through non-U.S.-licensed space stations were also modified to refer to §§ 25.122 and 25.123, for those applicants seeking U.S. market access under the small satellite or spacecraft process.

This collection is also used by staff in carrying out United States treaty obligations under the World Trade Organization (WTO) Basic Telecom Agreement. The information collected is used for the practical and necessary purposes of assessing the legal, technical, and other qualifications of applicants; determining compliance by applicants, licensees, and other grantees with Commission rules and the terms and conditions of their grants; and concluding whether, and under what conditions, grant of an authorization will serve the public interest, convenience, and necessity.

As technology advances and new spectrum is allocated for satellite use, applicants for satellite service will continue to submit the information required in 47 CFR part 25 of the Commission's rules. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 25

Communications equipment, Earth stations, Radio, Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 25 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, unless otherwise noted.

■ 2. Amend the table in § 1.1107, under ''9. Space Stations (NGSO),'' by redesignating paragraphs ''b'' through ''f'' as paragraphs ''c'' through ''g'' and adding a new paragraph ''b'' to read as follows:

§ 1.1107 Schedule of charges for applications and other filings for the international services.

* * * * *

Service	FCC Form No.	Fee amount	Payment type code
* * * * * * *			
9. Space Stations (NGSO):			
* * * * * * *			
b. Application (license or market access for small satellite or small spacecraft system).	312 Main & Schedule S & 159	30,000.00	CLW
* * * * * * *			

PART 25—SATELLITE COMMUNICATIONS

■ 3. 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.

■ 4. Amend § 25.103 by adding the definition of ''Small satellite'' and ''Small spacecraft'' in alphabetical order to read as follows:

§ 25.103 Definitions.

* * * * *

Small satellite. An NGSO space station eligible for authorization under the application process described in § 25.122.

Small spacecraft. An NGSO space station operating beyond Earth's orbit that is eligible for authorization under the application process described in § 25.123.

* * * * *

■ 5. Amend § 25.112 by revising paragraph (a)(3) to read as follows:

§ 25.112 Dismissal and return of applications.

(a) * * *

(3) The application requests authority to operate a space station in a frequency band that is not allocated internationally for such operations under the Radio Regulations of the International Telecommunication Union, unless the application is filed pursuant to § 25.122 or § 25.123.

* * * * *

■ 6. Amend § 25.113 by revising paragraphs (h) and (i) to read as follows:

§ 25.113 Station construction, deployment approval, and operation of spare satellites.

* * * * *

(h) An operator of NGSO space stations under a blanket license granted by the Commission, except for those granted pursuant to the application process in § 25.122 or § 25.123, need not apply for license modification to operate technically identical in-orbit spare satellites in an authorized orbit. However, the licensee must notify the Commission within 30 days of bringing an in-orbit spare into service and certify that its activation has not exceeded the number of space stations authorized to provide service and that the licensee has determined by measurement that the activated spare is operating within the terms of the license.

(i) An operator of NGSO space stations under a blanket license granted by the Commission, except for those granted pursuant to the application process in § 25.122 or § 25.123, need not apply for license modification to deploy and operate technically identical replacement satellites in an authorized orbit within the term of the system authorization. However, the licensee must notify the Commission of the intended launch at least 30 days in advance and certify that its operation of the additional space station(s) will not increase the number of space stations providing service above the maximum number specified in the license.

■ 7. Amend § 25.114 by revising paragraph (d) introductory text to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) The following information in narrative form shall be contained in each application, except space station applications filed pursuant to § 25.122 or § 25.123:

* * * * *

■ 8. Amend § 25.117 by revising paragraph (d)(1) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(d)(1) Except as set forth in § 25.118(e), applications for modifications of space station authorizations shall be filed in accordance with § 25.114 and/or § 25.122 or § 25.123, as applicable, but only those items of information listed in § 25.114 and/or § 25.122 or § 25.123 that change need to be submitted, provided the applicant certifies that the remaining information has not changed.

* * * * *

■ 9. Amend § 25.121 by revising paragraph (a)(1), adding paragraph (a)(3), revising paragraph (d)(2), and adding paragraph (d)(3) to read as follows:

§ 25.121 License term and renewals.

(a) * * *

(1) Except for licenses for DBS space stations, SDARS space stations and terrestrial repeaters, 17/24 GHz BSS space stations licensed as broadcast facilities, and licenses for which the application was filed pursuant to §§ 25.122 and 25.123, licenses for facilities governed by this part will be issued for a period of 15 years.

* * * * *

(3) Licenses for which the application was filed pursuant to § 25.122 or § 25.123 will be issued for a period of

6 years, without the possibility of extension or replacement authorization.

* * * * *

(d) * * *

(2) For non-geostationary orbit space stations, except for those granted under § 25.122 or § 25.123, the license period will begin at 3 a.m. Eastern Time on the date when the licensee notifies the Commission pursuant to § 25.173(b) that operation of an initial space station is compliant with the license terms and conditions and that the space station has been placed in its authorized orbit. Operating authority for all space stations subsequently brought into service pursuant to the license will terminate upon its expiration.

(3) For non-geostationary orbit space stations granted under § 25.122 or § 25.123, the license period will begin at 3 a.m. Eastern Time on the date when the licensee notifies the Commission pursuant to § 25.173(b) that operation of an initial space station is compliant with the license terms and conditions and that the space station has been placed in its authorized orbit and has begun operating. Operating authority for all space stations subsequently brought into service pursuant to the license will terminate upon its expiration.

* * * * *

■ 10. Add § 25.122 to read as follows:

§ 25.122 Applications for streamlined small space station authorization.

(a) This section shall only apply to applicants for NGSO systems that are able to certify compliance with the certifications set forth in paragraph (c) of this section. For applicants seeking to be authorized under this section, a comprehensive proposal for Commission evaluation must be submitted for each space station in the proposed system on FCC Form 312, Main Form and Schedule S, as described in § 25.114(a) through (c), together with the certifications described in paragraph (c) of this section and the narrative requirements described in paragraph (d) of this section.

(b) Applications for NGSO systems may be filed under this section, provided that the total number of space stations requested in the application is ten or fewer.

(1) To the extent that space stations in the satellite system will be technically identical, the applicant may submit an application for blanket-licensed space stations.

(2) Where the space stations in the satellite system are not technically identical, the applicant must certify that each space station satisfies the criteria in paragraph (c) of this section, and submit technical information for each type of space station.

(c) Applicants filing for authorization under the streamlined procedure described in this section must include with their applications certifications that the following criteria will be met for all space stations to be operated under the license:

(1) The space station(s) will operate only in non-geostationary orbit;

(2) The total in-orbit lifetime for any individual space station will be six years or less;

(3) The space station(s):

(i) Will be deployed at an orbital altitude of 600 km or below; or

(ii) Will maintain a propulsion system and have the ability to make collision avoidance and deorbit maneuvers using propulsion;

(4) Each space station will be identifiable by a unique signal-based telemetry marker distinguishing it from other space stations or space objects;

(5) The space station(s) will release no operational debris;

(6) The space station operator has assessed and limited the probability of accidental explosions, including those resulting from the conversion of energy sources on board the space station(s) into energy that fragments the spacecraft;

(7) The probability of a collision between each space station and any other large object (10 centimeters or larger) during the orbital lifetime of the space station is 0.001 or less as calculated using current National Aeronautics and Space Administration (NASA) software or other higher fidelity model;

(8) The space station(s) will be disposed of post-mission through atmospheric re-entry. The probability of human casualty from portions of the spacecraft surviving re-entry and reaching the surface of the Earth is zero as calculated using current NASA software or higher fidelity models;

(9) Operation of the space station(s) will be compatible with existing operations in the authorized frequency band(s). Operations will not materially constrain future space station entrants from using the authorized frequency band(s);

(10) The space station(s) can be commanded by command originating from the ground to immediately cease transmissions and the licensee will have the capability to eliminate harmful interference when required under the terms of the license or other applicable regulations;

(11) Each space station is 10 cm or larger in its smallest dimension; and

(12) Each space station will have a mass of 180 kg or less, including any propellant.

(d) The following information in narrative form shall be contained in each application:

(1) An overall description of system facilities, operations, and services and an explanation of how uplink frequency bands would be connected to downlink frequency bands;

(2) Public interest considerations in support of grant;

(3) A description of means by which requested spectrum could be shared with both current and future operators, (*e.g.,* how ephemeris data will be shared, antenna design, earth station geographic locations) thereby not materially constraining other operations in the requested frequency band(s);

(4) For space stations with any means of maneuverability, including both active and passive means, a description of the design and operation of maneuverability and deorbit systems, and a description of the anticipated evolution over time of the orbit of the proposed satellite or satellites; and

(5) In any instances where spacecraft capable of having crew aboard will be located at or below the deployment orbital altitude of the space station seeking a license, a description of the design and operational strategies that will be used to avoid in-orbit collision with such crewed spacecraft shall be furnished at time of application. This narrative requirement will not apply to space stations that will operate beyond Earth's orbit.

(6) A list of the FCC file numbers or call signs for any known applications or Commission grants related to the proposed operations (*e.g.,* experimental license grants, other space station or earth station applications or grants).

■ 11. Add § 25.123 to read as follows:

§ 25.123 Applications for streamlined small spacecraft authorization.

(a) This section shall only apply to applicants for space stations that will operate beyond Earth's orbit and that are able to certify compliance with the certifications set forth in paragraph (b) of this section. For applicants seeking to be authorized under this section, a comprehensive proposal for Commission evaluation must be submitted for each space station in the proposed system on FCC Form 312, Main Form and Schedule S, as described in § 25.114(a) through (c), together with the certifications described in paragraph (b) of this section and the requirements described in paragraph (c) of this section.

(b) Applicants filing for authorization under the streamlined procedure described in this section must include with their applications certifications that the following criteria will be met for all space stations to be operated under the license:

(1) The space station(s) will operate and be disposed of beyond Earth's orbit;

(2) The total lifetime from deployment to spacecraft end-of-life for any individual space station will be six years or less;

(3) Each space station will be identifiable by a unique signal-based telemetry marker distinguishing it from other space stations or space objects;

(4) The space station(s) will release no operational debris;

(5) No debris will be generated in an accidental explosion resulting from the conversion of energy sources on board the space station(s) into energy that fragments the spacecraft;

(6) The probability of a collision between each space station and any other large object (10 centimeters or larger) during the lifetime of the space station is 0.001 or less as calculated using current NASA software or higher fidelity models;

(7) Operation of the space station(s) will be compatible with existing operations in the authorized frequency band(s). Operations will not materially constrain future space station entrants from using the authorized frequency band(s);

(8) The space station(s) can be commanded by command originating from the ground to immediately cease transmissions and the licensee will have the capability to eliminate harmful interference when required under the terms of the license or other applicable regulations;

(9) Each space station is 10 cm or larger in its smallest dimension; and

(10) Each space station will have a mass of 500 kg or less, including any propellant.

(c) Applicants must also provide the information specified in § 25.122(d) in narrative form.

■ 12. Amend § 25.137 by revising paragraphs (b) and (d)(5) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

* * * * *

(b) Any request pursuant to paragraph (a) of this section must be filed electronically through the International Bureau Filing System and must include an exhibit providing legal and technical information for the non-U.S.-licensed space station of the kind that § 25.114 or § 25.122 or § 25.123 would require in a license application for that space station, including but not limited to, information required to complete Schedule S. An applicant may satisfy this requirement by cross-referencing a pending application containing the requisite information or by citing a prior grant of authority to communicate via the space station in question in the same frequency bands to provide the same type of service.

* * * * *

(d) * * *

(5) Recipients of U.S. market access for NGSO-like satellite operation that have one market access request on file with the Commission in a particular frequency band, or one granted market access request for an unbuilt NGSO-like system in a particular frequency band, other than those filed or granted under the procedures in § 25.122 or § 25.123, will not be permitted to request access to the U.S. market through another NGSO-like system in that frequency band. This paragraph (d)(5) shall not apply to recipients of U.S. market access applying under § 25.122 or § 25.123.

* * * * *

■ 13. Amend § 25.156 by revising paragraph (d)(1) to read as follows:

§ 25.156 Consideration of applications.

* * * * *

(d)(1) Applications for NGSO-like satellite operation will be considered pursuant to the procedures set forth in § 25.157, except as provided in § 25.157(b) or (i), as appropriate.

* * * * *

■ 14. Amend § 25.157 by revising paragraph (a) and adding paragraph (i) to read as follows:

§ 25.157 Consideration of applications for NGSO-like satellite operation.

(a) This section specifies the procedures for considering license applications for ''NGSO-like'' satellite operation, except as provided in paragraphs (b) and (i) of this section. For purposes of this section, the term ''NGSO-like satellite operation'' means:

(1) Operation of any NGSO satellite system; and

(2) Operation of a GSO MSS satellite to communicate with earth stations with non-directional antennas.

* * * * *

(i) For consideration of license applications filed pursuant to the procedures described in § 25.122 or § 25.123, the application will be processed and granted in accordance with §§ 25.150 through 25.156, taking into consideration the information provided by the applicant under § 25.122(d) or § 25.123(c), but without a processing round as described in this section and without a queue as described in § 25.158.

■ 15. Amend § 25.159 by revising paragraph (b) to read as follows:

§ 25.159 Limits on pending applications and unbuilt satellite systems.

* * * * *

(b) Applicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band, or one licensed-but-unbuilt NGSO-like satellite system in a particular frequency band, other than those filed or licensed under the procedures in § 25.122 or § 25.123, will not be permitted to apply for another NGSO-like satellite system license in that frequency band. This paragraph (b) shall not apply to applicants filing under § 25.122 or § 25.123.

* * * * *

■ 16. Amend § 25.165 by revising paragraphs (a) introductory text and (e)(1) to read as follows:

§ 25.165 Surety bonds.

(a) For all space station licenses issued after September 20, 2004, other than licenses for DBS space stations, SDARS space stations, space stations licensed in accordance with § 25.122 or § 25.123, and replacement space stations as defined in paragraph (e) of this section, the licensee must post a bond within 30 days of the grant of its license. Space station licensed in accordance with § 25.122 or § 25.123 must post a bond within one year plus 30 days of the grant of the license. Failure to post a bond will render the license null and void automatically.

* * * * *

(e) * * *

(1) Is authorized to operate at an orbital location within ±0.15° of the assigned location of a GSO space station to be replaced or is authorized for NGSO operation and will replace an existing NGSO space station in its authorized orbit, except for space stations authorized under § 25.122 or § 25.123;

* * * * *

■ 17. Amend § 25.217 by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 25.217 Default service rules.

(b)(1) For all NGSO-like satellite licenses, except as specified in paragraph (b)(4) of this section, for which the application was filed pursuant to the procedures set forth in § 25.157 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not

adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the technical requirements in paragraphs (b)(2) through (4) of this section, notwithstanding the frequency bands specified in these sections: §§ 25.143(b)(2)(ii) (except NGSO FSS systems) and (iii), 25.204(e), and 25.210(f) and (i).

* * * * *

(4) For all small satellite licensees, for which the application was filed pursuant to § 25.122 or § 25.123, authorizing operations in a frequency band for which the Commission has not adopted frequency-band specific service rules at the time the license is granted, the licensee will not be required to comply with the technical requirements specified in this section.

* * * * *

[FR Doc. 2020–12013 Filed 7–17–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180625576–8999–02]

RIN 0648–BJ95

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–2020 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial groundfish fisheries. This action is intended to allow commercial fishing vessels to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: This final rule is effective July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, phone: 206–526–4491 or email: *karen.palmigiano@noaa.gov.*

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at 50 CFR part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2019–2020 biennium for most species managed under the PCGFMP on December 12, 2018 (83 FR 63970).

Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL] and harvest guidelines [HG]) based on the best scientific information available at that time (50 CFR 660.60(b)). The harvest specifications and mitigation measures developed for the 2019–2020 biennium used data through the 2017 fishing year. In general, the management measures (*e.g.,* trip limits, area closures, and bag limits) set at the start of the biennial harvest specifications cycle help catch in the various sectors of the fishery reach, but not exceed, the limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal. At its June 10–19, 2020 meeting, the Council recommended increasing the limited entry fixed gear (LEFG) and open access (OA) trip limits for bocaccio south of 40°10′ North latitude (N lat.). Each of the adjustments discussed below are based on updated fisheries information that was unavailable when the Council completed the initial analysis for the current harvest specifications.

Bocaccio is managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. NMFS declared bocaccio overfished in 1999, and implemented a rebuilding plan for the stock in 2000. NMFS declared bocaccio officially rebuilt in 2017, and implemented new, higher catch limits for the first time in 2019. For example, the ACL for bocaccio increased from 741 metric tons (mt) in 2018 to 2,097 mt in 2019. For 2020, the bocaccio ACL south of 40°10′ N lat. is 2,011 mt with a fishery HG of 1,965 mt. The non-trawl allocation is 1,197.8 mt.

At the June 2020 Council meeting, members of the Groundfish Advisory SubPanel (GAP) notified the Council and the Groundfish Management Team (GMT) of increased interactions with bocaccio and the desire for higher trip limits to reduce the need to discard. The most recent bocaccio attainment estimates for 2020 suggest that around 13.5 percent or 162.1 mt of bocaccio will be attained by the non-trawl sector out of the 1,197.8 mt non-trawl allocation for south of 40°10′ N lat., the GAP requested the GMT examine potential increases to the bocaccio trip limits for the LEFG and OA sectors south of 40°10′ N lat.

To assist the Council in evaluating potential trip limit increases for the LEFG and OA sectors targeting bocaccio south of 40°10′ N lat., the GMT analyzed projected attainment under the current status quo trip limits and increased trip limits (Table 1).

TABLE 1—STATUS QUO AND PROPOSED INCREASED LEFG AND OA TRIP LIMITS FOR BOCACCIO SOUTH OF 40°10′ N LAT

Option	Sector	Geographic area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sep–Oct	Nov–Dec
Option 1: Status Quo Trip Limits.	LE	40°10′ to 34°27′ N lat.	1,500 lb (680 kg)/2 months					
	LE	South of 34°27′ N lat.	1,500 lb (680 kg)/2 months.	CLOSED	1,500 lb (680 kg)/2 months			
	OA	South of 34°27′ N lat.	500 lb/2 months	CLOSED	500 lb (227 kg)/2 months			

TABLE 1—STATUS QUO AND PROPOSED INCREASED LEFG AND OA TRIP LIMITS FOR BOCACCIO SOUTH OF 40°10′ N LAT—Continued

Option	Sector	Geographic area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sep–Oct	Nov–Dec
Option 2: Increased Trip Limits.	LE	40°10′ to 34°27′ N lat.	1,500 lb (680 kg)/2 months			6,000 lb (2,722 kg)/2 months		
	LE	South of 34°27′ N lat.	1,500 lb (680 kg)/2 months.	CLOSED	1,500 lb (680 kg)/2 months.	6,000 lb (2,722 kg)/2 months		
	OA	South of 34°27′ N lat.	500 lb (227 kg)/2 months.	CLOSED	500 lb (227 kg)/2 months.	4,000 lb (1,814 kg)/2 months		

In 2018, when the Council recommended bocaccio trip limits for the 2019–20 harvest specifications, bocaccio had only just been rebuilt and few data points existed to provide projected annual catch data under the current trip limits. Based on the limited data available at that time, attainment of boccacio by the non-trawl commercial fishery in 2020 was projected to be around 3.5 mt of the 1,197.8 mt non-trawl allocation.

The GMT updated the projected attainments under the current status quo trip limits (Option 1) and examined potential impacts under increased trip limits (Option 2) with additional catch data from the 2018 and 2019 fishing years. Based on updated model projections attainment of bocaccio, under the current status quo trip limits in the LEFG and OA fisheries, is projected to be 19.1 mt, or 1.5 percent of the non-trawl allocation (1,197.8 mt) and less than one percent of the bocaccio ACL (2,011 mt) for south of 40°10′ N lat. Increasing the trip limits for the LEFG and OA fisheries south of 40°10′ N lat. for the remainder of the fishing year is projected to increase attainment of bocaccio for the LEFG and OA fisheries by 39.7 mt over Option 1, and the overall attainment of bocaccio is projected to increase from 162.1 mt, or 13.5 percent, to 201.8 mt, or 16.8 percent, of the non-trawl HG and 10 percent of the ACL south of 40°10′ N lat. (Table 2).

TABLE 2—PROJECTED MORTALITY FOR STATUS QUO AND OPTION 2 TRIP LIMITS FOR THE LEFG AND OA SECTORS TARGETING BOCACCIO SOUTH OF 40°10′ N LAT

Option	Sector	Geographic area	Projected attainment (mt)	Non-trawl projected attainment (mt)	Percentage of non-trawl allocation attained	Non-trawl allocation (mt)	ACL (mt)
Option 1: Status Quo Trip Limits	LE	40°10′ to 34°27′ N lat	11.0	162.1	13.5	1,197.8	2,011
	LE	South of 34°27′ N lat	2.7				
	OA	South of 34°27′ N lat	5.4				
	Total		19.1				
Option 2: Increased Trip Limits	LE	40°10′ to 34°27′ N lat	23.6	201.8	16.8		
	LE	South of 34°27′ N lat	7.9				
	OA	South of 34°27′ N lat	27.3				
	Total		58.8				

Trip limit increases for bocaccio are intended to allow for increased attainment of the non-trawl allocation (1,197.8 mt), while also providing the incentive for vessels targeting co-occurring species, such as chilipepper rockfish, to land their bocaccio catch instead of discarding. Therefore, the Council recommended and NMFS is implementing, by modifying Table 2 (South) to part 660, Subpart E, an increase to the bocaccio trip limits for the LEFG fishery south of 40°10′ N lat., and by modifying Table 3 (South) to part 660, Subpart F, an increase to the bocaccio trip limits for the OA fishery south of 40°10′ N lat.

Classification

NMFS issues tis action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 660.60(c), which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Karen Palmigiano in NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to bocaccio management measures in this document ease restrictive trip limits on commercial fisheries in California to allow fisheries to harvest more fish while still staying within harvest limits. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2019–2020 harvest specifications and management measures which published on December 12, 2018 (83 FR 63970).

At its June 2020 meeting, the Council recommended the increases to the commercial trip limits for the LEFG and OA sectors be implemented as soon as possible so that harvesters may be able to take advantage of these higher limits and reduce unnecessary discarding of bocaccio. Each of the adjustments to commercial management measures in this rule will create more harvest opportunity and allow fishermen to catch species that are currently under attained without causing any impacts to the fishery that were not anticipated during development of the 2019–20 biennial harvest specifications. Each of these recommended adjustments also rely on new catch data that were not available and thus not considered

during the 2019–2020 biennial harvest specifications process. New catch information through the end of the 2019 fishing year used to inform model projections estimates that attainment of bocaccio will again be very low in 2020 and, even with these increases to trip limits, sectors are unlikely to come close to attaining their shares of the bocaccio ACL. These adjustments to management measures could provide up to an additional $189,000 in ex-vessel revenue to harvesters and would reduce the unnecessary discarding of bocaccio. Additional economic benefits would also be seen for processors and the fishing support businesses; however, these are more difficult to quantify. Delaying implementation to allow for public comment would likely reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry. If the notice and comment rulemaking process took 90 days to complete, the increase would not be in place until October when the majority of the fishing year is over. Therefore, providing a comment period for this action could significantly limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

The NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by increasing opportunity and relieving participants of the more restrictive trip limits. These adjustments were requested by the Council's advisory bodies, as well as members of industry during the Council's June 2020 meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2019–2020 (82 FR 63970; December 12, 2018).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: July 15, 2020.

Hélène M.N. Scalliet,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Table 2 (South) to part 660, subpart E is revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (South) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10′ N Lat.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 0/7/01/2020

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish		40,000 lb/ 2 months, of which no more than 5,500 lb may be blackgill rockfish			
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	1,300 lb week, not to exceed 3,900 lbs/2months		1,500 lb/ week, not to exceed 4,500 lbs/ 2 months			
7	South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**						
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month		10,000 lb/ month			
13		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
14	**Whiting**	10,000 lb/ trip					
15	**Minor Shelf Rockfish[2/], Shortbelly rockfish, Widow rockfish (including Chilipepper between 40°10' - 34°27' N. lat.)**						
16	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.		8,000 lb/ 2 months, of which no more than 500 lbs may be vermilion rockfish			
17	South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED	5,000 lb/ 2 months, of which no more than 4,000 lb may be vermilion rockfish			
18	**Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly and widow rockfish limits - - See above					
20	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA		4,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA			
21	**Canary rockfish**						
22	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months		3,500 lb/ 2 months			
23	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	3,500 lb/ 2 months			
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					

TABLE 2 (South)

Table 2 (South) continued 07/01/2020

TABLE 2 (South) cont'd

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
27	**Bocaccio**						
28	40°10' N. lat. - 34°27' N. lat.	1,500 lb/ 2 months			6,000 lb/ 2 months		
29	South of 34°27' N. lat.	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months	6,000 lb/ 2 months		
30	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
31	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
32	Deeper nearshore[5/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
33	**California Scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
34	**Lingcod[6/]**	1,200 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
35	**Pacific Cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Other Fish[7/] & Cabezon in California**	Unlimited					
39	**Big Skate**	Unlimited					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Table 3 (South) to part 660, subpart F is revised to read as follows:

Table 3 (South) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10′ N. Lat.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 07/01/2020

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish		10,000 lb/ 2 months, of which no more than 1,500 lb may be blackgill rockfish			
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day, or one landing per week up to 1,200 lb, not to exceed 2,400 lb/ 2 months		300 lb/ day, or one landing per week up to 1,500 lb, not to exceed 3,000 lb/ 2 months			
7	South of 36°00' N. lat.	300 lb day; or one landing per week up to 1,600 lb not to exceed 4,800 lb/2 months					
8	**Shortpine thornyheads and longspine thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.		5,000 lb/ month			
12		*South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.*					
13	**Whiting**	300 lb/ month					
14	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
15	40°10' N. lat. - 34°27' N. lat.	400 lb/ 2 months	CLOSED	4,000 lb/ 2 months, of which no more than 400 lbs may be vermilion rockfish			
16	South of 34°27' N. lat.	1,500 lb/ 2 months		3,000 lb/ 2 months, of which no more than 1,500 lbs may be vermilion rockfish			
17	**Canary rockfish**	300 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
18	**Yelloweye rockfish**	CLOSED					
19	**Cowcod**	CLOSED					
20	**Bronzespotted rockfish**	CLOSED					
21	**Bocaccio**	500 lb/ 2 months	CLOSED	500 lb/ 2 months	4,000 lb/ 2 months		
22	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
23	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
24	Deeper nearshore[5/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
25	**California scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
26	**Lingcod[6/]**	500 lb/month	CLOSED	700 lb/ month			
27	**Pacific cod**	1,000 lb/ 2 months					
28	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
29	**Longnose skate**	Unlimited					
30	**Big skate**	Unlimited					
31	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South). Continued 07/01/2020

TABLE 3 (South) cont'd

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
32	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
33	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
34		*40° 10′ N. lat. - 38° 00′ N. lat.*	*100 fm line 1/ - 200 fm line 1/*	*100 fm line 1/ - 150 fm line 1/*				*100 fm line 1/ - 200 fm line 1/*
35		*38° 00′ N. lat. - 34° 27′ N. lat.*	*100 fm line 1/ - 150 fm line 1/*					
36		*South of 34° 27′ N. lat.*	*100 fm line 1/ - 150 fm line 1/ along the mainland coast; shoreline - 150 fm line 1/ around islands*					
37			Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
38	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
39		South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2020–15629 Filed 7–17–20; 8:45 am]

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Proposed Rules

Federal Register
Vol. 85, No. 139
Monday, July 20, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 875, 890, and 894

RIN 3206–AN99

Designation of Certain Services as Emergency Services Under the Antideficiency Act; Lapse in Appropriation—Enroll and Change Enrollment in FEHB Program and Continuation of Certain Insurance Benefits

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to ensure the continuation of certain benefits and services that could be impacted by a lapse in appropriations. First, the proposed rule implements Section 1110 of the National Defense Authorization Act for Fiscal Year 2020 (FY20 NDAA) which designates certain Federal Employees Health Benefits (FEHB) Program and Federal Employees' Group Life Insurance (FEGLI) services as emergency services under the Antideficiency Act. These services are deemed as services for emergencies involving the safety of human life or the protection of property. The law also provides that employees furloughed as a result of a lapse in appropriations shall, during such lapse, be deemed to be in pay status, for purposes of enrolling or changing enrollment in the FEHB Program. Secondly, the proposed rule implements a section of law which authorizes continuation of coverage under the Federal Employees Dental and Vision Insurance Program (FEDVIP) and the Federal Long Term Care Insurance Program (FLTCIP) for enrollees who are furloughed or excepted from furlough and working without pay due to a lapse in appropriations, and provides that coverage may not be cancelled as a result of nonpayment of premiums or other periodic charges due to such a lapse. The proposed rule also clarifies that upon the end of a lapse in appropriations, FEDVIP and FLTCIP premiums will be paid from back pay or may be paid back from another source for FLTCIP enrollees who elected to make payments directly to the Carrier.

DATES: OPM must receive comments on or before August 19, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Julia Elam, Program Analyst, at (202) 606–2128 or Padma Shah, Senior Policy Analyst, at (202) 606–2128.

SUPPLEMENTARY INFORMATION:

Background

The Federal Benefits Programs

Federal Employees' Group Life Insurance Program (FEGLI)

FEGLI is administered by the United States Office of Personnel Management (OPM) in accordance with Chapter 87 of Title 5 of the U.S. Code and implementing regulations (Title 5, part 87, and Title 48, chapter 21 of the Code of Federal Regulations). As of September 30, 2019, FEGLI covers an estimated 4.3 million employees and annuitants enrolled in Basic insurance, including 1.2 million employees and annuitants enrolled in Option A—Standard insurance, 1.2 million employees and annuitants with Option B—Additional insurance that has not reduced to zero, and 924,000 employees and annuitants enrolled in Option C—Family insurance that has not reduced to zero. Eligible employees are automatically enrolled in Basic insurance unless the employee waives this coverage, and FEGLI coverage can be continued upon retirement, if certain requirements are met. For most enrollees, the Government pays one-third of the premium cost for Basic insurance and the enrollee pays two-thirds of the premium cost. Those enrolled in Basic insurance may also elect Optional A, B, or C insurance. Enrollees pay the full cost for all Optional insurance.

Federal Employees Health Benefits (FEHB) Program

The FEHB Program is administered by OPM in accordance with Title 5 Chapter 89, United States Code and implementing regulations (Title 5, Parts 890, 892 and Title 48, Chapter 16). As of March 2019, there were approximately 8.2 million Federal employees, annuitants, certain Tribal employees, and their family members covered by the FEHB Program. It is the largest employer-sponsored health insurance program in the country. The Government contribution toward premium costs for most enrollees is set in statute as the lesser of 72 percent of the weighted average premium of all health plans or 75 percent of that plan option's premium. Using 2020 premiums with 2019 enrollments, the Government contribution toward 2020 premiums is $39.8 billion and the enrollee portion is $17.3 billion.

Federal Employees Dental and Vision Insurance Program (FEDVIP)

FEDVIP was created as a result of the enactment of the Federal Employee Dental and Vision Benefits Enhancement Act of 2004, Public Law 108–496. This Act required OPM to make stand-alone dental and vision insurance available to Federal employees, annuitants, and their family members. Certain TRICARE-eligible individuals who are authorized under Section 715 of the National Defense Authorization Act of Fiscal Year 2017, Public Law 114–328, recently became eligible for FEDVIP. As of November 2019, FEDVIP has 4.8 million enrollees with approximately 6.6 million covered individuals. There is no Government contribution towards premiums; enrollees pay the full cost of coverage. FEDVIP is administered by OPM in accordance with 5 U.S.C. chapters 89A and 89B and implementing regulations (5 CFR part 894).

Federal Long Term Care Insurance Program (FLTCIP)

FLTCIP was created as a result of the enactment of the Long Term Care Security Act of 2000, Public Law 106–265. Eligible individuals may apply for insurance to help them pay for the costs of long term care. Most Federal employees and annuitants and their qualified relatives, and active and retired members of the uniformed services and their qualified relatives, can apply for FLTCIP coverage. As of November 2019, FLTCIP has 268,000 enrollees. FLTCIP is administered by OPM in accordance with 5 U.S.C. chapter 90 and implementing regulations (5 CFR part 875). FLTCIP is an enrollee-pay-all program; there is no Government contribution toward premiums.

Discussion of the Changes

Designation of FEHB Program and FEGLI Program Services as Emergency Services Under the Antideficiency Act

The Constitution provides that ''No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law.'' U.S. Const. art. I, section 9, cl. 7. The Treasury is further protected through the Antideficiency Act, 31 U.S.C. 1341 *et seq.* Among other things, the Antideficiency Act prohibits all officers and employees of the Federal Government from entering into obligations in advance of appropriations (31 U.S.C. 1341) and it prohibits employing Federal personnel in advance of appropriations except in emergencies involving the safety of human life or the protection of property (31 U.S.C. 1342).[1] Section 1110(b) of Public Law 116–92 amends 5 U.S.C. 8702 (automatic coverage of life insurance), to provide that any services by an officer or employee under Chapter 87 of Title 5 relating to FEGLI benefits shall be deemed for purposes of 31 U.S.C. 1342, as services for emergencies involving the safety of human life or the protection of property. In addition, Section 1110(a) of Public Law 116–92 amends 5 U.S.C. 8905 to provide that any services by an officer or employee for the purposes of enrolling an individual in an FEHB plan, or changing the enrollment of an individual, shall be deemed, for purposes of section 1342 of Title 31, as services for emergencies involving the safety of human life or the protection of property. Therefore, the Government may continue to employ Federal officers and employees to perform such emergency services related to the FEGLI and FEHB Programs.

In this proposed rule, OPM amends the FEGLI regulations by adding a new section 5 CFR 870.106 in subpart A, which designates certain FEGLI services as emergency services under the Antideficiency Act. These services include, but are not limited to, any activities related to enrollment, changing enrollment, temporary extension of coverage and conversion, eligibility, certification of coverage, and matters relating to reemployed annuitants and survivor annuitants. OPM's current regulations do not address how or whether agencies must make changes to FEGLI for enrollees during a furlough. OPM also amends the FEHB Program regulations by adding a new section 5 CFR 890.113 in subpart A, which designates certain FEHB Program services as emergency services under the Antideficiency Act. These services include, but are not limited to, activities related to enrollment, changing enrollment, temporary extension of coverage and conversion, eligibility, and matters relating to reemployed annuitants and survivor annuitants.

Under Section 1110(d) of Public Law 116–92, the amendments relating to the designation of FEHB Program and FEGLI services as emergency services shall apply to any lapse in appropriations beginning on or after December 20, 2019, the date of enactment of the FY20 NDAA. The FEHB Program and FEGLI regulations have been updated with new sections 5 CFR 890.113(b) and 5 CFR 870.106(b), respectively, to clarify that the designation of FEHB Program and FEGLI services as emergency services shall apply to any lapse in appropriations beginning on or after December 20, 2019.

Opportunities To Enroll and Change Enrollment in the FEHB Program for Furloughed Employees and Employees Excepted From Furlough and Working Without Pay During a Lapse in Appropriations

Generally, an employee needs to be in pay status in order to enroll or change enrollment in the FEHB Program. *See* 5 CFR 890.301(b), which indicates that an FEHB ''enrollment or change of enrollment takes effect on the first day of the first pay period that begins after the date the employing office receives an appropriate request to enroll or change the enrollment and that follows a pay period during any part of which the employee is in *pay status.*'' (emphasis added). Likewise, under 5 CFR 890.301(f)(4), ''an open season new enrollment takes effect on the first day of the first pay period that begins in the next following year and which follows a pay period during any part of which the employee is in a pay status.'' Currently, when an employee is furloughed or excepted from furlough and working without pay as a result of a lapse in appropriations, he or she is not receiving pay during the lapse. Therefore, this regulatory requirement prevents enrollment changes made by employees affected by a furlough from becoming effective. Therefore, under current regulations, such employees cannot enroll or change enrollment in the FEHB Program. Under section 1110(c)(2) of the FY20 NDAA, such employees would be deemed to be in pay status, during the lapse, for purposes of enrolling or changing enrollment in the FEHB Program.

Section 1110(c)(2) refers to furloughed employees but not to employees excepted from furlough and working without pay. However, OPM interprets the statute's purpose to be that of protecting the benefits of employees affected by a lapse in appropriations. Further, all other clauses in sections 1110 and 1111—the two provisions in the FY20 NDAA addressing Federal benefit programs to include FEHB, FEGLI, FEDVIP and FLTCIP—encompass both furloughed employees and employees excepted from furlough and working without pay. Given these facts, and pursuant to OPM's general authority to interpret the provisions of the FEHB Act, 5 U.S.C. 8901 *et seq.,* and to fill in statutory gaps left by Congress, as well as OPM's broad authority under 5 U.S.C. 8913(b) to prescribe the conditions under which employees are eligible to enroll in the FEHB Program, OPM is also including similarly situated employees who are excepted from furlough and working without pay as being deemed to be in a pay status for the purpose of enrolling or changing enrollment in the FEHB Program. This will ensure that all employees that would otherwise be affected by a lapse in appropriations will be treated the same.

This proposed rule would add a new paragraph (o) to 5 CFR 890.301 and revise that section's heading. Under new paragraph (o), employees furloughed or excepted from furlough and working without pay as a result of a lapse in

[1] U.S. Department of Justice, Office of Legal Counsel, *Government Operations in the Event of a Lapse in Appropriations,* memorandum from Walter Dellinger, Assistant Attorney General, for Alice Rivlin, Director, Office of Management and Budget, August 16, 1995, available at *https://www.justice.gov/opinion/file/844116/download. See also* 2018 Congressional Research Service (CRS), *Shutdown of the Federal Government: Causes, Processes, and Effects,* available at *https://fas.org/sgp/crs/misc/RL34680.pdf.*

appropriations are deemed to be in pay status, during such lapse, for purposes of enrolling or changing enrollment in the FEHB Program. The number of employees that would likely enroll or change enrollment during a lapse in appropriations would depend on the length of the lapse, the timing of the lapse, and number of employees impacted by the lapse. Based on recent data, OPM estimates that during a year, there are approximately 460,000 new enrollment or enrollment change transactions that occur through the electronic FEHB Data Hub. About 57% of these transactions occur during Open Season, and about 43% of these transactions occur outside Open Season. OPM estimates these numbers represent 75% of total transactions with the remaining transactions being paper transactions that occur outside of the FEHB Data Hub. The amendments relating to enrollment and changing enrollment in the FEHB Program apply to any lapse of appropriations beginning on or after December 20, 2019, the date the FY20 NDAA was enacted.

Continuation of FLTCIP and FEDVIP During a Lapse in Appropriations

Section 1111 of the FY20 NDAA amended 5 U.S.C. 9003, and authorized the continuation of coverage under FLTCIP for an enrollee who is an employee or member of the uniformed services who, due to a lapse in appropriations, is furloughed or excepted from furlough and working without pay during such lapse, and provides that these FLTCIP enrollees may not have coverage cancelled as a result of nonpayment of premiums or other periodic charges during a lapse. Under the FY20 NDAA, FLTCIP premiums will be paid to the Carrier from enrollees' back pay made available as soon as practicable upon the end of such a lapse. If the enrollee has elected to pay premiums by a method other than payroll deduction, the enrollee may continue to pay premiums pursuant to such election.

Currently, if an employee with FLTCIP is furloughed, payroll deductions stop for any employee that does not receive pay during a shutdown furlough. However, during a shutdown furlough an impacted employee's coverage does not terminate due to nonpayment of premiums. The employee will accrue a debt for FLTCIP premiums. Once the shutdown ends, the Program Administrator will collect the past due amount of missed FLTCIP premiums from the employee's upcoming pay, which may include making adjustments to the deduction amount. It will work with the enrollee to collect the back premiums limiting the amount per pay check to prevent undue hardship. The Program Administrator does not attempt to terminate an enrollment or collect missed premium until after the furlough is resolved.

Under the proposed rule, continuation of FLTCIP coverage is authorized for an enrollee who is an employee or member of the uniformed services who, due to a lapse in appropriations, is furloughed or excepted from furlough and working without pay during such lapse. The proposed rule also clarifies that upon the end of a lapse in appropriations, FLTCIP premiums will be paid from back pay or may be paid back from another source for FLTCIP enrollees who elected to make payments directly to the Carrier. During a furlough, an employee can stop or continue direct pay or debit billing during a furlough. These enrollees will receive letters from the Program Administrator about any back premiums to pay. This proposed rule does not affect the amount of premiums collected, but it may change when the premiums are received by the Carrier.

It also provides that FLTCIP enrollees may not have coverage cancelled as a result of nonpayment of premiums or other periodic charges during a lapse. In 5 CFR 875.302 OPM is adding a new paragraph (c) to add an exception to allow FLTCIP coverage to continue if any enrollee is furloughed, or excepted from furlough and working without pay during a lapse in appropriations, and that coverage may not be cancelled as a result of nonpayment of premiums or other periodic charges due during such lapse. This proposed rule also adds in new paragraph 5 CFR 875.302(c)(1) to provide that an enrollee who elected to pay FLTCIP premiums directly to the Carrier, may continue to pay premiums pursuant to such election. Otherwise; if the premiums had been withheld from pay and Congress appropriates back pay as authorized by 31 U.S.C. 1341(c)(2), premiums will be paid to the Carrier from the enrollee's back pay made available as soon as practicable upon the end of such a lapse. If Congress does not appropriate back pay for the lapse period, if the enrollee usually pays premiums through payroll deduction, and the lapse period is less than three consecutive pay periods, the accumulated premiums will be withheld when the lapse ends and employees can be paid. Otherwise, the Program Administrator will begin to bill the enrollee directly for premium payments. The enrollee must pay those bills on a timely basis in order to continue coverage. A new paragraph 5 CFR 875.302(c)(2), explains that upon the end of a lapse in appropriations, premiums will be required from all impacted enrollees, and if premiums are not paid as soon as practicable upon the end of the lapse when due, coverage will terminate pursuant to current regulations at 5 CFR 875.412(c).

Section 1111 of Public Law 116–92 also amends 5 U.S.C. 8956 (dental benefits) and 8986 (vision benefits), to authorize the continuation of coverage under a vision and/or dental benefits plan for any employee or a covered TRICARE-eligible individual enrolled in such a plan who, as a result of a lapse in appropriations, is furloughed or excepted from furlough and working without pay. FEDVIP coverage for these enrollees may not be cancelled as a result of nonpayment of premiums or other periodic charges due to a lapse in appropriations, and, assuming Congress appropriates back pay as authorized by 31 U.S.C. 1341(c)(2), FEDVIP premiums will be paid to the Carrier from the enrollee's back pay made available as soon as practicable upon the end of such a lapse. If Congress does not appropriate back pay for the lapse period, the Program Administrator will begin billing seventy (70) calendar days after the first missed payment. The first direct bill will be mailed on the next available direct bill cycle date following the 70-day period. The Program Administrator may not terminate an enrollment during a lapse in appropriation (furloughed employees, during a lapse in appropriations, are not considered to be on a leave without pay). When employees return to work and receive pay, the Program Administrator will collect 2 missed premium payments each month until the previously unpaid premiums are caught up. This will also pertain to retirees impacted by a lapse in appropriation.

Currently, if a FEDVIP enrollee has been furloughed, FEDVIP coverage will continue. Payroll deductions will cease for any employee that does not receive pay and missed premium payments will be withheld from pay upon return to pay status. The Program Administrator, will begin to directly bill enrollees for premiums 70 calendar days after the first missed payment, but may not terminate an enrollment due to a lapse in appropriations. The proposed rule authorizes continuation of coverage under a vision and/or dental benefits plan for any employee or a covered TRICARE-eligible individual enrolled in such a plan who, as a result of a lapse in appropriations, is furloughed or excepted from furlough and working

without pay. FEDVIP coverage for these enrollees may not be cancelled as a result of nonpayment of premiums or other periodic charges due to a lapse in appropriations, and FEDVIP premiums will be paid to the Carrier from the enrollee's back pay made available as soon as practicable upon the end of such a lapse. The proposed rule does not affect the amount of premiums collected, but it may change when the premiums are received by the insurance carrier.

In 5 CFR 894.405, OPM adds a new paragraph (c), which adds an exception to allow FEDVIP coverage to continue for any enrollee who is furloughed or is excepted from furlough and working without pay during a lapse in appropriations. In addition, in 5 CFR 894.406, OPM adds a new paragraph (c), which adds an exception to allow FEDVIP coverage to continue for any enrollee who is a TRICARE-eligible individual who is furloughed or is excepted from furlough and working without pay during a lapse. Currently, under 5 CFR 894.405 and 894.406, if a FEDVIP enrollee goes into nonpay status or the enrollee's pay or annuity, including uniformed services retirement pay, is insufficient to cover the allotments, the enrollee may contact the Program Administrator and make payments directly, or coverage will stop if the enrollee does not make premium payments, and the enrollee has to wait until open season to enroll.

In 5 CFR 894.601, OPM amends paragraph (b) to add an exception to allow FEDVIP coverage to continue for any enrollee who is furloughed or excepted from furlough and working without pay during a lapse in appropriations. Currently, under 5 CFR 894.601(b), FEDVIP coverage stops if an enrollee goes into a period of nonpay or insufficient pay, including insufficient uniformed services pay or uniformed services retirement pay, if the enrollee does not make premium payments.

Under Section 1111(c) of Public Law 116–92, the amendments relating to the continuation of FEDVIP and FLTCIP under chapter 89A, 89B, or 90 (respectively) of Title 5, United States Code, apply to any contract for those benefits entered into before, on, or after December 20, 2019, the date of enactment of Public Law 116–92.

In addition to the above regulatory changes, OPM is updating the authority citation for parts 870, 875, 890 and 894.

Expected Impact of Proposed Changes

OPM seeks general comments on the impact of this regulation. OPM does not believe this regulation will have a large impact on the broader life insurance, dental, vision, or long term care insurance markets as FEGLI, FEDVIP, and FLTCIP constitute a small percentage of participating Carriers' overall business line in their respective non-Federal life, dental, vision, or long term care insurance portfolios. OPM also does not believe this regulation will have a large impact on the broader health insurance market even if FEHB constitutes a large percentage of a Carrier's overall business line because administrative actions such as processing enrollments and enrollment changes are routine practices.

Regulatory Impact Analysis

OPM has examined the impact of this rulemaking as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. While this rulemaking does not reach the economic effect of $100 million or more under Executive Order 12866, this rulemaking is still designated as a ''significant regulatory action,'' under Executive Order 12866 and has been reviewed by OMB.

Reducing Regulation and Controlling Regulatory Costs

This proposed rule, if finalized as proposed, is expected to impose no more than de minimis costs and thus be neither an E.O. 13771 regulatory action nor an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 875

Administrative practice and procedure, Employee benefit plans, Government contracts, Government employees, Health insurance, Military personnel, Organization and functions, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 894

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations parts 870, 875, 890, 894 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 1. The authority citation for Part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Pub. L. 104–106, 110 Stat. 521; Pub. L. 116–92.

Subpart A—Administration and General Provisions

■ 2. Amend subpart A by adding section 870.106 to read as follows:

§ 870.106 Designation of FEGLI services as emergency services under the Antideficiency Act.

(a) Any services by an officer or employee relating to benefits under this part, shall be deemed, for purposes of section 1342 of Title 31, United States

Code, as services for emergencies involving the safety of human life or the protection of property.

(b) The designation of services as emergency services shall apply to any lapse in appropriations beginning on or after December 20, 2019, the date of enactment of Section 1110(d) of Public Law 116–92.

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 3. The authority citation for part 875 is revised to reads as follows:

Authority: 5 U.S.C. 9008, Pub. L. 116–92.

Subpart C—Cost

■ 4. Amend § 875.302 by adding paragraph (c) to read as follows:

§ 875.302 What are the options for making premium payments?

* * * * *

(c) Notwithstanding paragraph (b) of this section, if you are an enrollee who is furloughed or excepted from furlough and working without pay during a lapse in appropriations, your FLTCIP coverage will stay in effect through such a lapse. Your coverage may not be cancelled as a result of nonpayment of premiums or other periodic charges due during such lapse. Pursuant to the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92, such continuation of coverage during a lapse in appropriations applies to any contract for long term care insurance coverage under 5 U.S.C. chapter 90 entered into before, on, or after December 20, 2019.

(1) If your premium payments are made by Federal payroll or annuity deduction, or uniformed services retirement pay deduction, premiums will be paid to the Carrier from back pay made available as soon as practicable upon the end of such a lapse. If your premium payments are made by pre-authorized debit or by direct billing, you have the option of continuing to pay premiums while you are furloughed or excepted from furlough and working without pay, or not making premium payments. If you opt not to make premium payments during this period, you will be contacted by the Carrier regarding premiums due and must pay premiums to the Carrier as soon as practicable upon the end of the lapse.

(2) Upon the end of a lapse in appropriations, premiums will be required from all impacted enrollees in accordance with enrollees' method of payment, as described in paragraph (c)(1) of this section. If you do not pay the required premiums as soon as practicable upon the end of the lapse when due, your coverage will terminate pursuant to 5 CFR 875.412.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 5. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–3, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.803 also issued under 50 U.S.C. 3516 (formerly 50 U.S.C. 403p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; subpart M also issued under section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152; Pub. L. 116–92.

Subpart A—Administration and General Provisions

■ 6. Amend subpart A by adding § 890.113 to read as follows:

§ 890.113 Designation of FEHB Program services as emergency services under the Antideficiency Act.

(a) Any services by an officer or employee under parts 890 and 892 relating to the enrollment of an individual in a health benefits plan under this chapter, or changing the enrollment of an individual already so enrolled, shall be deemed, for purposes of section 1342 of Title 31, United States Code, as services for emergencies involving the safety of human life or the protection of property.

(b) The designation of services as emergency services shall apply to any lapse in appropriations beginning on or after December 20, 2019, the date of enactment of section 1110(d) of Public Law 116–92.

Subpart C—Enrollment

■ 7. Amend § 890.301 by revising the section heading and adding paragraph (o) to read as follows:

§ 890.301 Opportunities for employees to enroll or change enrollment; effective dates.

* * * * *

(o) An employee, who is furloughed or excepted from furlough and working without pay as a result of a lapse in appropriations, is deemed to be in pay status, during the lapse, for purposes of this section.

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

■ 8. The authority citation for part 894 is revised to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; Subpart C also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; Sec. 715 of Pub. L. 114–328, 130 Stat. 2221; Pub. L. 116–92.

Subpart D—Cost of Coverage

■ 9. Amend § 894.405 by adding paragraph (c) to read as follows:

§ 894.405 What happens if I go into nonpay status or if my pay/annuity is insufficient to cover the allotments?

* * * * *

(c) If you are a FEDVIP enrollee, who due to a lapse in appropriations is furloughed or excepted from furlough and working without pay due to such a lapse, your FEDVIP coverage will not stop during such a lapse. Upon the end of such a lapse, premiums will be paid to the Carrier from back pay made available as soon as practicable upon the end of such a lapse.

■ 10. Amend § 894.406 by adding paragraph (c) to read as follows:

§ 894.406 What happens if my uniformed services pay or uniformed services retirement pay is insufficient to cover my FEDVIP premiums, or I go into a nonpay status?

* * * * *

(c) If you are a FEDVIP enrollee who is furloughed or excepted from furlough and working without pay due to such a lapse, your coverage will not stop during such a lapse. Upon the end of such a lapse, premiums will be paid to the Carrier using back pay.

Subpart F—Termination or Cancellation of Coverage

■ 11. Amend § 894.601 by revising paragraph (b) to read as follows:

§ 894.601 When does my FEDVIP coverage stop?

(a) * * *

(b) If you go into a period of nonpay or insufficient pay (or insufficient uniformed services pay or uniformed services retirement pay) and you do not make direct premium payments, your FEDVIP coverage stops at the end of the pay period for which your agency, retirement system, *OWCP,* uniformed services or uniformed services retirement system last deducted your premium payment. *Exception:* If you are an enrollee who is furloughed or excepted from furlough and working without pay during a lapse in appropriations, your FEDVIP coverage

will not stop, and your enrollment may not be cancelled as a result of nonpayment of premiums or other periodic charges due. Pursuant to the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92, such continuation of coverage during a lapse in appropriations applies to any dental or vision contract under 5 U.S.C. chapters 89A and 89B entered into before, on, or after December 20, 2019.

* * * * *

[FR Doc. 2020–14474 Filed 7–17–20; 8:45 am]

BILLING CODE 6325–64–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0034]

RIN 1904–AE56

Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Reopening of public comment period.

SUMMARY: The U.S. Department of Energy (''DOE'') is reopening the public comment period for its Request for Information (''RFI'') regarding energy conservation standards for commercial prerinse spray valves. DOE published the RFI in the **Federal Register** on June 10, 2020, establishing a 30-day public comment period that ended July 10, 2020. On June 25, 2020, DOE received a comment requesting extension of the comment period by 30 days. DOE is reopening the public comment period for submitting comments and data on the RFI for an additional 30 days.

DATES: The comment period for the RFI published on June 10, 2020 (85 FR 35383), is re-opened. DOE will accept comments, data, and information regarding this RFI received no later than August 19, 2020.

ADDRESSES: Interested persons are encouraged to submit comments, identified by docket number EERE–2019–BT–STD–0034, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: CPSV2019STD0034@ee.doe.gov. Include the docket number EERE–2019–BT–STD–0034 and/or RIN 1904–AE56 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

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. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

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.

No telefacsimilies (faxes) will be accepted.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0034.*

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 may not be publicly available, such as those containing information that is exempt from public disclosure.

The docket web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0034.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On June 10, 2020, DOE published a RFI in the **Federal Register** soliciting public comment on its energy conservation standards for commercial prerinse spray valves. 85 FR 35383. Comments were originally due on July 10, 2020. On June 25, 2020, DOE received a comment from Plumbing Manufacturers International (''PMI'') requesting extension of the comment period by 30 days due to the need for more detailed feedback from its members to inform PMI's comments.[1] PMI stated that feedback has been difficult to obtain due to the current pandemic and related business impacts and priorities. DOE has reviewed the request and considered the benefit to stakeholders in providing additional time to review the RFI and gather information/data that DOE is seeking. Accordingly, DOE has determined that a re-opening of the comment period is appropriate, and will accept comments until August 19, 2020. DOE will consider any comments received from July 10, 2020 through the end of the comment period to be timely submitted. DOE feels that the additional time provided is adequate for stakeholders to respond to the RFI.

Signing Authority

This document of the Department of Energy was signed on July 7, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 8, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–15001 Filed 7–17–20; 8:45 am]

BILLING CODE 6450–01–P

[1] DOE has posted this comment to the docket at *https://www.regulations.gov/document?D=EERE-2019-BT-STD-0034-0002.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0585; Product Identifier 2019–SW–112–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 all Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. This proposed AD was prompted by reports of corrosion on attachment screws and fittings fastening the main gearbox (MGB) suspension bars to the fuselage. This proposed AD would require inspecting the affected parts and associated frame bores for discrepancies, and applicable corrective actions. 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 September 3, 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–2020–0585; 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 (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: Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@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–2020–0585; Product Identifier 2019–SW–112–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0295, dated December 5, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. EASA advises that there were reports of corrosion on attachment screws and fittings fastening the rear MGB suspension bars, right and left hand sides, to the fuselage, and the attachment screws and fitting fastening the front MGB suspension bar to the fuselage. Subsequent investigation determined that during maintenance visits of an identified batch of helicopters between September 2012 and April 2019, application of compound sealant on MGB suspension bar attachment screws may not have been accomplished using the approved maintenance data. The EASA AD requires a one-time inspection of the affected parts, and depending on findings, accomplishment of applicable corrective actions. The compliance times vary depending on helicopter configuration.

For helicopters identified in Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020, the earliest inspection compliance time is within 100 flight hours or 6 months after the effective date of this AD, whichever occurs first. For helicopters identified in Airbus Helicopters Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, the earliest inspection compliance time is within 100 flight hours after the effective date of this AD.

For helicopters identified in Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020, the latest initial inspection compliance time is within 3,800 flight hours or 3 years and 6 months, whichever occurs first, since the last maintenance action at Airbus Helicopters Marignane. For helicopters identified in Airbus Helicopters Alert

Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, the latest initial inspection compliance time is within 3,800 flight hours since last removal.

The FAA is issuing this proposed AD to address corrosion on attachment fittings and attachment screws for the MGB suspension bars. This condition, if not addressed, could lead to structural failure of the MGB attachment screws, resulting in detachment of MGB suspension bars from the fuselage and subsequent loss of control of the helicopter.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0585.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020; and Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019. The service information describes procedures for inspecting the attachment fittings and attachment screws of the MGB suspension bars and their frame bores for discrepancies and corrective actions. This inspection includes an inspection of the attachment fittings and attachment screws of the MGB suspension bars for corrosion and an inspection of the attachment screws for evidence of sealing compound. The corrective actions include replacing or repairing corroded parts and replacing screws that have sealing compound on them. These documents are distinct since they apply to different helicopter models in different configurations.

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 Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 0, dated April 18, 2019. The service information describes procedures for inspecting the attachment fittings and attachment screws of the MGB suspension bars and their frame bores for discrepancies and corrective actions.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD also would require sending certain inspection results to the manufacturer.

Costs of Compliance

The FAA estimates that this proposed AD affects 12 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
16 work-hours × $85 per hour = $1,360	$0	$1,360	$16,320

The FAA estimates that it would take about 1 hour per product to comply with the on-condition reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $85 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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: Docket No. FAA–2020–0585; Product Identifier 2019–SW–112–AD.

(a) Comments Due Date

The FAA must receive comments by September 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code 5340, Fuselage main, attach fittings.

(e) Reason

This AD was prompted by reports of corrosion on attachment screws and fittings fastening the main gearbox (MGB) suspension bars to the fuselage. The FAA is issuing this AD to address corrosion on attachment fittings and attachment screws for the MGB suspension bars. This condition, if not addressed, could lead to structural failure of the MGB attachment screws, resulting in detachment of MGB suspension bars from the fuselage and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Definitions

Affected parts are attachment screws and fitting(s) fastening the parts identified in paragraphs (g)(1) and (2) of this AD.

(1) Rear MGB suspension bars, right and left sides, to the fuselage.

(2) Front MGB suspension bar to the fuselage.

(h) Inspection

Except as specified in paragraphs (j)(1) through (3) of this AD: Within the applicable compliance times identified in paragraph (h)(1) or (2) of this AD, inspect each affected part and its frame bores for discrepancies, in accordance with the Accomplishment Instructions, Section 3.B.2, of Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020; or Airbus Helicopters Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, as applicable. For the purposes of this inspection, a discrepancy may be indicated by corrosion on the MGB attachment fitting or by sealing compound on the attachment screws.

(1) Table 1 or 2, as applicable, of Section 1.E.2, ''Compliance in service,'' of Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020.

(2) Table 1 of Section 1.E.2, ''Compliance in service,'' of Airbus Helicopters Alert Service Bulletin AS332–53.02.07, dated October 21, 2019.

(i) Corrective Action

Except as required by paragraph (j)(4) of this AD: If, during the inspection required by paragraph (h) of this AD, there is any discrepancy, before further flight, do the applicable corrective action (including replacing or repairing corroded parts and replacing screws that have sealing compound on them), in accordance with the Accomplishment Instructions, Section 3.B.2, of Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020; or Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, as applicable.

(j) Exceptions to Service Information Specifications

(1) Where Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020, uses the phrase ''Revision 0 of this Alert Service Bulletin issued on April 18, 2019,'' this AD requires using ''the effective date of this AD.''

(2) Where Airbus Helicopters Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, uses the phrase ''receipt of this Alert Service Bulletin,'' this AD requires using ''the effective date of this AD.''

(3) Where Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020; and Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, specify discarding parts, you are not required to discard parts.

(4) Where Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020; and Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, specify contacting Airbus Helicopters for repair instructions: This AD requires repair using a method approved by the Manager, Rotorcraft Standards Branch, FAA. The Manager's approval letter must specifically refer to this AD.

(k) Reporting

If, during the inspection required by paragraph (h) of this AD, there is any discrepancy, report the inspection results to Airbus Helicopters at the applicable time specified in paragraph (k)(1) or (2) of this AD. The report should include the information specified in Appendix 4.A. of Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020; or Alert Service Bulletin AS332–53.02.07, Revision 0, dated October 21, 2019, as applicable.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(l) Credit for Previous Actions

For helicopters identified in Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 1, dated March 2, 2020: This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Helicopters Alert Service Bulletin AS332–53.02.05, Revision 0, dated April 18, 2019.

(m) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Manager, 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.

(o) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2019–0295, dated December 5, 2019. 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–2020–0585.

(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 July 14, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15532 Filed 7–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0653; Project Identifier AD–2020–00631–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all General Electric Company (GE) GEnx–1B64, –1B64/P1, –1B64/P2, –1B67, –1B67/P1, –1B67/P2, –1B70, –1B70/75/P1, –1B70/75/P2, –1B70/P1, –1B70/P2, –1B70C/P1, –1B70C/P2, –1B74/75/P1, –1B74/75/P2, –1B76/P2, and –1B76A/P2 model turbofan engines. This proposed AD was prompted by a report of a crack in the outer fuel manifold causing fuel leakage. This proposed AD would require initial and repetitive visual inspections of the cushioned loop clamp (''p-clamp'') and, depending on the results of the inspection, a spot fluorescent penetrant inspection (FPI) of the outer fuel manifold. Depending on the results of the FPI, this proposed AD would require replacement of the outer fuel manifold. This proposed AD would also require initial and repetitive replacements of the p-clamp. 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 September 3, 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 General Electric Company, 1 Neumann Way, Cincinnati, OH 45215, United States; phone: 513–552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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–2020–0653; 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, 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: Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7743; fax: 781–238–7199; email: *Mehdi.Lamnyi@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–2020–0653; Project Identifier AD–2020–00631–E'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA received a report that an aircraft with GE GEnx–1B model engines installed experienced a fuel imbalance in July 2018. Upon landing, the operator identified a crack in the outer fuel manifold during a fuel system inspection. The root cause of this cracking has been identified as a failure of a p-clamp that provides bracket support to the outer fuel manifold. Failure of the p-clamp increased high-cycle fatigue stresses at a welded joint of the outer fuel manifold resulting in the crack. This condition, if not addressed, could result in engine fire and damage to the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE GEnx–1B Service Bulletin (SB) 73–0080 R01, dated August 29, 2019. The SB describes procedures for replacing the p-clamp located at the signal fuel tube hose, significant item number 34200, and instructions for removing the signal fuel tube hose when a p-clamp is found damaged or missing. This service

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

FAA's Determination

The FAA is proposing this AD because the Agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require initial and repetitive visual inspections of the p-clamp and, depending on the results of the inspection, a FPI of the outer fuel manifold. Depending on the results of the FPI, this proposed AD would require replacement of the outer fuel manifold. This proposed AD would also require initial and repetitive replacements of the p-clamp.

Interim Action

The FAA considers this proposed AD interim action. The manufacturer is still reviewing this unsafe condition and may develop a terminating action.

Costs of Compliance

The FAA estimates that this proposed AD affects 190 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visually inspect the p-clamp	0.25 work-hours × $85 per hour = $21.25	$0	$21.25	$4,037.50
Replace the p-clamp	0.25 work-hours × $85 = $21.25	102	123.25	23,417.50

The FAA estimates the following costs to do any necessary FPIs and replacements that would be required based on the results of the proposed visual inspection. The FAA has no way of determining the number of aircraft that might need this FPI or replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
FPI the outer fuel manifold	2.5 work-hours × $85 per hour = $212.50	$0	$212.50
Replace the outer fuel manifold	250 work-hours × $85 per hour = $21,250	18,400	39,650

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):

General Electric Company: Docket No. FAA–2020–0653; Project Identifier AD–2020–00631–E.

(a) Comments Due Date

The FAA must receive comments by September 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) GEnx–1B64, –1B64/P1, –1B64/P2, –1B67, –1B67/P1, –1B67/P2, –1B70, –1B70/75/P1, –1B70/75/P2, –1B70/P1, –1B70/P2, –1B70C/P1, –1B70C/P2, –1B74/75/P1, –1B74/75/P2, –1B76/P2, and –1B76A/P2 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7310, Engine Fuel Distribution.

(e) Unsafe Condition

This AD was prompted by a report of a crack in the outer fuel manifold causing fuel leakage. The FAA is issuing this AD to prevent failure of the outer fuel manifold. The unsafe condition, if not addressed, could result in engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 500 flight cycles (FCs) after the effective date of this AD, perform a visual inspection of the cushioned loop clamp (''p-clamp'') to verify the p-clamp is undamaged and installed.

(i) Thereafter, perform the visual inspection required by (g)(1) of this AD at intervals not to exceed 500 FCs since the last inspection.

(ii) [Reserved]

(2) If, during any visual inspection required by paragraphs (g)(1) or (g)(1)(i) of this AD, the p-clamp is outside of the limits in paragraph 3.B.(4) of GE GEnx-1B Service Bulletin (SB) 73–0080 R01, dated August 29, 2019, or if the p-clamp is missing, perform a spot fluorescent penetrant inspection of the outer fuel manifold, part number (P/N) 2403M46G01 significant item number (SIN) 34302, using Accomplishment Instructions, paragraph 3.B.(4)(b), of GE GEnx-1B SB 73–0080 R01, dated August 29, 2019.

(i) If a crack or a sign of fuel leakage is found, before further flight, remove the outer fuel manifold, P/N 2403M46G01 SIN 34302, from service and replace with a part eligible for installation.

(ii) [Reserved]

(3) Within 500 FCs after the effective date of this AD, and thereafter at intervals not to exceed 500 FCs from the last p-clamp replacement, replace the p-clamp with a new p-clamp. Complete this required action after performing the visual inspections required by paragraphs (g)(1) and (g)(1)(i) of this AD.

(h) Definition

For the purpose of this AD, a p-clamp is a clamp, P/N J1432P12 with SIN 34282, located at the signal fuel tube hose, SIN 34200, as shown in Accomplishment Instructions, paragraph 3, Figure 1, ''Outer Fuel Manifold and Clamp Location,'' of GE GEnx-1B SB 73–0080 R01, dated August 29, 2019.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington MA 01803; phone: 781–238–7743; fax: 781–238–7199; email: *Mehdi.Lamnyi@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215, United States; phone: 513–552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued on July 13, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15381 Filed 7–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0007; Notice No. 192]

RIN 1513–AC55

Proposed Modification of the Boundaries of the Santa Lucia Highlands and Arroyo Seco Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to modify the boundaries of the ''Santa Lucia Highlands'' viticultural area and the adjacent ''Arroyo Seco'' viticultural area in Monterey County, California. The proposed boundary modifications would remove approximately 376 acres from the Santa Lucia Highlands viticultural area and would also remove 148 acres from the Arroyo Seco viticultural area and place them entirely within the Santa Lucia Highlands viticultural area. The proposed viticultural areas and the proposed modification areas are located entirely within the established Monterey and Central Coast viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by September 18, 2020.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2020–0007 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov*, U.S. mail, or hand delivery, and for full details on how to view or obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment or modification of AVAs. Petitions to modify an AVA must include the following:

- In the case of an expansion in size of an AVA, evidence that the proposed expansion area is nationally or locally known by the name of the AVA into which it would be placed;
- In the case of a reduction in size of an AVA, an explanation of the extent to which the current AVA name does not apply to the excluded area;
- An explanation of the basis for defining the boundary of the proposed areas to be realigned, including an explanation of how the boundary of the existing AVA was incorrectly or incompletely defined or is no longer accurate due to new evidence or changed circumstances;
- In the case of an expansion of an AVA, a narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the AVA into which it would be placed and distinguish it from adjacent areas outside the established AVA;
- In the case of a reduction of an AVA, a narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that differentiate the proposed reduction area from the established AVA and demonstrate a greater similarity to the features of adjacent areas outside the established AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA boundary modifications, with the proposed boundary modifications clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary modifications based on USGS map markings.

Santa Lucia Highlands–Arroyo Seco Boundary Modification Petition

TTB received a petition from Patrick Shabram on behalf of the Santa Lucia Highlands Wine Artisans, proposing to modify the boundaries of the Santa Lucia Highlands AVA (27 CFR 9.139) and the adjacent Arroyo Seco AVA (27 CFR 9.59). The Santa Lucia Highlands AVA and the Arroyo Seco AVA are both located within Monterey County, California, and are both located entirely within the established Monterey AVA (27 CFR 9.98) and the Central Coast AVA (27 CFR 9.75).

The petition contains two separate boundary modification proposals. The first proposal would remove approximately 376 acres from the northern part of the Santa Lucia Highlands AVA. The petition states that the proposed reduction area is within the floodplain of the Salinas River and that no vineyards are planted or proposed in this location. The land removed from the Santa Lucia Highlands AVA would remain within the Monterey AVA and the Central Coast AVA.

The second proposed modification affects a portion of the shared Santa Lucia Highlands–Arroyo Seco AVA boundary. The modification would remove 148 acres of foothills terrain from the western side of the Arroyo Seco AVA and place them entirely within the southeastern region of the Santa Lucia Highlands. One vineyard containing approximately 135 acres of vines would be affected by this boundary realignment, and the vineyard owner included a letter of support in the petition. The modification would reduce the size of the Arroyo Seco AVA by less than 1 percent and would not have any impact on the boundaries of the Monterey AVA or the Central Coast AVA.

Santa Lucia Highlands Reduction

Boundary Evidence

The current northeastern boundary of the Santa Lucia Highlands AVA follows the 100-foot elevation contour southeasterly from its intersection with Limekiln Creek to its intersection with the Salinas River. The boundary then proceeds along the west bank of the Salinas River to its intersection with the 120-foot elevation, where the boundary then turns southeast to briefly follow the 120-foot elevation before jumping to the 160-foot elevation contour. The boundary then follows the 160-foot elevation contour to its intersection with River Road.

The proposed modification to the northeastern boundary of the Santa Lucia Highlands AVA would move the beginning point of the boundary to the intersection of Limekiln Creek and the 120-foot elevation contour. The boundary would then follow the 120-foot elevation contour southeasterly to River Road, where it would then proceed southeasterly along River Road to an unnamed, unimproved road. From there, the boundary would proceed southeast in a straight line to the terminus of the 110-foot elevation contour, then proceed southeast in a straight line to the Salinas River. The boundary would then follow the Salinas River southeast to the 120-foot elevation contour. From that point, the boundary would follow the contour to River Road and then follow the road to the 160-foot elevation contour. At this point, the proposed boundary would rejoin the current boundary. The result would be the elimination of most of the Salinas River floodplains from the Santa Lucia Highlands AVA.

Name Evidence

The Santa Lucia Highlands AVA, established by T.D. ATF–321 on May 15, 1992 (57 FR 20764), is named for the Santa Lucia Mountain Range, and is located on the eastern edge of these mountains, in the lower elevations of the Sierra de Salinas. T.D. ATF–321 shows the AVA partly derives its name from the Santa Lucia Range's elevation, noting trade and general publications that reference viticulture ''in the Santa Lucia Highlands overlooking Soledad and Salinas Valley.''

While currently within the Santa Lucia Highlands AVA, the petition illustrates the topography in the proposed reduction area is inconsistent with the elevations of the Santa Lucia Range from which the ''Santa Lucia AVA'' partly derives its name. The petition provides evidence showing the proposed reduction area includes sections of the Salinas River floodplain that have essentially-flat elevations with little-to-no slope. Therefore, the petition shows the current ''Santa Lucia

Highlands AVA'' name is ill-suited for the proposed reduction area.

Comparison of the Proposed Reduction Area to the Santa Lucia Highlands AVA

According to T.D. ATF–321, the distinguishing features of the Santa Lucia Highlands AVA are its topography, climate, and soils. The boundary modification petition states that while the proposed reduction area's climate is similar to the climate of the rest of the AVA, its topography and soils are more similar to the topography and soils of the adjacent region outside of the AVA.

Topography

The boundary modification petition states that the Santa Lucia Highlands AVA is located on a series of alluvial fans and terraces. Slope angles within the AVA range from 5 to 30 percent, although most of the terraces have slope angles of 5 to 20 percent. The slopes are predominately oriented to the east. The petition states that east-facing slopes expose the vineyards to the cooler morning sun and offer greater solar exposure, compared to west-facing slopes which are exposed to warmer afternoon sun and receive less solar exposure. Furthermore, an eastern exposure allows for fog to burn off early in the morning. The petition also states that the gentle slope angles reduce the risk of frost in the vineyards by allowing cool night air to drain off the vineyards and into the lower, flatter elevations.

According to the petition, the proposed reduction area is on the Salinas Valley floor within the floodplain of the Salinas River. The reduction area has little-to-no slope and lacks the clear easterly orientation of the rest of the Santa Lucia Highlands AVA. It is also not on an alluvial fan or terrace. The petition included a map of the slope angles within the AVA and in the adjacent regions outside the AVA, as well as photographs of the proposed reduction area and the surrounding regions. The slope angle map and the photographs show that the proposed reduction area is essentially flat, similar to the Salinas River valley floor outside the AVA, while the terrain within the AVA is noticeably elevated.

Soils

The soils of the Santa Lucia Highlands AVA are predominately Chualar loams, which make up almost 32 percent of the soils within the AVA. These soils are described as very deep, well-drained soils formed in alluvial material from mixed rock sources. The petition also states that Xerorthent soils are also common within the AVA. Xerorthents are described as a subgroup of Entisols soils common to arid and semi-arid landscapes. Just over 17 percent of the AVA contains soils of this subgroup. The soils of the Santa Lucia Highlands AVA provide good drainage for vineyards.

By contrast, the petition states that the soils in the proposed reduction area are mostly Psamments and Fluvents. These are suborders of Entisols that are sandy and have little organic material. The petition included a map of the location of Psamments and Fluvents within the Santa Lucia Highlands and the region outside the AVA. The maps shows that these soils are primarily found along the Salinas River's immediate floodplain and the river's channel, which is outside the AVA. The soils represent a little over 0.7 percent of the acreage of the soils of the AVA.

Santa Lucia Highlands–Arroyo Seco Boundary Realignment

The boundary modification petition also proposed to realign a portion of the shared Santa Lucia Highlands–Arroyo Seco AVA boundary. The proposed realignment would remove approximately 148 acres from the Arroyo Seco AVA and place them entirely within the Santa Lucia Highlands AVA.

Boundary Evidence

The petition proposes to realign the segment of the shared Santa Lucia Highlands–Arroyo Seco boundary located along Paraiso Road. The current boundary follows Paraiso Road south from its intersection with Foothill Road to its intersection with Clark Road. The boundary then proceeds east along Clark Road to an unnamed, light-duty road and then follows a straight line southeasterly to the southeast corner of Section 33.

The proposed realigned boundary would follow Paraiso Road south from its intersection with Foothill Road to its intersection with an unnamed road north of Clark Road. The boundary would then follow the unnamed road southeasterly to an intermittent stream. From this point, the boundary would follow the stream southwesterly to the western boundary of Section 21 and then proceed in a straight line southwest to the intersection of Clark Road and to the southern boundary of Section 21. The boundary would then follow Clark Road southwesterly to an unnamed, light-duty road, where the realigned boundary would rejoin the current boundary. The realignment would remove an alluvial terrace from the Arroyo Seco AVA and place it within the Santa Lucia Highlands AVA.

Name Evidence

The Arroyo Seco AVA, which was established by T.D. ATF–131 on April 15, 1983 (48 FR 16246), derives its name from both the Arroyo Seco land grant and the Arroyo Seco Creek. The Santa Lucia Highlands, established by T.D. ATF–321 on May 15, 1992 (57 FR 20764), was named for the Santa Lucia Range. The Santa Lucia Highlands AVA is located on the eastern edge of this mountain range, in the lower elevations of the Sierra de Salinas.

The proposed realignment area is currently within the Arroyo Seco AVA. The boundary modification petition states that the proposed realignment area is not within the Arroyo Seco land grant, nor does the Arroyo Seco Creek run through it. The petition notes that the proposed realignment area ''occupies a highland position consistent with the Santa Lucia Highlands AVA.'' Therefore, the petition claims that the current ''Arroyo Seco'' name is less suited for the proposed realignment area than the ''Santa Lucia Highlands'' name.

Comparison of the Proposed Realignment Area to the Santa Lucia Highlands AVA and the Arroyo Seco AVA

Topography and soils are distinguishing features of both the Santa Lucia Highlands AVA and the Arroyo Seco AVA. The boundary modification petition states that the topography and soils of the proposed realignment area are more similar to those of the Santa Lucia Highlands AVA than to the topography and soils of the Arroyo Seco AVA.

Topography

As stated previously, the Santa Lucia Highlands AVA is comprised of gently sloping alluvial fans and terraces. The Arroyo Seco AVA, as described in T.D. ATF–131, is comprised of sloping bench land surrounding the Arroyo Seco Creek. The boundary modification petition also notes that the Arroyo Seco AVA contains the watershed of the Arroyo Seco Creek.

The proposed realignment area is located on an alluvial fan. According to the boundary modification petition, the proposed realignment area has an eastern orientation and slope angles above 5 percent. By contrast, the land within the Arroyo Seco AVA that is immediately adjacent to the proposed realignment area has a more gradual slope, becoming nearly flat and lacking an eastern orientation. The petition states that the topographical characteristics of the proposed

realignment area are more consistent with those of the Santa Lucia Highlands than the topography of the Arroyo Seco AVA and would justify moving this region from the Arroyo Seco AVA into the Santa Lucia Highlands AVA.

Soils

As stated previously, the prominent soil of the Santa Lucia Highlands AVA is the Chualar series. The boundary modification petition also notes that Placentia sandy loam soils are also present and comprise 5.3 percent of the soils within the Santa Lucia Highlands AVA. The petition states that the principal soil series of the Arroyo Seco AVA are Mocho, Lockwood, Arroyo Seco, Rincon, and Chualar, with Chualar and Arroyo Seco being the most common soil types. Placentia soils are present only in very small amounts in limited areas within the Arroyo Seco AVA.

The petition states that the soil of the proposed realignment area is comprised of Placentia sandy loam, Chualar, and Arroyo Seco soils. Although all three soil series are found in both the Arroyo Seco AVA and the Santa Lucia Highlands AVA, Placentia soils are not common in the Arroyo Seco AVA except within the proposed realignment area. The petition states that the combination of Placentia, Chualar, and Arroyo Seco soils is more common within the Santa Lucia Highlands AVA. Therefore, the petition claims that moving the proposed realignment area into the Santa Lucia Highlands AVA would enhance the boundary integrity of both AVAs.

TTB Determination

TTB concludes that the petition to modify the boundaries of the Santa Lucia Highlands AVA and the Arroyo Seco AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA boundary modifications in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed boundary modifications for the Santa Lucia Highlands and Arroyo Seco AVAs on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB approves the proposed removal of land from the Santa Lucia Highlands AVA, wines produced primarily from grapes grown in the removal area would no longer be eligible to be labeled with ''Santa Lucia Highlands'' as an appellation of origin. Consequently, wine bottlers using the name ''Santa Lucia Highlands'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin under the proposed new boundary of the Santa Lucia Highlands AVA if this proposed rule is adopted as a final rule. TTB does not anticipate that the proposed removal of land will affect any current labels because the petition indicates there are no vineyards currently planted or planned within the proposed reduction area.

If TTB approved the proposed realignment of the shared Santa Lucia Highlands–Arroyo Seco AVA boundary, the realignment area would be moved from the Arroyo Seco AVA into the Santa Lucia Highlands AVA. Wines produced primarily from grapes grown in the realignment area would no longer be eligible to be labeled with ''Arroyo Seco'' as an appellation of origin. Consequently, wine bottlers using the name ''Arroyo Seco'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin under the proposed new boundary of the Arroyo Seco AVA if this proposed rule is adopted as a final rule. However, if the proposed realignment is approved, wines produced primarily from grapes grown in the realignment area would be eligible to be labeled with ''Santa Lucia Highlands'' as an appellation of origin. The petition included a letter of support for the proposed realignment from the only vineyard owner located within the proposed realignment area.

The approval of the proposed boundary realignments would not affect the Monterey AVA or the Central Coast AVA. Bottlers using ''Monterey'' or ''Central Coast'' as an appellation of origin or in a brand name for wines made from grapes grown within the proposed removal area or the proposed realignment area would not be affected by these boundary modifications. The proposed reduction of the Santa Lucia Highlands AVA boundary would allow vintners to continue using ''Monterey'' and ''Central Coast'' as appellations of origin for wines made from grapes grown within the proposed reduction area if the wines meet the eligibility requirements for the appellation. Additionally, the proposed realignment of the shared Santa Lucia Highlands–Arroyo Seco AVA boundary would allow vintners to use ''Santa Lucia Highlands'' as well as ''Central Coast'' and ''Monterey'' as appellations of origin for wines made from grapes grown within proposed realignment area if the wines meet the eligibility requirements for the appellation.

Transition Period

If the proposal to realign the shared Santa Lucia Highlands–Arroyo Seco AVA boundary is approved, a transition rule will apply to labels for wines produced from grapes grown in the area removed from the Arroyo Seco AVA and placed into the Santa Lucia Highlands AVA (the ''proposed realignment area''). A label containing the words ''Arroyo Seco'' may be used on wine bottled within two years from the effective date of the final rule, provided that such label was approved before the effective date of the final rule and that the wine conforms to the standards for use of the label set forth in 27 CFR 4.25 or 4.39(i) in effect prior to the final rule. At the end of this two-year transition period, if the wine is produced primarily from grapes grown in the proposed realignment area, then a label containing the words ''Arroyo Seco'' in the brand name or as an appellation of origin would not be permitted on the label. TTB believes that the two-year transition period should provide affected label holders with adequate time to use up any old labels. This

transition period is described in the regulatory text of this proposed rule. TTB notes that wine made primarily from grapes grown in the proposed realignment area would be eligible to be labeled with ''Santa Lucia Highlands'' as an appellation of origin upon the effective date of the final rule. Finally, TTB is not proposing a similar transition period for wines labeled with ''Santa Lucia Highlands'' that are produced primarily from grapes grown in the area proposed to be removed from the Santa Lucia Highlands AVA, because the petition states that there are no current or planned vineyards within the proposed removal area.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should modify the boundaries of the Santa Lucia Highlands AVA and the Arroyo Seco AVA as proposed. TTB is also interested in receiving comments on the sufficiency and accuracy of the information submitted in support of the petition. Please provide any available specific information in support of your comments.

TTB also encourages comments from industry members with wine labels potentially affected by the proposed realignment of land from the Arroyo Seco AVA into the Santa Lucia Highlands AVA. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different boundary for either AVA.

Submitting Comments

You may submit comments on this notice by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2020–0007 on ''*Regulations.gov,*'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 192 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 192 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2020–0007 on the Federal e-rulemaking portal, *Regulations.gov,* at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 192. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For information on how to use *Regulations.gov,* click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also obtain copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal at 20 cents per 8.5 x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division by email using the web form at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–1039, ext. 175, to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.59 is amended by removing paragraphs (c)(12) and (13), redesignating paragraphs (c)(14) through

(21) as paragraphs (c)(17) through (24), and adding new paragraphs (c)(12) through (16) and (d) to read as follows:

§ 9.59 Arroyo Seco.

* * * * *

(c) * * *

(12) Then south following Paraiso Road to its intersection with an unnamed, light-duty road north of Clark Road in Section 20, T18S/R6E;

(13) Then east-southeast along the unnamed road for 0.3 mile to its intersection with an intermittent stream;

(14) Then southwesterly along the intermittent stream for 0.2 mile to its intersection with the western boundary of Section 21, T18S/R6E;

(15) Then south-southwest in a straight line for approximately 0.3 mile to the intersection of Clark Road and the southern boundary of Section 21, T18S/R6E;

(16) Then west-southwest along Clark Road for 0.2 mile to its intersection with an unnamed, light-duty road;

* * * * *

(d) *Transition period.* A label containing the words ''Arroyo Seco'' in the brand name or as an appellation of origin approved prior to [EFFECTIVE DATE] may be used on wine bottled before [DATE 2 YEARS AFTER EFFECTIVE DATE], if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to [EFFECTIVE DATE].

■ 3. Section 9.139 is amended by redesignating paragraphs (c)(10) through (22) as paragraphs (c)(18) through (30), revising paragraphs (c)(1) through (9), and adding new paragraphs (c)(10) through (17).

The revisions/additions read as follows:

§ 9.139 Santa Lucia Highlands.

* * * * *

(c) * * *

(1) From the beginning point, the boundary follows Limekiln Creek for approximately 1.2 miles northeast to the 120-foot elevation contour.

(2) Then following the 120-foot elevation contour in a general southeasterly direction for approximately 0.9 mile to where it intersects with River Road.

(3) Then following River Road in a southeasterly direction for 0.3 mile to its intersection with an unimproved road near the marked 130-foot elevation.

(4) Then follow a straight line southeast to the terminus of the 110-foot elevation contour.

(5) Then follow a straight line southeast 0.9 mile, crossing onto the Gonzales map, to the Salinas River.

(6) Then follow the Salinas River in a south-southeast direction 0.7 mile, crossing onto the Palo Escrito map, to the intersection of the Salinas River and the 120-foot elevation contour.

(7) Then follow the 120-foot contour south for 1 mile, then southeast to its intersection with River Road.

(8) Then follow River Road east for 0.1 mile to its intersection with an unnamed, light-duty road.

(9) Then follow the unnamed road southeast for 0.2 mile to its intersection with the 160-foot elevation contour.

(10) Then follow the 160-foot elevation contour southeasterly for approximately 5.9 miles to its intersection with River Road.

(11) Then follow River Road southeasterly for approximately 1 mile to the intersection of River, Fort Romie, and Foothill Roads.

(12) Then following Foothill Road in a southeasterly direction for approximately 4 miles to the junction of Foothill Road and Paraiso Roads on the Soledad map.

(13) Then follow Paraiso Road in a southerly direction, crossing onto the Paraiso Springs map, to its intersection with an unnamed, light-duty road north of Clark Road in Section 20, T18S/R6E.

(14) Then follow the unnamed road east-southeast for 0.3 mile to its intersection with an intermittent stream.

(15) Then follow the intermittent stream in a southwesterly direction for 0.2 mile to its intersection with the western boundary of Section 21, T18S/R6E.

(16) Then follow a straight line south-southwest for 0.3 mile to the intersection of Clark Road and the southern boundary of Section 21, T18S/R6E.

(17) Then follow Clark Road west-southwest for 0.2 mile to its intersection with an unnamed, light-duty road.

* * * * *

Signed: March 10, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: June 2, 2020.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2020–14579 Filed 7–17–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–071–FOR; Docket ID: OSM–2019–0011; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Texas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Texas Abandoned Mine Land Plan (hereinafter, the Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its Plan to allow its AML program to receive limited liability protection for certain non-coal reclamation projects. Texas intends to revise its Plan in order to meet the requirements of SMCRA and the implementing Federal regulations. This document gives the times and locations where the Texas Plan and this proposed amendment to that Plan are available for your inspection, establishes the comment period during which you may submit written comments on the amendment, and describes the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., CST, August 19, 2020. If requested, we will hold a public hearing on the amendment on August 14, 2020. We will accept requests to speak at a hearing until 4:00 p.m., CST on August 4, 2020.

ADDRESSES: You may submit comments, identified by SATS No. TX–071–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Joseph R. Maki, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2019–0011. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Texas Plan, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Tulsa Field Office, or the full text of the program amendment is available for you to review at *www.regulations.gov.*

Joseph R. Maki, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430, Email: *jmaki@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location: Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Joseph R. Maki, Director, Tulsa Field Office. Telephone: (918) 581–6430, email: *jmaki@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*), in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Tribes to assume exclusive responsibility for reclamation activity within the State or on Tribal lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a Plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Texas Plan June 23, 1980. You can also find later actions concerning the Texas Plan and amendments to the Plan at 30 CFR 943.25.

II. Description of the Proposed Amendment

By letter dated December 3, 2019 (Administrative Record No. TX–708), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) in response to a March 6, 2019, letter (Administrative Record No. TX–0707) OSMRE sent to Texas in accordance with 30 CFR 884.15. The full text of the plan amendment is available for you to read at the locations listed above under **ADDRESSES**.

Effective March 9, 2015, OSMRE published a final rule allowing certified AML programs to receive limited liability protection for certain non-coal reclamation projects (80 FR 6435). In the March 6, 2019, letter (Administrative Record No. TX–0707), we notified Texas that the state must update its Plan in order to meet the requirements of SMCRA and the implementing Federal regulations.

Texas proposes to amend its Plan to meet the requirements to receive limited liability protection for certain non-coal reclamation projects, and to meet the requirements of SMCRA and the implementing Federal regulations.

Texas also proposes to amend several sections of its Coal Mining Regulations at 16 TAC Chapter 12. Major revisions and/or additions include section 12.804, Reclamation Objectives and Priorities and section 12.805, Water Supply Restoration.

Changes and additions to section 12.804 include updating references and adding project priority information from Section 403(a) of SMCRA. Changes to section 12.805 include changing the section title from Utilities and Other Facilities to Water Supply Restoration, defining water supply projects and other administrative changes.

Any changes not specifically mentioned here are administrative in nature and considered not sustentative.

III. Public Comment Procedures

We are seeking your comments on whether the amendment satisfies the applicable plan approval criteria of 30 CFR 884.14 and 884.15. If we approve the amendment, it will become part of the state Plan.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed Plan, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final plan will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., CST on August 4, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to

discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state plan amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a Plan amendment to OSMRE for review, our regulations at 30 CFR 884.14 and 884.15, and agency policy require public notification and an opportunity for public comment. We accomplish this by publishing a notice in the **Federal Register** indicating receipt of the proposed amendment and its text or a summary of its terms. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Alfred L. Clayborne,

Regional Director, IR 3, 4 and 6.

[FR Doc. 2020–14461 Filed 7–17–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV–120–FOR; Docket ID: OSM–2014–0006; S1D1S SS08011000 SX066A000 201S180110; S2D2S SS08011000 SX066A000 20XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the existing West Virginia Federal Lands Cooperative Agreement. Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the Federal regulations authorize a State with an approved permanent regulatory program to enter into an agreement for the State regulation and control of surface coal mining and reclamation operations on Federal lands. West Virginia's existing cooperative agreement was adopted in February of 1984, between the State and the Secretary of the Interior (the Secretary), to allow the State administration of SMCRA on Federal lands within West Virginia under its approved permanent regulatory program (the West Virginia program). Since several years have passed since the original agreement was adopted, West Virginia is now proposing to amend the existing cooperative agreement to reflect the current statutory schemes, regulatory requirements, and agency responsibilities associated with the regulation of coal mining and reclamation activities on Federal lands. Additionally, the revised cooperative agreement would grant the State the authority to regulate all coal exploration activities on Federal lands, and would delegate the primary responsibility to review and approve coal mining permits involving federally and privately owned coal. This document gives the times and locations that the West Virginia program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., E.S.T., August 19, 2020. If requested, we will hold a public hearing on the amendment on August 14, 2020. We will accept requests to speak at a hearing until 4:00 p.m., E.S.T. on August 4, 2020.

ADDRESSES: You may submit comments, identified by SATS No. WV–120–FOR, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID OSM–2014–0006. Follow the instructions for submitting comments.
- *Fax:* (304) 347–7170.
- *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, OSMRE, 3 Parkway Center South, 2nd Floor, Pittsburgh, PA 15220. Please include the rule identifier (WV–120–FOR; Docket ID OSM–2014–0006) with your written comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Charleston Field Office or the full text of the program amendment is available for you to read at *http://www.regulations.gov.*

Mr. Ben Owens, Pittsburgh Field Office Director, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center South, 2nd Floor, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2827, Email: *chfo@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Harold Ward, West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, West Virginia 25304, Telephone: (304) 926–0490, Email: *harold.d.ward@wv.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004 (By Appointment Only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, Telephone: (412) 937–2827. Email: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Cooperative Agreement

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''. . . State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning the West Virginia program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

West Virginia sent a request, received on August 26, 1981, proposing the existing Federal Lands Cooperative Agreement (herein referred to as the existing cooperative agreement) between the Department of the Interior and the State of West Virginia to give the State primacy and grant the ability to administer its approved regulatory program on Federal lands within West Virginia. West Virginia's existing cooperative agreement was approved on February 24, 1984, and the final rule was published in the March 9, 1984, **Federal Register** (49 FR 8913). The text of the existing cooperative agreement can be found at 30 CFR 948.30.

On August 5, 2014, the West Virginia Department of Environmental Protection (WVDEP) submitted a proposed, revised cooperative agreement (herein referred to as the revised agreement) to address several changes that have occurred since the existing cooperative agreement was adopted. (Administrative Record No. WV–1599). After expressing an interest in revising the agreement in 2009, WVDEP collaborated with OSMRE's Charleston Field Office (CHFO) before it submitted a final draft of the revised agreement.

The provision for amending cooperative agreements is found in 30 CFR 745.14. This provision provides that a cooperative agreement, which has been approved pursuant to 30 CFR 745.11, may be amended by mutual agreement of the Secretary and of the Governor of a State.

Amendments to a cooperative agreement must be adopted by Federal rulemaking in accordance with 30 CFR 745.11. Sections 745.11(b)(1) through (8) require that certain information be submitted with a request for a cooperative agreement if the information has not previously been submitted in the State program. The information relating to the budget, staffing, organization and duties of the State regulatory authority, WVDEP, was submitted when West Virginia requested its existing cooperative agreement. See 49 FR 8913.

OSMRE has determined that this information satisfies the requirements for the proposed amendments to the cooperative agreement, and no additional information is needed. A written certification from the West Virginia Attorney General was also included in the State's request for its existing cooperative agreement. The Attorney General concluded that no State statutory, regulatory or other legal constraint exists which would limit the capability of the State to fully comply with section 523(c) of the Act, as implemented by 30 CFR part 745.

OSMRE is seeking comments on the proposed revisions to the existing cooperative agreement. If the amendment is deemed as sufficient, it will become part of the West Virginia program.

II. Proposed Revisions to the Cooperative Agreement

Through this proposed rulemaking, West Virginia seeks to revise the outdated contents of its existing cooperative agreement. As the existing cooperative agreement does not contemplate the State's desire to regulate coal exploration activities and assume responsibility for approving coal mining permits involving federally leased coal, the revised agreement would authorize the State regulation of these activities. Under the revised agreement, the State would be primarily responsible for reviewing and approving coal mining permits involving federally and privately owned coal, as well as regulate all surface coal mining and reclamation operations on Federal lands within West Virginia. As a result, upon approval of the revised agreement, OSMRE would no longer be responsible for approving permits on Federal lands involving federally leased coal and would instead function solely in its oversight capacity to ensure the State complies with the West Virginia program and the terms of the revised cooperative agreement. The revised agreement would further clarify the requirements, procedures, and responsibilities of the State, OSMRE, the Secretary, and the other Federal agencies affected by such operations conducted on Federal lands.

As discussed and summarized below, the revised agreement would include a more in-depth discussion of the agency duties regarding permit application review, permit revisions or renewals, agency coordination, bonding, and transfer, assignment, or sale of permit rights. The revised agreement would incorporate the Bureau of Land Management (BLM) responsibilities under the Mineral Leasing Act of 1920 (MLA) for lands involving leased Federal coal and would include a new Article to address areas unsuitable for mining, valid existing rights (VER), and compatibility determinations reserved for the Secretary and non-delegable to the State.

A summary of the proposed changes to the existing cooperative agreement is provided below. For convenience, the existing Article is provided alongside the corresponding proposed revised Article. These proposed revisions are subject to further changes because of public comments and further discussions with West Virginia. The full text of the terms of the proposed cooperative agreement, as submitted, is also provided.

Cooperative Agreement

The proposed revisions to the introductory language concern non-substantive wording or editorial changes.

Existing Article I: Introduction, Purpose and Responsible Administrative Agency

Proposed Revised Article I: Introduction, Purposes, and Responsible Agencies

Article I would be retitled to read: *Article I: Introduction, Purposes, and Responsible Agencies.*

Under paragraph *A. Authority,* the statement ''including surface operations and surface impacts incident to underground mining operations'' is added for clarity. The language would be revised in paragraph A to (1) reference to activities reserved for BLM such as the ability to lease Federal coal subject to 43 CFR part 3400, subparts 3480 through 3487; (2) explain that the State regulation will be conducted in a manner consistent with SMCRA, the

Federal lands program pursuant to 30 CFR parts 740, 745, and 746, and the approved West Virginia program; and (3) delegate authority to the State to review and approve coal exploration activities on Federal lands within West Virginia.

Paragraph *B. Purposes* would be revised for editorial purposes and to incorporate the changes that have occurred in regards to agency structure.

Paragraph *C. Responsible Administrative Agencies* would be revised to more accurately reflect the current agency structure and responsibilities. These revisions would change the name of the State agency with authority to regulate coal mining in West Virginia and would authorize WVDEP to administer the cooperative agreement on behalf of the Governor, instead of the Department of Natural Resources, Reclamation Division (DNR), as the existing cooperative agreement provided.

Existing Article II: Effective Date

Proposed Revised Article II: Effective Date

The proposed revisions to Article II concern non-substantive wording or editorial changes.

Existing Article III: Definitions

Proposed Revised Article III: Definitions

Article III would be revised to expand the list of definition sources, originally listing 30 CFR parts 700, 701, and 740, and the State program, to incorporate SMCRA, 30 CFR 700.5, 701.5 and 740.5, the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), the Office of Explosives and Blasting, and the rules and regulations promulgated pursuant to those Acts. Moreover, the proposed revisions would add a new paragraph to resolve instances where a conflict occurs between State and Federal definitions, stating that the definitions used in the approved State program will apply with exception to the definition of ''valid existing rights'' which will use the Federal VER definition.

Existing Article IV: Applicability

Proposed Revised Article IV: Applicability

The language in Article IV would be revised to clarify that although the laws, regulations, terms and conditions of the West Virginia program are applicable to Federal lands in the State through the cooperative agreement, certain authority or responsibilities are reserved and cannot be delegated to the State as the regulatory authority. Existing language would be revised to include additional current statutory and regulatory references that are relevant, but are not presently included. The proposed revisions would remove from the existing cooperative agreement a statement that the terms of the agreement do not apply to operations on Federal lands that contain leased Federal coal. Under the revised agreement, WVDEP would be primarily responsible for regulating coal mine sites which may involve federally owned coal, which will be discussed further below.

The revised agreement would list the State Surface Mine Board, rather than the State of West Virginia's Reclamation Board of Review as provided in the existing cooperative agreement, as the appropriate entity to receive appeals of orders and decisions issued by WVDEP.

Existing Article V: Requirements for Cooperative Agreement

Proposed Revised Article V: General Requirements

Article V would be retitled to read: *Article V: General Requirements.* Paragraph *A. Authority of State Agency* would be revised to list WVDEP as the appropriate State agency to carry out the terms of the cooperative agreement. Proposed revisions to paragraph *B. Funding* would provide WVDEP the necessary funds to cover the full cost incurred by the State in carrying out its responsibilities under the agreement. However, the proposed revision would also include the proviso, ''provided that such cost does not exceed the estimated cost the Federal Government would have expended on such responsibilities in the absence of this Agreement.''

Paragraph *C. Reports and Records* would be revised to require the State, pursuant to 30 CFR 745.12(d), to report its compliance with the cooperative agreement to OSMRE on a more frequent basis.

Paragraphs *D. Personnel* and *E. Equipment and Facilities* would continue to require the State to provide the necessary personnel and access to facilities in order to implement the agreement. However, the revised agreement would make the existing personnel and facilities requirements contingent upon adequate appropriations and grant awards. Under the revised agreement, paragraph E would be retitled: *E. Equipment and Facilities.*

Paragraph F would be revised to read: *F. Permit Application Fees and Civil and Criminal Penalties* and would incorporate coal exploration application fees. Paragraph F, as revised, would require civil and criminal penalties and fines collected from operations on Federal lands to be deposited in the State's Special Reclamation Fund and Special Reclamation Water Trust Fund and would allow the State to consider all permit application fees collected as program income to be retained by the State and deposited within WVDEP's Mining and Reclamation Operation Fund. Additionally, the existing requirement to submit a financial status report pursuant to 30 CFR 735.26 would be revised to require that the State report the permit fee, penalty, and fine amounts collected from operations on Federal lands during the prior grant year.

Existing Article VI: Review of a Permit Application Package

Proposed Revised Article VI: Review of Permit Application

Article VI would be retitled to read: *Article VI: Review of Permit Application.* Article VI would be revised to update the procedures, responsibilities of each agency, and agency coordination associated with permitting on Federal lands. Under the revised agreement, WVDEP would be responsible for reviewing and approving coal mining permits involving federally and privately owned coal as well as the authority to regulate all surface coal mining and reclamation operations on Federal land. The revised agreement would provide a more thorough outline of the specific duties assigned to the State or Federal agency for permitting actions, including the agency responsibilities and review procedures for operations involving Federal surface and leased Federal coal.

The proposed revisions would add paragraph *A. Responsibilities.* As established in the existing cooperative agreement, WVDEP would continue to hold the primary responsibility for reviewing and approving the permit application package. However, the revised paragraph A would identify BLM as the agency responsible for matters that concern Federal coal leases issued under mineral leasing laws which exclusively fall under 43 CFR part 3400 of the Federal regulations. In instances where the operation involves leased Federal coal, the revised agreement would require OSMRE to prepare a mining plan decision document and obtain approval from the Secretary. OSMRE would be required to consult and seek concurrence from BLM, the Federal land management agency, and other Federal agencies in order to determine the appropriate

mining plan recommendation for the Secretary.

The proposed revisions would set forth the Secretary's reserved right to carry out certain responsibilities, and act independently of WVDEP, pursuant to laws other than SMCRA. The revised agreement would provide a clear depiction of the Secretary's responsibilities, outlined in 30 CFR 740.4(a), that cannot be delegated to the State under the Federal lands program, the MLA, NEPA, this proposed revised cooperative agreement, and other applicable Federal laws. However, the revised paragraph A would explain that the Secretary's authority to make certain determinations under SMCRA that cannot be delegated to WVDEP, but may be delegated to OSMRE. Although OSMRE retains responsibilities under NEPA, the revised paragraph A would specify that OSMRE may request the State's assistance in preparing documents for NEPA compliance. The revised agreement would enable OSMRE and the State, with the concurrence of other Federal agencies involved, to delegate additional responsibilities to WVDEP under other applicable Federal laws by establishing a working agreement.

The proposed addition of paragraph *B. Submission of Permit Application* would continue to set forth similar permit application submission procedures as those provided under paragraph *A. Contents of Permit Application Package* of the existing cooperative agreement, but would incorporate coal exploration operations on Federal lands. The proposed paragraph B would additionally require applicants to satisfy the 30 CFR 740.13(b) requirements, which set forth the information required for a permit package, submission procedures, and other permit requirements. If OSMRE is regulating or processing existing or pending permit applications on Federal lands before the revised cooperative agreement is effective, paragraph B would allow the State to request that OSMRE continue its responsibility for those permits. While regulating or processing those applications, OSMRE may, however, pass its additional responsibilities to the State under the terms of the revised agreement, along with any resulting attendant fees, fines or civil or criminal penalties.

The revised agreement would add paragraph *C. Review Procedures* to provide a more extensive description of agency responsibilities during permit review. The proposed paragraph C would require OSMRE and WVDEP to develop a work plan and permit application review schedule, incorporating the timeframes established by the approved State program. In addition to agency coordination procedures, the paragraph C would require OSMRE to provide the State with its comments on the application as well as any requirements for additional data, within 45 days of receiving the administratively complete permit application. OSMRE would coordinate the resolution of conflicts between WVDEP and other Federal agencies to assist the State in carrying out its responsibilities.

The proposed, revised agreement would add paragraph *D. Review Procedures Where There is Federal Surface, but No Leased Federal Coal Involved* to clarify that WVDEP will be responsible for reviewing permit applications for operations on Federal lands that do not involve leased Federal coal and do not require a mining plan.

The revised agreement would add paragraph *E. Review Procedures Where Federal Surface and Leased Federal Coal Is Involved.* Paragraph E would allow OSMRE to delegate its obligations under 30 CFR 740.4(c)(1) through (4), (6), and (7), thereby authorizing WVDEP to issue permitting decisions for operations on Federal land, review exploration operations not subject to 43 CFR part 3400, and assist OSMRE in the preparation of NEPA documents. After consulting the appropriate agency, the revised agreement would also enable the State to approve and release bonds and determine the post-mining land use. The proposed addition to paragraph E would also require BLM to notify WVDEP of its leasing actions and provide a copy of the decision.

Paragraph *F. [WV]DEP, OSMRE, and Other Federal Agency Coordination* would be added under the revised agreement, to reiterate the agency coordination required when Federal leased coal is involved. In addition to discussing WVDEP's responsibility to consult with BLM and the Federal land management agency when the proposed permit application involved leased Federal coal, WVDEP would be responsible for seeking comments from other agencies with jurisdiction over Federal lands affected by the proposed operation. Under the proposed paragraph F, the State would be able to request Federal agencies to provide their comments and findings to WVDEP within 45 calendar days after receipt of the permit application. Pursuant to paragraph F, WVDEP would also be responsible for providing OSMRE written findings that each permit application involving lands containing leased Federal coal is in compliance with the State program.

Paragraph F would set forth the State, OSMRE, and BLM's responsibility to coordinate with other agencies in instances where the land at issue contains leased Federal coal. Under the revised agreement, the State would be required to provide OSMRE with written findings demonstrating that each permit application complies with the West Virginia program and perform a technical analysis of each application to assist OSMRE.

To make the recommendation for the Secretary's decision on the mining plan, OSMRE would be required to consult and obtain concurrence from BLM, the Federal land management agency, and any other agency with jurisdiction over Federal lands affected by the proposed operations. Lastly, paragraph F of the revised Article VI would also establish a 5 day deadline for BLM to notify the State of actions taken pursuant to 43 CFR part 3400 and provide documentation on all leasing decisions.

The revised agreement would add paragraph *G. Permit Application Decision and Permit Issuance.* Under the proposed revised Article VI, paragraph G would authorize the State to approve, disapprove, or conditionally approve coal exploration activities on Federal lands. The proposed paragraph G would require certain terms or conditions to be incorporated into State-issued permits, including but not limited to, lease requirements pursuant to the MLA and post-mining land use conditions imposed by the Federal land management agency.

Additionally, the proposed paragraph G would allow the State to approve surface mining permits or coal exploration activities involving leased Federal coal before the Secretary has issued a decision on the mining plan. However, paragraph G would clarify that the State would be responsible for informing the operator that permit issuance is contingent upon the Secretary's approval of the mining plan and coal exploration or surface mining cannot commence unless the mining plan has been approved. Further, the revised agreement would authorize the State to reserve the right to withdraw permit approval or modify the permit requirements in order to conform with any terms or conditions imposed by the Secretary in the approval of the mining.

The revised agreement would add paragraph *H. Review Procedures for Permit Revisions; Renewals; and Transfer, Assignment or Sale of Permit Rights,* which would incorporate the procedures for the above-listed permit actions. For applications involving permit revisions or renewals on Federal lands, WVDEP would be responsible,

under the revised agreement, to review and approve the proposed revision or renewal. However, the revised agreement would require the State to consult OSMRE beforehand, to determine whether the proposed permitting action constitutes a mining plan modification. The proposed paragraph H would require OSMRE to notify the State, within 15 days of receiving a copy, if the proposed permit revision or renewal constitutes a mining plan modification. For mining plan modifications requiring Secretarial approval, the proposed paragraph H would direct OSMRE and the State to follow the procedures outlined in proposed paragraph *E. Review Procedures Where Federal Surface and Leased Federal Coal Is Involved* of the revised agreement.

Additionally, the proposed paragraph H would allow OSMRE to establish criteria, consistent with the mining plan modification criteria set forth in 30 CFR 746.18, to identify those revisions or renewals that clearly do not constitute mining plan modifications. If OSMRE determines the renewal or revision does not constitute a mining modification, or the criteria for non-mining plan modifications is satisfied, the revised agreement under the proposed paragraph H would direct the State to review the proposed revision or renewal according to the procedures set forth in the proposed paragraph *D. Review Procedures Where There is Federal Surface, but No Leased Federal Coal Involved,* the West Virginia Program, and the regulations at 30 CFR 740.13(d), if applicable.

The proposed paragraph H would require transfer, assignment or sale of permit rights on Federal lands to be processed in accordance with the West Virginia program and the regulations at 30 CFR 740.13(e). Similar to the permit revisions or renewals procedures, applications for transfer, assignment or sale of permit rights must be evaluated to determine whether the application constitutes a mining plan modification. Those applications that constitute a mining plan modification would be processed according to the procedures provided in the proposed paragraphs E. Otherwise, applications that do not constitute a mining plan modification would be evaluated by the State according to the procedures set forth in the proposed paragraph D of the revised agreement.

Existing Article VII: Inspections

Proposed Revised Article VII: Inspections

The revised Article VII would continue to require WVDEP to perform inspections on Federal land pursuant to 30 CFR 740.4(c)(5) and provide OSMRE with a copy of the completed State inspection report. However, the proposed revisions to Article VII would require WVDEP to provide OSMRE with access to a copy after the State conducts an inspection on Federal lands, on a ''timely basis'', rather than the 15 day deadline required by the existing cooperative agreement. Although the existing cooperative agreement states that nothing within the 1984 cooperative agreement will prevent other inspections by authorized Federal or State agencies, the proposed agreement would specifically include a reference to 30 CFR parts 842 and 843 to clarify that the authority for Federal inspection and monitoring and Federal enforcement is retained. Additionally, the proposed revisions would refer all citizen complaints, which do not involve an imminent danger or significant, imminent environmental harm, to WVDEP for action. The information regarding State and Department of Interior witness availability would be moved to *Article VIII: Enforcement.*

Existing Article VIII: Enforcement

Proposed Revised Article VIII: Enforcement

Article VIII would be revised to clarify that WVDEP's enforcement actions includes the assessment of civil or criminal penalties in addition to issuing orders of cessation or notices of violation. Although the existing cooperative agreement requires the State to take appropriate enforcement action pursuant to the agreement, the revised agreement would additionally require WVDEP to notify OSMRE and the Federal land management agency of decisions to suspend or revoke a permit on Federal land prior to issuing such decision.

In instances where inspections are conducted solely by OSMRE, or during a joint inspections where WVDEP and OSMRE do not agree on a particular enforcement action, the proposed revisions incorporate a reference to 30 CFR part 846 and would allow OSMRE to take the necessary enforcement actions regarding individual civil penalties.

The proposed revisions to Article VIII would provide that permits to conduct coal exploration or surface coal mining and reclamation operations may be suspended or revoked by WVDEP pursuant to the State program, but issuance of any decision to suspend or revoke a permit on Federal land requires that WVDEP must first inform OSMRE and the Federal land management agency before its decision is issued. The State would be required to notify BLM, under the revised agreement, of its decision to revoke or suspend a permit is on lands containing leased Federal coal, so BLM may assess whether cancellation of the Federal lease is necessary.

The proposed revisions to Article VIII would reference a new Appendix A, which lists the enforcement authority reserved to the Secretary.

Existing Article IX: Bonds

Proposed Revised Article IX: Bonds

The revised Article IX would incorporate coal exploration activities, use of penal bonds, the conversion to a full-cost reclamation bond in the event the cooperative agreement is suspended or terminated, and the agency coordination and procedures associated with bond release and forfeiture. Under the revised agreement, the State and the Secretary would require operators conducting coal exploration or surface coal mining and reclamation activities on Federal lands to submit a performance and/or penal bond. While the existing cooperative agreement provides that such bond is conditioned upon the compliance with all applicable requirements, the revised Article would specify that these requirements include those established by SMCRA, the State program, other State or Federal laws and regulations, along with any other requirements imposed by the Secretary or Federal land management agency. In order for the State to release the bond, the State would be required to obtain OSMRE's concurrence in the bond release, which in turn would require OSMRE to consult the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands affected by the operation. The proposed revisions to this Article would additionally require the State to advise OSMRE of any annual adjustments to the bonds made pursuant to the West Virginia program.

The proposed revised Article would continue to require bonds to be made payable only to the United States in the event the cooperative agreement terminated. However, the proposed revisions would additionally require the bond to provide that the portion covering Federal lands to be converted

into a full-cost reclamation bond upon the termination, as well as suspension, of the cooperative agreement. Further, the proposed revisions to this Article would require WVDEP, before termination of the cooperative agreement, to assist OSMRE in obtaining the full-cost reclamation bond from the operator for the areas only covering Federal lands.

Moreover, the list of funds available to the State in the event of bond forfeiture would be revised to include the Special Reclamation Water Trust Fund. Additional language would be added to clarify that reclamation by the State is to be completed consistent with the West Virginia program and the reclamation plan before the permit is revoked or modified.

Further, this existing Article would be revised to include additional bonds requirements and would identify the responsible agencies for collection and maintenance of such bonds. The revised agreement would provide that OSMRE or the appropriate Federal agency will be responsible for the collection and maintenance of Federal lease bonds or lessee protection bonds, if such bonds are required. The revised agreement would require BLM concurrence and compliance with 43 CFR part 3400 requirements before releasing a Federal lease bond.

Proposed Revised Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Mining and Reclamation Operations and Activities and Valid Existing Rights (VER) and Compatibility Determinations

The revised agreement would add a new Article to the existing cooperative agreement entitled, *Article X: Designating Land Areas Unsuitable for all or Certain Types of Surface Mining and Reclamation Operations and Activities and Valid Existing Rights (VER) and Compatibility Determinations.* Although Article VI of the existing cooperative agreement contemplates the content discussed below, the revised agreement would provide a more extensive outline of the procedures and agency responsibilities associated with the following determinations.

Paragraph *A. Unsuitability Petitions* would set forth the Secretary's reserved authority to designate Federal lands as unsuitable for mining as provided by 30 CFR 745.13(a). The addition of paragraph A would discuss OSMRE's responsibilities in processing requests for designating Federal lands as unsuitable for mining and the termination of previous designations in accordance with 30 CFR part 769. The revised agreement would provide the required procedures for State and Federal agency coordination after a petition to designate lands unsuitable for mining is received.

Paragraph *B. Valid Existing Rights Determinations* would provide the procedures and appropriate actions to be taken by the applicable State or Federal agency when requests for determinations of VER, pursuant to section 522(e) of SMCRA and the Federal regulations at 30 CFR 761.11, are received. For private in-holdings within areas protected under 30 CFR 761.11(a) and SMCRA section 522(e)(1), WVDEP is to process the VER request in accordance with the State program, but use the Federal VER definition at 30 CFR 761.5 when making VER determinations.

Paragraph *C. Compatibility Determinations* would outline the procedures for compatibility determinations and will state that the Secretary is responsible for issuing findings discussing whether there are significant recreational, timber, economic or other values that may be incompatible with surface coal mining operations incident to underground mining on Federal lands within the boundaries of a national forest protected pursuant to section 522(e)(2) of SMCRA and 30 CFR 761.11(b). The proposed revision would list OSMRE as the responsible agency to process requests for compatibility determinations in accordance with the procedures outlined in 30 CFR 761.13.

Existing Article X: Termination of Cooperative Agreement

Proposed Revised Article XI: Termination of Cooperative Agreement

Article X would be renumbered to read: *Article XI: Termination of Cooperative Agreement.*

Existing Article XI: Reinstatement of Cooperative Agreement

Proposed Revised Article XII: Reinstatement of Cooperative Agreement

Article XI would be renumbered to read: *Article XII: Reinstatement of Cooperative Agreement.*

Existing Article XII: Amendment of Cooperative Agreement

Proposed Revised Article XIII: Amendment of Cooperative Agreement

Article XII would be renumbered to read: *Article XIII: Amendment of Cooperative Agreement.*

Existing Article XIII: Changes in State or Federal Standards

Proposed Revised Article XIV: Changes in State or Federal Standards

Article XIII would be renumbered to read: *Article XIV: Changes in State or Federal Standards.* The proposed revisions to the existing Article XIV concern non-substantive wording or editorial changes.

Existing Article XIV: Changes in Personnel and Organization

Proposed Revised Article XV: Changes in Personnel and Organization

Article XIV would be renumbered to read: *Article XV: Changes in Personnel and Organization.* The proposed revisions to the existing Article WIV concern non-substantive wording or editorial changes.

Existing Article XV: Reservation of Rights

Proposed Revised Article XVI: Reservation of Rights

Article XV would be renumbered to read: *Article XVI: Reservation of Rights.* The proposed amendment would include a reference to Appendix A.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on August 4, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If a public meeting is held instead, the Field Office Director will prepare a summary for the administrative record. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Lanny E. Erdos,

Principal Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, 30 CFR part 948 is proposed to be amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.30 is amended and revised to read as follows:

§ 948.30 State-Federal Cooperative Agreement.

Cooperative Agreement

The Governor of the State of West Virginia (the Governor) and the Secretary of the Department of the Interior (the Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes, and Responsible Agencies

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under section 503 of SMCRA, 30 U.S.C. 1253, to elect to enter into an Agreement for the State regulation and control of surface coal mining and reclamation operations (including surface operations and surface impacts incident to underground mining operations) on Federal lands. This Agreement provides for State regulation of coal exploration operations and surface coal mining and reclamation operations on Federal lands within West Virginia, except for those activities reserved for the Bureau of Land Management (BLM) involving leased Federal coal subject to 43 CFR part 3400, subparts 3480 through 3487.

This Agreement provides for State regulation of coal exploration and surface mining activities consistent with SMCRA, the Federal lands program (30 CFR parts 740, 745 and 746), and the approved West Virginia regulatory program (State Program). This Agreement does not abridge any rights that West Virginia may have under State law to regulate coal exploration activities within the State.

B. Purposes

The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to BLM's authority under 43 CFR part 3400, (b) minimize intergovernmental duplication of effort, and (c) provide for uniform and effective application of the State Program on all lands within West Virginia in accordance with SMCRA, the State Program, and this Agreement.

C. Responsible Administrative Agencies

The West Virginia Department of Environmental Protection (DEP) will be responsible for administering this Agreement on behalf of the Governor under the approved West Virginia Permanent Regulatory Program. The Office of Surface Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect immediately after publication

in the **Federal Register** as a final rule. This Agreement will remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement that are defined in SMCRA, 30 CFR 700.5, 701.5 and 740.5, the State Program, including the approved West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) W. Va. Code section 22–3–1, *et seq.* and The Office of Explosives and Blasting, W. Va. Code section 22–3A–1, *et seq.,* and the rules and regulations promulgated pursuant to those Acts, will be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply, except for valid existing rights (VER) requests pursuant to 30 CFR 761.16. The Federal VER definition will apply when making VER determinations for those protected areas identified in 30 CFR 761.11 (a) and (b).

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the State Program, as conditionally approved effective January 21, 1981, 30 CFR part 948, or hereinafter amended in accordance with 30 CFR 732.17, are applicable to Federal lands in West Virginia, except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a) and 745.13, and other applicable laws, Executive Orders, or regulations.

Orders and decisions issued by DEP in accordance with the State Program that are appealable must be appealed to the State Surface Mine Board. Orders and decisions issued by the Secretary or OSMRE that are appealable must be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency

DEP has and will continue to have the authority under State law to carry out this Agreement.

B. Funding

Upon application by DEP and subject to the availability of appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of SMCRA, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DEP in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal Government would have expended on such responsibilities in the absence of this Agreement.

The amount of the grant will be determined using the procedures specified in the Federal Assistance Manual Chapter 3–10 and Appendix III.

If DEP applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DEP will promptly meet to decide on appropriate measures that will insure that coal exploration operations and surface coal mining and reclamation operations on Federal lands within West Virginia are regulated in accordance with the State Program. If an agreement cannot be reached, either party may terminate this Agreement in accordance with Article XI of this Agreement.

Funds provided to the DEP under this Agreement will be adjusted in accordance with the Office of Management and Budget Common Rule for Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments and must be reduced by the amount of permit application fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. Reports and Records

DEP will make regular reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DEP and OSMRE will exchange information developed under this Agreement, except where prohibited by Federal or State law.

OSMRE will provide DEP with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DEP comments on the report will be appended before transmission to the Congress, unless necessary to respond to a request by a certain date or to other interested parties.

D. Personnel

Subject to adequate appropriations and grant awards, the DEP will maintain the personnel necessary to fully implement this Agreement in accordance with the provisions of SMCRA, applicable regulations, the Federal lands program, and the approved State Program.

E. Equipment and Facilities

Subject to adequate appropriations and grant awards, the DEP will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of this Agreement.

F. Permit Application Fees and Civil and Criminal Penalties

The amount of the fee accompanying an application for a coal exploration operation or a surface coal mining and reclamation operation on Federal lands in West Virginia will be determined in accordance with the approved West Virginia Program. All permit application fees collected from operations on Federal lands will be considered program income to be retained by the State and must be deposited within the Department of Environmental Protection's Mining and Reclamation Operations Fund. Civil and criminal penalties and fines collected from operations on Federal lands must be deposited in State's Special Reclamation Fund and Special Reclamation Water Trust Fund. The financial status report submitted pursuant to 30 CFR 735.26 will include a report on the amount of permit fees, penalties, and fines collected from operations on Federal lands during the State's prior grant year.

Article VI: Review of Permit Application

A. Responsibilities

DEP will assume primary responsibility for the analysis, review, and approval, disapproval or conditional approval of the permit application component of the permit application package-required by 30 CFR 740.13 for surface coal mining and reclamation operations or for coal exploration operations in West Virginia on Federal lands.

For proposals to conduct surface coal mining operations involving leased Federal coal, OSMRE is responsible for preparing a mining plan decision document in accordance with 30 CFR 746.13 and obtaining the Secretary's approval. The mining plan includes: The permit application; the resource recovery and protection plan reviewed and approved by BLM; information prepared in accordance with the National Environmental Policy Act (NEPA); documentation assuring compliance with other Federal laws and regulations; comments from other Federal agencies and the public; findings and recommendations from BLM with respect to the resource

recovery and protection plan; findings and recommendations from DEP with respect to the permit application and the approved State program; and findings and recommendations from OSMRE with respect to the additional requirements of the Federal Lands Program.

BLM is responsible for matters concerned exclusively with regulations under 43 CFR part 3400.

The Secretary reserves the right to act independently of DEP to carry out responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the State Program, and in instances of disagreement over SMCRA and the Federal lands program. The Secretary will, as provided by 30 CFR 740.4(a), make determinations under SMCRA that cannot be delegated to the State, some of which have been delegated to OSMRE.

The Secretary will concurrently carry out the responsibilities under 30 CFR 740.4(a) that cannot be delegated to DEP under the Federal lands program, the Mineral Leasing Act of 1920 (MLA), NEPA, this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the State Program. The Secretary will consider the information in the permit application and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Where necessary to make the determination to recommend that the Secretary approve the mining plan as provided by 30 CFR 740.4(b)(1), OSMRE will consult with and obtain the concurrences of BLM, the Federal land management agency, and other Federal agencies as required.

DEP may assist OSMRE in the preparation of documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7). If requested, DEP may assist with document preparation, but OSMRE will retain responsibility for preparing NEPA compliance documents, including the exceptions relating to NEPA as set forth in 30 CFR 740.4(c)(7)(i)–(vii).

DEP will be responsible for the approval and release of performance bonds and liability insurance under 30 CFR740.4(c)(4) in accordance with Article IX of this Agreement, and for the review and approval under 30 CFR 740.4(c)(6) of coal exploration operations not subject to 43 CFR part 3400, subparts 3480–3487.

Responsibilities and decisions that can be delegated to DEP under other applicable Federal laws may be specified in working agreements between OSMRE and the State with the concurrence of any Federal agency involved and without amendment to this Agreement.

B. Submission of Permit Application

DEP will require an applicant proposing to conduct surface coal mining and reclamation operations or coal exploration operations on Federal lands covered by this Agreement to submit a permit application in the format as prescribed by DEP. DEP will furnish a copy of the permit application or make it available to OSMRE, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the permit application. The permit application will be in the form required by DEP and will include any supplemental information required by OSMRE, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the permit application.

At a minimum, the permit application will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for DEP to make a determination of compliance with 30 CFR 740.4(c) and the State Program, and for OSMRE, the appropriate Federal land management agencies, and any other agencies with jurisdiction or responsibilities over Federal lands affected by operations proposed in the permit application to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, other Federal laws, Executive Orders, and regulations for which they are responsible.

For any existing or pending permit applications on Federal lands being regulated or processed by OSMRE prior to the effective date of this Agreement, OSMRE will coordinate with DEP and continue that responsibility, if so requested by the State. At any point during the regulation or processing of those applications, all additional responsibilities may be passed to DEP pursuant to the terms of this Agreement, along with any attendant fees, fines or civil or criminal penalties therefrom.

C. Review Procedures

DEP will be the primary point of contact for applicants regarding the review of the permit application for compliance with the State Program and other applicable State laws and regulations. OSMRE will be the point of contact regarding the review of the applicable portions of the permit application for compliance with the non-delegated responsibilities of SMCRA and for compliance with the requirements of other Federal laws, Executive Orders, and regulations.

OSMRE and DEP will develop a work plan and schedule for permit application review that complies with the time limitations established by the approved State Program, and each agency will designate a person as the Federal lands liaison. The Federal lands liaisons will serve as the primary points of contact between OSMRE and DEP throughout the review process.

Not later than 45 calendar days after receipt of an administratively complete permit application, unless a different schedule is agreed upon, OSMRE will furnish DEP with its review comments on the permit application and specify any requirements for additional data. OSMRE and DEP will coordinate with each other during the review process, as needed. DEP will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the permit application.

OSMRE will send to DEP copies of all OSMRE correspondence that may have a bearing on the permit application. OSMRE will provide technical assistance to DEP when requested and will have access to DEP files concerning coal exploration or surface mining operations on Federal lands. DEP will keep OSMRE informed of findings made during the review process that bear on the responsibilities of OSMRE or other Federal agencies.

OSMRE will assist the State in carrying out DEP's responsibilities by coordinating resolution of conflicts and difficulties between DEP and other Federal agencies in a timely manner; assisting in scheduling joint meetings, upon request, between State and Federal agencies; and exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the State Program.

D. Review Procedures Where There Is Federal Surface, but No Leased Federal Coal Involved

DEP will assume the responsibility for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c)(1), (2), (4), (6) and (7).

DEP will assume responsibility for the analysis, review and approval, disapproval or conditional approval of the permit application component of the permit application package required by 30 CFR 740.13 for surface coal mining

and reclamation operations in West Virginia on Federal lands not requiring a mining plan pursuant to the MLA, as amended, including applications for revisions, renewals and transfer, sale and assignment of such permits.

E. Review Procedures Where Federal Surface and Leased Federal Coal Is Involved

DEP will assume the responsibility for review of permit applications involving both Federal surface and leased Federal coal to the extent authorized in 30 CFR 740.4(c)(1), (2), (3), (4), (6) and (7).

DEP will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. On matters concerned exclusively with regulations under 43 CFR part 3400, subparts 3480 through 3487, BLM will be the primary contact with the applicant. BLM will inform DEP of its actions and provide DEP with a copy of documentation on all leasing decisions.

F. DEP, OSMRE, and Other Federal Agency Coordination

DEP will, to the extent authorized, consult with the Federal land management agency and with BLM when Federal leased coal is involved pursuant to 30 CFR 740.4(c)(2) and (3), respectively. DEP will also be responsible for obtaining the comments and determinations of other agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the permit application. DEP will request all Federal agencies to furnish their findings or any request for additional information to DEP within 45 calendar days of the date of receipt of the permit application. OSMRE will, upon request, assist DEP in obtaining such information.

In accordance with 30 CFR 745.12(g)(2), where lands containing leased Federal coal are involved, DEP will provide OSMRE, in the form specified by OSMRE in consultation with DEP, with written findings indicating that each permit application is in compliance with the terms of the State Program and a technical analysis of each permit application to assist OSMRE in meeting its responsibilities under other applicable Federal laws and regulations.

Where leased Federal coal is involved, OSMRE will consult with and obtain the concurrences of BLM, the Federal land management agency, and any other agency with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the permit application as required to make its recommendation for the Secretary's decision on the mining plan.

Where BLM contacts the applicant in carrying out its responsibilities under 43 CFR part 3400, BLM will immediately inform DEP of its actions and provide DEP with a copy of documentation of all leasing decisions within 5 calendar days.

G. Permit Application Decision and Permit Issuance

DEP will prepare a State decision package, including written findings and supporting documentation, indicating whether the permit application is in compliance with the State Program. DEP will make the decision on approval, disapproval or conditional approval of the surface mining permit or coal exploration approval on Federal lands in accordance with the State Program.

Any permit issued by DEP will incorporate, as applicable, any terms or conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use or any special requirements to protect non-mineral resources and those of other affected agencies.

DEP may make a decision on approval, disapproval or conditional approval of the surface mining permit or coal exploration approval on Federal lands in accordance with the State Program prior to the necessary Secretarial decision on the mining plan when leased Federal coal is involved, provided that DEP advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal exploration or surface coal mining operations on the Federal lease and conditions the issuance of the permit or approval as such. DEP will reserve the right to amend or rescind any requirements of the permit or approval to conform with any terms or conditions when imposed by the Secretary in the approval of the mining plan.

After making its decision on the permit application, DEP will send a notice to the applicant, OSMRE, the Federal land management agencies, and any other agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the permit application. A copy of the permit and written findings will also be submitted to OSMRE.

H. Review Procedures for Permit Revisions; Renewals; and Transfer, Assignment or Sale of Permit Rights

Any permit revision or renewal for a surface coal mining and reclamation operation on Federal lands will be reviewed and approved or disapproved by DEP after consultation with OSMRE on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSMRE will inform DEP within 15 calendar days of receiving a copy of a proposed permit revision or renewal whether the permit revision or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and DEP will follow the procedures outlined in Section E of this Article.

OSMRE may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions or renewals clearly do not constitute mining plan modifications. Permit revisions or renewals on Federal lands that are determined by OSMRE not to constitute mining plan modifications or that meet the criteria for not being mining plan modifications will be reviewed and approved by following the procedures set forth in Section D of this Article, the State Program, and 30 CFR 740.13(d), if applicable.

Transfer, assignment or sale of permit rights on Federal lands will be processed in accordance with the State Program and 30 CFR 740.13(e). Those applications that do not or do require a mining plan modification will be processed according to the procedures set forth in Sections D or E of this Article, respectively.

Article VII: Inspections

DEP will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the State Program.

DEP will, subsequent to conducting any inspection on Federal lands pursuant to 30 CFR 740.4(c)(5), and on a timely basis, provide OSMRE access to a copy of the completed State inspection report.

DEP will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department of the Interior may conduct any inspections necessary to comply with 30 CFR parts

842 and 843 and its obligations under laws other than SMCRA.

OSMRE will give DEP reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection.

When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DEP prior to the Federal inspection, if circumstances and time allow, to facilitate a joint Federal/State inspection. All citizen complaints that do not involve an imminent danger or significant, imminent environmental harm will be referred to DEP for action. OSMRE may conduct any inspections necessary to comply with 30 CFR part 842. OSMRE will provide DEP with a copy of the inspection report within 15 days of the inspection. The Secretary reserves the right to conduct inspections without prior notice to DEP to carry out his responsibilities under SMCRA or other Federal laws.

Article VIII: Enforcement

DEP will have primary enforcement authority on Federal lands to ensure compliance with the requirements of the State Program and this Agreement in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive Orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

During any joint inspection by DEP and OSMRE, DEP will have primary responsibility for taking enforcement actions, including issuance of orders of cessation, notices of violation, and assessment of civil or criminal penalties. DEP must inform OSMRE and the Federal land management agency prior to issuance of any decision to suspend or revoke a permit on Federal lands.

A permit to conduct coal exploration or surface coal mining and reclamation operations on Federal lands may be suspended or revoked by DEP pursuant to the State program.

If a permit to conduct coal exploration or surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked, the DEP must notify BLM so it can determine whether action should be taken to cancel the Federal lease pursuant to 30 CFR 740.13(f)(2).

During any inspection made solely by OSMRE or any joint inspection where DEP and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the State Program, SMCRA or both and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

DEP and OSMRE will promptly notify each other and the Federal land management agency of all violations of applicable laws, regulations, orders or approved mining permits subject to this Agreement and of all actions taken with respect to such violations.

Personnel of DEP and the Department of the Interior, including OSMRE, will be mutually available to serve as litigation witnesses in enforcement actions taken by either party.

This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

DEP and the Secretary will require each operator who conducts coal exploration operations or surface coal mining and reclamation operations on Federal lands to submit a performance and/or penal bond payable to both the State of West Virginia and the United States to cover the operator's responsibilities under SMCRA and the State Program. The performance and/or penal bond will be conditioned upon compliance with the requirements of SMCRA, the State Program, other State or Federal laws and regulations, and any other requirements imposed by the Secretary or the Federal land management agency. Such bond will provide that if this Agreement is suspended or terminated, the portion of the bond covering Federal lands will be converted to a full-cost reclamation bond and made payable only to the United States. Prior to termination, DEP will assist OSMRE in obtaining the full-cost reclamation bond from the operator for those areas where only Federal lands are covered by the bond. If applicable, DEP will advise OSMRE of any annual adjustments to the performance and/or penal bond pursuant to the State Program.

Performance and/or penal bonds will be subject to release and forfeiture in accordance with the procedures and requirements of the State Program. Where coal exploration operations or surface coal mining and reclamation operations are conducted on Federal lands, the performance and/or penal bond must be released by the State upon compliance with all applicable State and Federal requirements and after the release is concurred in by OSMRE. OSMRE's concurrence will include coordination with the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands affected by the coal exploration operation or surface coal mining and reclamation operation.

In the event of forfeiture by an operator of a performance and/or penal bond for a coal exploration operation or a surface coal mining and reclamation operation on Federal lands covered by this Agreement, the State must use funds received from the forfeited bond and, where necessary, funds from the West Virginia Special Reclamation Fund and/or the Special Reclamation Water Trust Fund, pursuant to W. Va. Code section 22–3–11, to ensure that complete reclamation is accomplished in accordance with the State Program and the reclamation plan of the permit prior to revocation or any modification thereto.

Submission of a performance and/or penal bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA. Where Federal lease or lessee protection bonds are required, OSMRE or the appropriate Federal agency is responsible for the collection and maintenance of such bonds.

If a Federal lease bond is required as provided by 30 CFR 740.15, such bond may be released upon satisfactory compliance with all applicable requirements of 43 CFR part 3400 and after the release is concurred in by BLM.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights (VER) and Compatibility Determinations

A. Unsuitability Petitions

The authority to designate Federal lands as unsuitable for mining pursuant to a 30 CFR part 769 petition is reserved by the Secretary as provided by 30 CFR 745.13(a). OSMRE will consider the minimum criteria set forth in 30 CFR part 762 when evaluating each petition for designating an area as unsuitable for mining. In addition, OSMRE will process all requests for designating Federal lands as unsuitable for mining or for terminating previous designations in accordance with 30 CFR part 769.

When either DEP or OSMRE receives a petition to designate land areas unsuitable for all or certain types of

surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of its receipt and the anticipated schedule for reaching a decision and request and fully consider data, information, and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area and will solicit comments from the agency.

B. Valid Existing Rights Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA and 30 CFR 761.11 are received prior to or at the time of submission of a permit application that involves surface coal mining and reclamation operations and activities:

For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA and 30 CFR 761.11(a), OSMRE will determine whether VER exists for such areas pursuant to 30 CFR 745.13(o).

For Federal lands within the boundaries of any national forest where proposed operations are prohibited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSMRE will make the VER determinations pursuant to 30 CFR 745.13(o). OSMRE will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and 30 CFR 761.13.

For private in-holdings within areas protected under 30 CFR 761.11(a) and SMCRA section 522(e)(1), DEP will process the VER request in accordance with the State Program, but use the Federal VER definition at 30 CFR 761.5 when making the VER determination.

For any lands, DEP will determine whether any proposed operation will adversely affect any publicly owned park or, in consultation with the State Historic Preservation Officer, sites listed on the National Register of Historic Places, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA and 30 CFR 761.11(c). DEP will make the VER determination for such lands using the approved State Program definition of VER. DEP will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operations. In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations will be permitted unless jointly approved by DEP and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

C. Compatibility Determinations

As provided by 30 CFR 740.4(a)(5), the Secretary is responsible for the issuance of findings concerning whether there are significant recreational, timber, economic or other values that may be incompatible with surface coal mining operations incident to underground mining on Federal lands within the boundaries of a national forest protected pursuant to section 522(e)(2) of SMCRA and 30 CFR 761.11(b). OSMRE will process requests for compatibility determinations in accordance with the procedures set forth at 30 CFR 761.13.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

The Secretary or the Governor may from time to time promulgate new or revised performance standards or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the State Program and under the procedures of sections 501 and 523 of SMCRA for changes to the Federal lands program.

DEP and OSMRE will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Changes in State law or regulations cannot take effect for the purposes of this Agreement until they have been approved by OSMRE pursuant to 30 CFR 732.17.

Article XV: Changes in Personnel and Organization

In accordance with 30 CFR part 745, each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization, and funding or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and to facilitate cooperation.

Article XVI: Reservation of Rights

As provided by 30 CFR 745.13, this Agreement will not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement and that the State or the Secretary may have under laws other than SMCRA or their regulations including, but not limited to, those listed in Appendix A.

Approved:

David Bernhardt,

Secretary of the Interior

Dated:

Jim Justice,

Governor of West Virginia

Dated:

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.,* and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.,* and implementing regulations, including 43 CFR part 3400.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321*et seq.,* and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.,* and implementing regulations, including 50 CFR part 402.
5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661*et seq.;* 48 Stat. 401.
6. The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668–668d, and implementing regulations.
7. The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701–718h *et seq.*
8. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.,* and implementing regulations, including 36 CFR part 800.
9. The Clean Air Act, 42 U.S.C. 7401 *et seq.,* and implementing regulations.
10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* and implementing regulations.
11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.,* and implementing regulations.
12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. *et seq.*
13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
14. Executive Order 11988 (May 24, 1977), for flood plain protection.
15. Executive Order 11990 (May 24, 1977), for wetlands protection.
16. The Mineral Leasing Act for Acquired Lands, 30 U.S. 351 *et seq.,* and implementing regulations.

17. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

18. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.,* as amended.

19. The Constitution of the United States.

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.,* as amended.

21. 30 CFR Chapter VII.

22. The Constitution of the State of West Virginia.

23. West Virginia Department of Environmental Protection Permanent Regulatory Program at 30 CFR part 948, as amended.

24. West Virginia Surface Coal Mining and Reclamation Act at W.Va. Code section 22–3–1 *et seq.*

25. West Virginia Department of Environmental Protection, Surface Mining Reclamation Regulations, CSR section 38–2–1 *et seq.*

26. The Office of Explosives and Blasting at W.Va. Code section 22–3A–1 *et seq.*

27. The West Virginia Surface Mining Blasting Rule, CSR section 199–1–1 *et seq.*

[FR Doc. 2020–14460 Filed 7–17–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0968]

RIN 1625–AA09

Drawbridge Operation Regulations; Old Fort Bayou, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the State Road 609 highway bascule bridge across the Old Fort Bayou mile 1.6, Ocean Springs, Harrison County, Mississippi. This proposed action would allow the bridge to close to vessel traffic from 6:30 a.m. to 8:00 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays and require a 12 hour notification to open the bridge to vessels on Thanksgiving Day, Christmas Day and New Year's Day. This proposed action is intended to enhance vehicle safety and allow the bridge owner to effectively manage bridge operations during federal holidays.

DATES: Comments and related material must be received by the Coast Guard on or before September 18, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0968 using Federal eRulemaking Portal at *http://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
MDOT Mississippi Department of Transportation
OMB Office of Management and Budget
Pub. L. Public Law
NPRM Notice of proposed rulemaking
§ Section
SR State Road
U.S.C. United States Code

II. Background, Purpose and Legal Basis

MDOT has requested to change the operating requirements for the SR 609 highway bascule bridge across the Old Fort Bayou mile 1.6, Ocean Springs, Harrison County, MS. This bridge currently operates according to 33 CFR part 117.681 and opens on signal; except that, from 9 p.m. to 5 a.m., the draw opens on signal if at least eight hour notice is given. At this bridge location the waterway is used by small commercial, recreational and fishing vessels. The bridge has a vertical clearance of 26′ above mean high water in the closed to vessel position.

MDOT has requested two changes to the regulations. They asked to close the bridge to vessel traffic from 6:30 a.m. to 8:00 a.m., from 10:45 a.m. to 12:30 p.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays and require a 12 hour notification to open the bridge to vessels on Thanksgiving Day, Christmas Day and New Year's Day. The first change is needed to prevent unsafe driving conditions created when the bridge opens to vessels during morning and evening commuting hours. The second change would allow MDOT to remove the bridge tender during three federal holidays when there has been almost no bridge openings.

The Coast Guard allowed MDOT to temporarily change the bridge operating schedule to measure the impacts to vehicle traffic that were created when the bridge opened to vessels. For a 120 day period the bridge did not open to vessel traffic from 6:30 a.m. to 8:00 a.m., 10:45 a.m. to 12:30 p.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays. The Coast Guard published a Notice of Temporary Deviation from the regulations and a request for comments concerning these changes on February 4, 2019, **Federal Register** Volume 84, number 23, Monday, February 4, 2019. Two comments were received during this temporary deviation. 1 comment was in favor of the change and one comment that did not refer to this regulation change. During this period there were no vehicle or vessel queues created by this temporary operating schedule.

After this temporary deviation the bridge returned to its normal operating schedule. Over 88 days MDOT measured the vehicle and vessel queues created when the bridge opened for vessels during the above commute hours. MDOTs analysis of this data demonstrated that during the above commuting periods vehicle queues were created when the bridge opened for vessels and that the queues backed up traffic on SR 609 and on U.S. Highway 90. U.S. 90 is located south of the bridge and perpendicular to SR 609. These vehicle queues presented an increased potential for rear end vehicle collisions on the U.S. 90 Highway. There were no vessel queues during this period.

From 2014 through 2017 this bridge opened once for vessels on Thanksgiving Day, Christmas Day and New Year's Day.

The Coast Guard is issuing this NPRM under authority 33 U.S.C. 499.

III. Discussion of Proposed Rule

The Coast Guard's decision to promulgate a drawbridge regulation depends primarily upon the effect of the proposed rule on navigation to assure that the rule provides for the reasonable needs of navigation after consideration of the rule on the impact to the public. The Coast Guard must ensure that bridges across navigable waters do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must balance the needs of vessel, vehicle, rail, pedestrian and recreational traffic in the overall public interest.

Closing the bridge to vessel traffic in the morning and evening commuting hours appears to reduce vehicle queues while not creating vessel queues. The reduction in vehicle queues enhances safety by preventing vehicles from backing up on U.S. 90 highway.

Since vessel queues were not created during this test the Coast Guard has determined that closing the bridge to

vessel traffic in the morning and evening commute hours continues to provide vessels with the reasonability to use the waterway.

The Coast Guard does not agree that the bridge should close to vessels from 10:45 a.m. to 12:30 p.m. Allowing this change would add another 1½ hours that vessels would have to wait to transit through the bridge. This unreasonably impacts navigation. MDOT should implement traffic measures during this time period to reduce vehicle queues.

Since this bridge opened once to vessels from 2014 through 2017 on Thanksgiving Day, Christmas Day and New Year's Day, requiring a 12 hour notice to open would not impact navigation.

Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still open the draw and transit given advance notice. Those vessels with a vertical clearance requirement of less than 26 feet above mean high water may transit the bridge at any time. Additionally according to 33 CFR 117.31(b) the drawtender shall take all reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of certain vessels during emergency situations. We believe this proposed change to the drawbridge operation regulations at 33 CFR 117.675(a) will meet the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The bridge provides a 26 foot vertical clearance at mean high water that should accommodate most present vessel traffic and the bridge will continue to open on signal during most daylight hours for any vessel during the above federal holidays provided at least 12 hour notice is given. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

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

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

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

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.681 to read as follows:

§ 117.681 Old Fort Bayou.

The draw of the bridge, mile 1.6 at Ocean Springs, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least eight hour notice is given; on Thanksgiving Day, Christmas Day and New Year's Day the draw shall open on signal if at least 12 hour notice is given; and the draw need not open to vessels from 6:30 a.m. to 8 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. The draw shall open anytime at the direction of the District Commander.

Dated: May 4, 2020.

John P. Nadeau,

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

[FR Doc. 2020–14934 Filed 7–17–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

[NPS–WASO–29921; PPWOBSADC0; PPMVSCS1Y.Y00000]

RIN 1024–AE57

Commercial Visitor Services; Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to revise regulations that govern the solicitation, award, and administration of concession contracts to provide commercial visitor services at National Park Service units under the authority granted through the Concessions Management Improvement Act of 1998 and the National Park Service Centennial Act. The proposed changes would reduce administrative burdens and expand sustainable, high quality, and contemporary concessioner-provided visitor services in national parks.

DATES: The NPS will accept comments received or postmarked on or before September 18, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Standard Time on the closing date.

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE57, by any of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions for submitting comments.

(2) *By hard copy:* Mail to: Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Concession Contracts Revised Rule Comments, Washington DC 20240.

Instructions: Comments on the proposed rule will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words ''National Park Service'' or ''NPS'' and the RIN 1024–AE57. Comments received may be posted without change to *www.regulations.gov,* including any personal information provided. The NPS will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* and search for ''1024–AE57''.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Chief of Commercial Services Program, National Park Service; (202) 513–7202; *kurt_rausch@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authority and Purpose

The National Park Service (NPS) enters into contracts with concessioners to provide commercial visitor services in over 100 units of the National Park System. Examples of such services include lodging, food, retail, marinas, transportation, and guided recreation. Each year, concession contracts generate approximately $1.5 billion in gross revenues and return approximately $135 million in franchise fees to the NPS. The National Park Service Concession Policies Act of 1965 (1965 Act), Public Law 89–249, provided the first statutory authority for the NPS to issue concession contracts. Since the repeal of the 1965 Act, concession contracts have been awarded under the Concessions Management Improvement Act of 1998 (1998 Act), 54 U.S.C. 101901–101926. A revision to the 1998 Act was also included in section 502 of the 2016 National Park Service Centennial Act (Pub. L. 114–289). NPS regulations in 36 CFR part 51 govern the solicitation and award of concession contracts issued under the 1998 Act and the administration of concession contracts issued under the 1965 and 1998 Acts. The NPS promulgated these regulations in April 2000 (65 FR 20630) and since that time has made only minor changes to them (see, *e.g.,* 79 FR 58261).

In August of 2018, as part of the Department of the Interior's implementation of Executive Order 13777, *Enforcing the Regulatory Reform Agenda,* and in response to a request for public input on how the Department of the Interior can improve implementation of regulatory reform initiatives by identifying regulations for modification (82 FR 28429), the NPS's external concessions partners provided

the Secretary of the Interior (Secretary) with suggestions for improving existing concession regulations. The Department of the Interior has considered the suggestions provided by the concessions partners, and some of those suggestions are reflected in this proposed rule. In addition, Secretarial Order 3366, *Increasing Recreational Opportunities on Lands and Waters Managed by the U.S. Department of the Interior,* signed by the Secretary in April of 2018, directed the NPS to look for ways to streamline and improve the contracting process for recreational concessioners, as part of the Department's efforts to expand access to and improve the infrastructure on public lands and waters, including through the use of public-private partnerships. The directives set forth in that Secretarial Order are intended to provide the public with more recreational opportunities and memorable experiences on the Department's public lands and waters. The proposed rule is responsive to these directives, suggestions received, and areas for improvement identified by the NPS.

Each of the proposed changes to 36 CFR part 51 are explained below and correspond to the subparts of the existing regulations that would change under this rule. In total, this rule proposes 12 changes to the existing regulations, which are numbered in the aggregate below to assist with public review and comment. Some of the changes will be implemented for new contracts while others will be effective for both current and new contracts as identified in the explanation for each change. The overall purpose of these changes is to update and improve the regulations governing concession contracts so that the public will be better served when visiting our nation's most cherished public lands and waters. The NPS welcomes public comment on this rule and hopes to receive meaningful input on these proposals.

Subpart C—Solicitation, Selection, and Award Procedures (36 CFR 51.4–51.22).

The regulations in Subpart C set forth the processes and rules governing the solicitation, selection, and award of concession contracts. The NPS proposes to make four changes to this subpart, as explained below.

Proposed Change 1: New Concession Opportunities

The NPS recognizes that the needs for commercial visitor services in parks may change over time, including the need to provide new services that are not currently provided. Recent examples include wireless connectivity services at Lake Mead National Recreation Area, parking management at Muir Woods National Monument and bike rentals at Grand Canyon National Park. The NPS considers evolving visitor needs through its commercial services planning processes. Each unit of the national park system is required to have a formal statement of its core mission, titled the park foundation document, that provides basic guidance for all planning and management decisions and from which a park's planning portfolio is developed. The planning portfolio is the assemblage of individual plans, studies, and inventories which guide park decision-making. For commercial services, these may range from broader planning such as visitor use studies and commercial services strategies to more focused studies such as climbing or horse management plans. Commercial visitor services planning occurs further through the concession contract prospectus development process. During this process, the NPS reviews the current services being provided, conducts market studies and may solicit public comments to assess new commercial visitor service opportunities.

This planning framework is not recognized in the current concession regulations, and the regulations do not explicitly address that the NPS will consider evolving visitor needs that are not being addressed by existing concession contracts. In order to better recognize NPS planning to address evolving visitor needs, the proposed rule would add paragraphs (c) through (h) to § 51.4 in subpart C that would apply to new concession opportunities. Paragraph (c) would state that the Director will issue a prospectus for a new concession opportunity when the Director determines that a new concession opportunity is necessary and appropriate for public use and enjoyment of the unit and is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. This standard for evaluating new opportunities is consistent with the 1998 Act. 54 U.S.C. 101912(b)(1)–(2). Paragraph (d) would require the NPS Director to establish procedures to solicit and consider suggestions from the public, including from potential concessioners, for new commercial services in NPS units. The procedures would not be specified in the regulations. Instead, they would be developed by the Director as a component of the existing NPS planning process. This would allow the processes to evolve over time as the NPS confronts emerging and unanticipated visitor needs. Paragraph (e) would establish relevant factors that the Director would consider when evaluating a suggested concession opportunity. These factors would include whether the suggested concession opportunities are already being provided within the unit or nearby communities; the feasibility of the suggestions; the compatibility of the suggestions with governing law and policy; the innovative quality of the suggestions; and the potential impacts of the suggestions on visitation and on the economic wellbeing of local communities. Paragraph (f) would clarify that the NPS may not give preference to any party that suggests, or fails to suggest, an opportunity that is subsequently offered by the NPS; in other words, the fact that a party has submitted, or has failed to submit, such a suggestion will neither enhance nor diminish the party's chances of obtaining a contract. The 1998 Act recognizes only two categories of concession contracts that provide preferential rights to incumbent concessioners. 54 U.S.C. 101913(7)(A). Paragraph (g) would state that nothing in the new processes to be established by the Director would prevent the Director from amending an existing contract to allow a concessioner to provide new or additional services under 36 CFR 51.76, as discussed below. This preserves the authority of the Director to make adjustments to the services being provided in response to changing visitor needs over the term of the contract, consistent with the fundamental business opportunity that was offered in the concession prospectus.

Proposed Change 2: Timing of Issuing Prospectuses

Section 51.4(b) of the existing regulations states that the Director will not issue a prospectus for a concession contract earlier than 18 months prior to the expiration of a related existing concession contract. The original purpose of this restriction was to ensure that an existing concessioner would not have to compete for a new contract in circumstances where assessment of the feasibility of the terms and conditions of the new contract would be unduly speculative (65 FR 20637). The proposed rule would eliminate this restriction for new concession contract prospectuses. The NPS has found that the ability to provide lead-time to potential offerors of greater than 18 months may be helpful in circumstances where there are unusually significant commitments required of potential offerors to acquire personal property,

such as vessels, or to obtain financing or to manage reservations. This additional lead time opens the possibility of more offerors which benefits the NPS and the public because increased competition generally results in higher quality offers.

Proposed Change 3: Publishing Notice of a Prospectus

Section 51.8 of the existing regulations states that the Director will publish notice of the availability of a prospectus at least once in the *Commerce Business Daily* or in a similar publication if the Commerce Business Daily ceases to be published. The Commerce Business Daily is no longer published and available. As a result, the proposed rule would update this provision to instead require the Director to publish notice of the availability of a prospectus in the System for Award Management (SAM) where federal business opportunities are electronically posted for future concession prospectuses. The NPS also proposes to expand the description of the types of electronic media that will be used to advertise opportunities to include websites and social media. Publishing in the SAM and through websites and social media is consistent with the NPS's current practice and continued use of these sources will help ensure that interested parties are aware of solicitations, which could increase competition and result in higher quality offers.

Proposed Change 4: Weighting Selection Factors

The fourth proposed change is to § 51.16 of the existing regulations. Section 51.16 is closely related to § 51.17 of the existing regulations, which identifies selection factors that must be applied by the Director when assessing the merits of a proposal. Paragraph (a) of § 51.17 lists five primary selection factors:

1. The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area.

2. The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates.

3. The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract.

4. The financial capability of the offeror to carry out its proposal.

5. The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director.

The Director is required to consider these five factors under the 1998 Act. 54 U.S.C. 101913(5)(A). Paragraph (b) of § 51.17 lists one secondary selection factor and allows the Director to adopt additional secondary selection factors where appropriate and otherwise permitted by law. The enumerated secondary factor is the quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. This factor can be excluded for small contracts and those expected to have limited impacts on park resources. Secondary factors are permitted, but not required to be considered under the 1998 Act. 54 U.S.C. 101913(5)(B).

The 1998 Act is silent on how the Director should weigh each factor. This question is answered by the regulations in § 51.16, which requires the Director to assign a score for each selection factor that reflects the merits of the proposal compared to other proposals received, if any. Under the existing regulations, the first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in paragraph (b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

The NPS proposes to revise the rules found in section 51.16 for how the Director may score each selection factor. Rather than setting the maximum scores for each selection factor in the regulations, the proposed rule would allow the NPS to determine the maximum score of each selection factor in the prospectus, subject to the following criteria:

1. The maximum score assignable for the fifth selection factor (the amount of the franchise fee and other forms of financial consideration to the NPS) would not be higher than the maximum score for any of the other principal selection factors. This limitation complies with a requirement in the 1998 Act that the consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities to the public at reasonable rates (54 U.S.C. 101913(5)(A)(iv)).

2. The maximum score for the enumerated secondary factor in § 51.17(b)(1) (furthering the protection, conservation and preservation of park area and other resources through environmental management programs and activities) would not be higher than the maximum score for any principal selection factor.

3. The maximum scores for any additional secondary selection factors would be such that the maximum aggregate score assignable for all additional secondary selection factors will not be higher than the maximum score for any primary selection factor. Limiting the maximum scores assigned to secondary selection factors in this manner acknowledges that they should be subordinate to the primary selection factors that Congress felt were important enough to articulate in the 1998 Act.

The proposed revisions to § 51.16 would be for all future prospectuses. The revisions would provide the NPS with greater flexibility to weigh the factors according to how important they are to the NPS and for the specific contract. For example, under the existing regulations, the Director must assign the offeror that best satisfies selection factor one (resource protection) up to five points. This can account for approximately 20% of the total maximum score. Because of the NPS practice to include specific requirements in the contracts and its exhibits (primarily the operating and maintenance plans), frequently there is little room for offerors to provide substantive proposals on how to exceed those baseline requirements. Reducing the available points for this selection factor and instead offering more points for creative ideas for visitor services would provide the NPS with flexibility to clearly illustrate its priorities, which in turn would provide information to interested parties on how to present their ideas. For some services resource protection may not be as important compared to other selection factors, such as primary selection factor three (experience and background). For example, when a concession operation occurs wholly within a park visitor center, the concessioner has little, if any ability to manage its operation to protect park resources. Under the proposed rule, the Director could set the maximum score for factor one (resource

protection) at three points and the maximum score for factor three (experience and background) at eight points to reflect the relative importance of those factors. In contrast, protecting resources is a significant concern for marinas with boat fueling services. In this scenario, the proposed rule would allow the NPS to set the maximum score of primary selection factor one (resource protection) higher than the other selection factors. Allowing the Director to adjust the maximum scores for each selection factor depending upon the offered services would also help offerors prepare proposals that focus on the relative importance of each factor. This should result in the selection of the best offeror and better services for visitors.

Subpart G—Leasehold Surrender Interest (36 CFR 51.51–51.67).

The regulations in Subpart G explain how a concessioner can obtain leasehold surrender interest (LSI) in capital improvements to visitor service facilities that are made under the terms of a concession contract. The NPS proposes to make one change to this subpart, as explained below. This change would apply to future concession contracts.

The NPS manages concession contracts to ensure concessioners maintain and repair the facilities assigned as required under the terms of their contract. The NPS also seeks to encourage concessioners to make capital improvements in order to ensure facilities are structurally sound, updated, and adequate to meet the needs of the visiting public. When the NPS requires the concessioner to fund and construct capital improvements to expand, update, and rehabilitate facilities, the concessioner receives LSI in each capital improvement as compensation for the associated costs. The NPS considers the costs associated with these improvements, as well as the opportunity for receiving LSI, when it determines the concessioner's reasonable opportunity for net profit and the minimum franchise fee for the contract. The 1998 Act outlines, in general terms, what constitutes a capital improvement eligible for LSI and how LSI should be valued (54 U.S.C. 101915). Details about which types of construction activities are eligible for LSI and how it is valued are found in subpart G.

LSI is unique to NPS concession contracts and is not used in the private sector. In the private sector, an owner may realize a return on its investment for capital improvements when it sells an improved property, if the value has appreciated. The owner may lose money if it sells an improved property that has declined in value. In contrast, under concession contracts with the NPS, the concessioner invests in facilities they do not own. As a result, the concessioner cannot receive a return on the investment through a sale of the property. LSI provides them that opportunity in the form of a guaranteed return to the concessioner on its investment.

Although the NPS seeks to encourage concessioners to make capital investments, it must balance the benefits of such investments with the need to address the LSI generated from such investments. If the incumbent concessioner wins the new contract, the LSI is retained by the concessioner and continues through the term of the next contract. If there is a new concessioner, the LSI is often transferred to a new concessioner, but the new concessioner must compensate the outgoing concessioner for the value of the LSI. This can create a significant investment hurdle that limits competition on the contract. A higher initial investment can lead to reduced competition because fewer entities have access to the large buy-in amounts for certain contracts or because the return on their investment does not make sense for these entities in comparison to other opportunities. When there is the likelihood of less competition, the incumbent may also not be incentivized to offer as many new practices or benefits when providing the services required. This can adversely impact the visitor experience. If, instead, the NPS pays the value of the LSI to the outgoing concessioner, then the funds expended are unavailable to support other NPS needs, such as prospectus development or managing the new concessioner during the term of the contract and improving visitor operations and facilities.

Proposed Change 5: Definition of Major Rehabilitation

Section 51.51 of the existing regulations contains definitions of special terms that are used in Subpart G to explain how LSI works. One of those terms is ''major rehabilitation,'' which means, under the existing regulations, a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

The meaning of this term is important for several reasons. Under § 51.64, a concessioner that undertakes a major rehabilitation to an existing structure in which the concessioner has LSI, will increase its LSI in the structure by the construction cost of the major rehabilitation. Under § 51.66, if a contract requires a concessioner to undertake a major rehabilitation of a structure in which there is no LSI, upon completion of the major rehabilitation the concessioner will obtain LSI in the structure for the amount of the construction costs.

The NPS proposes two changes to the definition of ''major rehabilitation'' in order to simplify and broaden what qualifies as a major rehabilitation with the intent of encouraging capital investment by concessioners. These changes would apply for future concession contracts.

First, the NPS proposes to eliminate the requirement that, unless special circumstances exist, the Director must determine the rehabilitation project is completed within 18 months from the start of the rehabilitation work. Projects must be approved by the Director and any approval would include a project schedule. Eighteen months is a timeframe typical for such projects. In practice, however, the Director approves the timeline for major rehabilitation projects based on the complexity and scope of the project. The result is that the 18-month requirement in the existing regulation has been rendered superfluous and does not provide any benefit to the public. Removing this requirement would simplify and clarify the definition to match existing practice.

Second, the NPS proposes to decrease the construction cost threshold for what constitutes major rehabilitation from 50% of the pre-rehabilitation value to 30% of the pre-rehabilitation value. This would allow more construction projects to qualify for increased LSI under § 51.64 or new LSI under § 51.66.

The NPS selected the 30% threshold through industry research. The International Facility Management Association identifies 30% as the threshold for when a rehabilitation is ''critical'' to the structure (see *https://community.ifma.org/fmpedia/w/fmpedia/2459*). The NPS proposes the 30% threshold because it better aligns with this industry standard than does the 50% threshold in the existing definition. Further, the NPS believes that broadening the opportunities under which LSI may be obtained would facilitate important and needed capital improvement projects. This would improve the conditions of facilities and

help ensure a safe and enjoyable experience for park visitors.

While the 1998 Act intended to promote private investment in concession structures by providing LSI to concessioners, the 50% threshold contained in the existing regulations limits concessioners' opportunities to make investments of the type envisioned by Congress. Concerns have been raised that the current regulations actually discourage investment in concessions structures. The NPS seeks to improve the regulations to encourage concessioners to invest in capital improvements. The NPS seeks comment from the public on other ways it can incentivize concessioners to make capital investments that improve the quality of facilities for the public.

Broadening the scope of projects encouraged by the availability of LSI would have other consequences to the concession contract and its management. For example, the utilization of LSI for more rehabilitation projects allows for the recovery of investment by the concessioner, lowering the risk of that investment to competitive levels. This lower risk will be considered in the NPS analysis of the opportunity and may result in a higher minimum franchise fee set in the contract consistent with the statutory requirements to set a fee appropriate to the probable value of the contract and thus result in a higher franchise fees paid to the government. Franchise fee revenue may also increase if increased concessioner investment results in increased visitor demand for NPS concessions. The NPS could use the new fee revenue for other NPS needs or when appropriate to buy down LSI incurred on the contract as a result of the concessioner investment. This assumes that revenue projections for the contract are realized and adequate franchise fees are available, since franchise fees are calculated as a function of revenue. The use of franchise fees for this purpose means they are not available for other NPS needs. An analysis of the expected relationship between LSI and franchise fees as a result of this proposed change can be found in the report entitled ''36 CFR 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)'' that can be accessed at *www.regulations.gov* by searching for ''1024–AE57''.

The proposed changes to the definition of ''major rehabilitation'' do not remove the requirement that the Director must approve in advance any major rehabilitation project. Although the changes to the definition will likely increase the opportunities for concessioners to seek approval for major rehabilitation projects, the NPS retains the discretion to determine that using that source of capital is not in the best interests of the public. The NPS considers many factors when deciding whether to approve a capital investment. For example, the NPS may decide that the value of LSI that would result from the capital improvement would decrease competition for future contracts, outweighing the benefit of the improvement. As a result, the availability of LSI may not generate the desired outcome of increased investment in all cases. However, in these cases the NPS may pay for the capital improvements itself to avoid generating imprudent levels of LSI. The NPS would need to evaluate the benefits of the investment against the opportunity costs of diverting funds from other projects, and how that would impact the quality of other concession facilities and visitor services.

Subpart I—Concession Contract Provisions (36 CFR 51.73–51.83).

The regulations in subpart I govern key provisions in concession contracts. The NPS proposes to make six changes to this subpart, as explained below.

Proposed Change 6: Term of Concession Contracts

Section 51.73 of the existing regulations governs the terms of concession contracts. Consistent with the 1998 Act (54 U.S.C. 101914), the existing regulation says that contracts may not exceed 20 years in length and will generally be awarded for ten years or less, unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. The regulations also say that it is the policy of the Director that the terms should be as short as prudent, taking into account financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate.

The NPS proposes to make several changes to this section for the purpose of clarifying that it may issue contracts for shorter or longer than ten years, never to exceed 20 years, depending upon the particular circumstances of the contract. The rule would state that the Director, when circumstances warrant, may award contracts for longer than 10 years. The stated preference for terms to be ''as short as is prudent,'' which is not found in the statute, would be removed. In practice, the NPS has found that a ten-year term or longer is often in the best interest of the public because it helps ensure a reasonable opportunity for return on investment for offerors thereby generating more interest in the opportunity when a shorter term might make the opportunity commercially unviable.

The NPS also proposes to revise § 51.73 to allow the Director to include contract provisions allowing for an optional term or terms of one year or more, provided that the total term of the contract, including all optional terms, does not exceed 20 years. Optional terms may be exercised when the concessioner has received favorable annual ratings during the term of the contract and has met other performance criteria defined in the contract, such as increasing occupancy or improving other aspects of the service. The availability of optional contract terms could incentivize the concessioner to focus on high performance under the contract. This new provision would also recognize that optional terms may be exercised when there has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner. These could include, for example, cessation of operations due to forest fires, hurricane damage or administrative closures ordered by the government. This would allow concessioners to receive the term that the NPS and concessioner both anticipated during the solicitation process and upon execution of the contract. This change would apply to current concession contracts if the contract was amended as well as future contracts. The NPS expects that this assurance would increase competition for contracts and avoid situations where concessioners reduce services, facility management or other aspects of their contracted requirements to cover lost revenue. In all cases, the Director would determine whether the criteria for exercising an option year or years have been met.

Proposed Change 7: New or Additional Services

Section 51.76 of the existing regulations states that the Director may not grant a concessioner a preferential right (*e.g.,* a right of first refusal) to provide new or additional visitor services beyond those already provided by the concessioner under the terms of a concession contract. This statutory basis for this prohibition is found in the 1998 Act. 54 U.S.C. 101913(9). Section 51.76, however, does allow the Director to amend a concession contract to authorize the concessioner to provide minor additional services that are a

reasonable extension of the existing services.

The NPS Centennial Act revised 54 U.S.C. 101913(9) concerning the authority to amend an existing contract to provide new and additional services, allowing the NPS to do so if the new and additional services do not represent a material change to the required and authorized services under the contract. The NPS proposes to change Section 51.76 to align the language in the regulation with that in the Centennial Act. This broader language may provide new opportunities to enhance commercial services under existing contracts allowing concessioners to meet changing visitor needs where appropriate. This change would apply to current and future concession contracts. Before the Director authorizes such new or additional services under a contract, the proposed rule would continue to require the Director to determine that the services are necessary and appropriate for public use and enjoyment of the NPS unit where they will be provided and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of that unit in accordance with the Centennial Act and the 1998 Act. 54 U.S.C. 101912(b) and 10913(9).

Proposed Change 8: Setting Franchise Fees

Paragraph (a) of § 51.78 of the existing regulations requires that concession contracts provide for payment to the government of a franchise fee in consideration of the probable value to the concessioner of the privileges granted by the contract. The regulations provide guidance on how probable value will be determined. As required by the 1998 Act (54 U.S.C. 101913(5)(A)(iv)), the regulations state that consideration of revenue to the United States will be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

The NPS proposes to add new language to paragraph (a) explaining in more detail how the Director will set the minimum acceptable franchise fee in the prospectus. The proposed rule would state that the minimum franchise fee will be set at a level that the Director determines will encourage competition among offerors and in a manner so that concessioners can provide the necessary and appropriate visitor services to the public. While Congress has charged the NPS with ensuring that the franchise fee reflects ''the probable value to the concessioner of the privileges granted by the particular contract involved,'' 54 U.S.C. 101917(a), the NPS has long implemented this directive by setting a minimum acceptable franchise fee in the contract prospectus and allowing the market to determine whether a higher franchise fee better reflects the contract's probable value to the concessioner. The proposed revision to the regulation emphasizes this appropriate role that competition between potential concessioners plays in fulfilling the statutory mandate. The proposed rule would also require the Director to use data, including data from the hospitality industry for similar operations, when determining the minimum franchise fee and to provide the basis for this determination in the prospectus. These proposed additions to the regulation are consistent with current NPS practice in prospectus development which already provides the basis for the minimum franchise fee but the addition to the regulation would further this transparency in the published prospectuses. The NPS already uses industry data to complete a financial analysis to set the minimum franchise fee that considers the probable value to the concessioner based upon a reasonable opportunity for net profit in relation to capital invested, obligations and privileges of the contract. The NPS also uses a competitive selection process and sets a minimum franchise fee which may be bid up by offerors. The proposed changes would state this explicitly in the regulations so that the public can better understand how the Director sets minimum franchise fees. These changes apply to all future prospectuses for concession contracts although, as noted, the changes are already consistent with NPS current practices.

Proposed Change 9: Special Accounts

Paragraph (b) of § 51.81 of the existing regulations allows concession contracts to require the concessioner to set aside a percentage of its gross receipts in a repair and maintenance reserve to be used, at the direction of the Director, solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct improvements that would be eligible for LSI. Paragraph (a) requires that construction of capital improvements must be undertaken pursuant to regulations and contract provisions regarding LSI.

The NPS proposes to revise paragraph (b) by replacing the term ''repair and maintenance reserve'' with the term ''component renewal reserve.'' The purpose of this change is to reduce confusion about how the funds in this reserve may be used. This change would apply to current concession contracts if the contract was amended as well as future contracts. The NPS seeks to clarify that this reserve is not intended to be used for routine maintenance and repair activities. The component renewal reserve (CRR) may be used to fund projects to replace systems and components that have reached the end of their design life, are non-recurring within a seven-year time frame and are not part of an LSI-eligible capital improvement project (*i.e.,* new construction or major rehabilitations). Examples of components are roofs and sprinkler systems. The CRR may not be used for routine maintenance (*e.g.,* painting) and repairs (*e.g.,* heating system parts replacement) or grounds keeping.

The NPS determines the amount of the CRR by estimating the anticipated component renewal needs for facilities during the term of the contract. The expected cost to meet those needs is amortized over the term of the contract and then specified in the contract to be set aside by the concessioner as a percentage of revenue. This reserve percentage is deducted from the franchise fee that would otherwise be paid to the government. The reserve is meant to cover those replacements that do not qualify for LSI so that there is no overlap between CRR and LSI projects. Because the contracts require the component renewal reserve to be set aside, the funds in the reserve cannot be received by the concessioner as profit and therefore must be used to renew components of facilities. To encourage utilization of these replacement reserves, in more recent contracts, reserves are required to be set aside, not available for profit and remaining unobligated balances are paid to the NPS as franchise fees at the end of the contract.

The NPS seeks comment from the public on other ways it can incentivize concessioners to complete component renewal activities that are practical and compliant with legal requirements. For example, the NPS seeks comment on whether concession contracts could contain provisions that allow the concessioner to deduct from its periodic franchise fee payments, amounts that were expended by the concessioner during the preceding period for component renewal activities.

Proposed Change 10: Concessioner Rates

Paragraph (a) of § 51.82 of the existing regulations states that concession

contracts must allow concessioners to set reasonable rates and charges to the public for visitor services, subject to approval by the Director. Paragraph (b) explains how the Director will determine whether rates and charges are reasonable, by comparison with rates and charges for facilities and services of comparable character under similar conditions with due consideration to the following factors: Length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and types of patronage. Rates and charges may not exceed market rates and charges for comparable facilities, goods, and services, after considering certain factors. These requirements are taken directly from the 1998 Act. 54 U.S.C. 101916.

The 1998 Act also states that the rate approval process must be as prompt and as unburdensome to the concessioner as possible and rely on market forces to establish the reasonableness of rates and charges to the maximum extent practicable. 54 U.S.C. 101916(b)(1). The NPS proposes several changes to § 51.82 to meet these requirements. These changes would apply to current and future concession contracts.

First, the NPS proposes to use the language in the 1998 Act and state clearly in the regulations that the Director will approve rates and charges that are reasonable and appropriate in a manner that is as prompt and as unburdensome as possible and that relies on market forces to establish the reasonableness of such rates and charges to the maximum extent practicable.

Second, the NPS would add a new paragraph (c) that would require the Director to identify the rate approval method for each category of facilities, goods, and services in the prospectus. If the Director determines that market forces are sufficient to establish the reasonableness of rates and charges, the rule would require the Director to make a competitive market declaration (rather than using other NPS annual rate approval methods), and rates and charges would be approved based upon what the concessioner determines the market will bear. The Director would determine this by reviewing the services being provided by the current concessioner relative to the comparable set of offerings in the market. The Director may make a competitive market declaration when the Director determines, based upon this review, that there are an adequate number of alternatives in the same market as the concessioner that are offering similar services, such that visitors may choose to use those alternative services rather than those of the concessioner based upon rate differences. Other rate approval methods would be used only when the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. For example, this may occur for overnight stays at iconic lodges, food and beverage outlets where there are no easily accessible alternatives, guiding services for one-of-a-kind recreational experiences and transportation to NPS units where there is only one way to access the site (*e.g.* ferry service to the Statue of Liberty). The rule would require the Director to monitor rates and charges and competition and would allow the Director to change the rate approval method during the term of the contract to reflect changes in market conditions. This last provision would allow the NPS to respond to market pressures on rates for concessioner services that did not historically exist. This has occurred where lodging and other visitor services have expanded in gateway communities, aided by online searches and booking methods that provide more options for visitors. In addition, competitors in some locations use dynamic pricing to set rates, which means that prices are adjusted to reflect demand. The task of approving reasonable and appropriate rates and charges in these scenarios is burdensome. Unlike private sector companies, concessioners must undergo an annual rate approval process each year where maximum rates are set through a complex comparability process that occurs months in advance of the season. The concessioners are then not as able to quickly and efficiently adjust rates, particularly in times when visitor demand is higher than was forecasted. The proposed changes acknowledge this fact and would allow the NPS to more fully consider competitive, demand-driven pricing methods where it makes sense to lessen this burden. The NPS monitors the rates of the concessioner. In the event that the concessioner's rates set based upon a competitive market declaration no longer reflect those of the competitors, the Director may determine that this rate approval method is not acting to provide reasonable and appropriate rates and may change the rate approval method to one that offers greater assurance that these conditions will be met.

The enhanced use of competitive market methods may result in increased rates and revenue with no change in expenses to the concessioner. These changes in the financial opportunity of the contract will be accounted for through contract requirements that would benefit the public using the concession services. An analysis of the expected relationship between rates and such contract changes can be found by reading the report entitled ''36 CFR 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)'' that can be accessed at *www.regulations.gov* by searching for ''1024–AE57''. The NPS notes that the competitive market declaration and other rate methods establish reasonable and appropriate rates for the services that are being offered. This is separate than the determination of what services are necessary and appropriate, including the range of offerings and associated price points. That determination is conducted through the NPS planning process.

Third, the NPS would add a new paragraph (d) that would establish rules for how the Director responds to requests from existing concessioners to change rates and charges to the public. The new language would require the Director to issue a response to a request by a concessioner to change rates or charges within 30 days of receiving a complete and timely request under the terms of the contract when possible. The NPS currently responds within 45 days as a matter of policy so this would accelerate the process and provide more certainty to concessioners. The rule would require the Director to explain in writing any finding that the requested changes are not adequately justified under the circumstances. This provision would ensure that the Director provides prompt and transparent decisions to the concessioner regarding rates and charges.

Subpart J—Assignment or Encumbrance of Concession Contracts (36 CFR 51.84–51.97)

The regulations in Subpart J set forth rules for executing assignments and encumbrances of concession contracts. The NPS proposes to make one change to this subpart, as explained below.

Proposed Change 11: Timing of Assigning Contracts

Section 51.87 of the existing regulations states that approvals of assignments or encumbrances of concession contracts are subject to several determinations by the Director.

The NPS proposes to add a new requirement that the request for approval of the assignment must be received 24 months or more after the effective date of the contract unless the requested assignment is compelled by

circumstances beyond the control of the concessioner. This would prevent concessioners with a preferential right of renewal from using that right to win a contract with the intention of then promptly assigning the contract to a new operator that did not compete for the contract. This change would apply to current concession contracts that are amended after the effective date of this rule as well as to future contracts.

Compliance With Other Laws, Executive Orders, and Department Policy Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The proposed rule is likely to affect a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*); however, the NPS lacks the ability to quantify the potential size of this impact. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared pursuant to the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA). The NPS concludes that the potential impact on small concessioners is likely to be positive. The NPS estimates that the majority (96%) of the entities that have concession contracts are small businesses and that this makeup is likely to be similar in the future. Furthermore, the NPS conducted a qualitative analysis to determine the likely impacts of the rule on concessioners that focused on key changes to the rule related to LSI, rates and franchise fees. While the NPS lacks the ability to quantify the impact, the NPS found that the impacts are likely to be beneficial to concessioners in general, without any particular bias toward small or large businesses. Since the majority of contracts are held by small businesses, the NPS concluded that the impacts to small businesses would be therefore be positive. The analysis is available in the report entitled ''36 CFR 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)'' that can be accessed at *www.regulations.gov* by searching for ''1024–AE57'', specifically Chapter 5 of that report.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and has determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This proposed rule contains no new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, financial, legal, and technical in nature. In addition, the environmental effects of this rule are too speculative to lend themselves to meaningful analysis. NPS decisions to enter into concession contracts will be subject to compliance with NEPA at the time the contracts are executed. The NPS has determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects in not required.

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule the NPS publishes must:

(a) Have logical organization;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Have short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that the NPS has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should specifically identify where the NPS could improve. For example, you should tell the NPS the numbers of the sections or paragraphs you find unclear, which sections or sentences are too long, the sections where you would find lists or tables useful, etc.

List of Subjects in 36 CFR Part 51

Commercial services, Government contracts, National parks, Visitor services.

In consideration of the foregoing, the National Park Service proposes to revise 36 CFR part 51 as follows:

PART 51—CONCESSION CONTRACTS

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: 54 U.S.C. 101901–101926 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

■ 2. Amend § 51.4 by revising the section heading and paragraph (b) and adding paragraphs (c) through (h) to read as follows:

§ 51.4 How will the Director invite the general public to apply for the award of a concession contract and how will the Director determine when to issue a prospectus for a new concession opportunity where no prior concession services had been provided?

* * * * *

(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded.

(c) The Director will issue a prospectus for a new concession opportunity when the Director determines, in the Director's discretion, that a new concession opportunity in a System unit is necessary and appropriate for public use and enjoyment of the System unit and is consistent to the highest practicable degree with the preservation and conversation of the resources and values of the unit.

(d) The Director will establish procedures to solicit and consider suggestions for new concession opportunities within units of the National Park System from the public (including from potential concessioners) as part of the System's planning processes for such opportunities.

(e) In determining whether suggested concession opportunities are necessary and appropriate and whether to issue a prospectus for a concession contract to provide such opportunities, the Director will consider factors including whether the suggested concession opportunities are already being adequately provided within the System unit or the communities located near the System unit; the feasibility of the suggestions; the compatibility of the suggestions with governing law and policy; the innovative quality of the suggestions; and the potential impacts of the suggestions on visitation and on the economic wellbeing of communities located near System units.

(f) No preference to a concession contract shall be granted to a party based on that party's having submitted, or failed to submit, a suggestion described in this section.

(g) The Director may consider suggestions for new services as additional services to be provided through an existing concession contract as described in § 51.76.

(h) Nothing in this section shall constrain the discretion of the Director to solicit or consider suggestions for new concession opportunities or collect other information that can be used by the Director in connection with a new concession opportunity.

■ 3. Revise § 51.8 to read as follows:

§ 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the System for Award Management (SAM) system where federal business opportunities are electronically posted, or in a similar publication if these sites cease to be used. The Director may also publish notices, if determined appropriate by the Director, electronically on websites including social media and in local or national newspapers or trade magazines.

■ 4. Amend § 51.16 by revising paragraph (a) to read as follows:

§ 51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. Each selection factor will be scored along a scale assigned to that selection factor in the prospectus, subject to the following criteria:

(1) The maximum score assignable for the fifth selection factor will not be higher than the maximum score for any of the other principal selection factors, with a score of one for agreeing to the minimum acceptable franchise fee contained in the prospectus;

(2) The maximum score assignable for the secondary factor set forth in § 51.17(b)(1) will not be higher than the maximum score for any principal selection factor; and,

(3) The maximum scores assignable for any additional secondary selection factors set forth in the prospectus will be such that the maximum aggregate score assignable for all additional secondary selection factors will not be higher than the maximum score for any primary selection factor.

* * * * *

■ 5. Amend § 51.51 by revising the definition of the term ''Major rehabilitation'' to read as follows:

§ 51.51 What special terms must I know to understand leasehold surrender interest?

* * * * *

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance; and

(2) The construction cost of which exceeds thirty percent of the pre-rehabilitation value of the structure.

* * * * *

■ 6. Revise § 51.73 to read as follows:

§ 51.73 What is the term of a concession contract?

(a) A concession contract will generally be awarded for a term of 10 years or less and may not have a term of more than 20 years (unless extended in accordance with this part). The Director will issue a contract with a term longer than 10 years when the Director determines that the contract terms and conditions, including but not limited to the required construction of capital improvements or other potential

investments related to providing both required and authorized services, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should take into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate.

(b) The Director may include in a concession contract an optional term or terms, in increments of at least one year, where the total term of the contract, including all optional terms, does not exceed 20 years. Such a contract shall provide that an optional term may be exercised by the concessioner if the Director determines that:

(1) The concessioner has received favorable annual ratings for every year during the term of the contract to date, as defined in the contract, and has met the performance criteria defined in the contract for the exercise of an optional term; or,

(2) There has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner, including but not limited to government-ordered interruptions, and the exercise of an optional term is warranted in light of the interruption or change to operations.

■ 7. Revise § 51.76 to read as follows:

§ 51.76 May the Director amend a concession contract to provide new or additional visitor services or grant a concessioner a preferential right to provide new or additional visitor services?

(a) The Director may propose to amend the applicable terms of an existing concession contract to provide new and additional services where the Director determines the services are necessary and appropriate for public use and enjoyment of the unit of the National Park System unit in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. Such new and additional services shall not represent a material change to the required and authorized services as set forth in the applicable prospectus or contract.

(b) Except as provided above or in subpart E of this part, the Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services beyond those already provided by the concessioner under the terms of a concession contract.

(c) A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

■ 8. Amend § 51.78 by revising paragraph (a) to read as follows:

§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. The Director shall set the minimum acceptable franchise fee in the prospectus at a level which the Director determines will encourage participation in the competition and so that concessioners can provide necessary and appropriate visitor services to the public, consistent with the foregoing requirements. In determining the minimum acceptable franchise fee, the Director shall use data including relevant general hospitality industry data for similar operations to determine the minimum acceptable franchise fee and provide a basis for the assessment of the minimum acceptable franchise fee in the prospectus. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

* * * * *

■ 9. Amend § 51.81 by revising paragraph (b) to read as follows:

§ 51.81 May the Director include "special account" provisions in concession contracts?

* * * * *

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a component renewal reserve to be used at the direction of the Director solely for renewal of real property components located in park areas and utilized by the concessioner in its operations. Component renewal reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Component renewal reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from these reserves will be expended only for the renewal of real property components assigned to the concessioner by the Director for use in its operations.

* * * * *

■ 10. Amend § 51.82 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

* * * * *

(b) The Director shall approve rates and charges that are reasonable and appropriate in a manner that is as prompt and as least burdensome to the concessioner as possible and that relies on market forces to establish the reasonableness of such rates and charges to the maximum extent practicable. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and changes shall be determined primarily by comparison with those rates and changes for facilities, goods and services of comparable character under similar conditions with due consideration to the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and cost of labor; and types of patronage.

(c) The Director shall identify the rate approval method to be used for each category of facilities, goods, and services to be provided when preparing the prospectus for a concession contract. The Director will use the least burdensome and most market-based method that is appropriate. Whenever the Director determines that market forces are sufficient to ensure reasonable and appropriate rates, the Director will make a competitive market declaration, and rates and charges will be approved based upon what the concessioner determines the market will bear. Other rate approval methods will be used only when the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. The Director will monitor rates and charges and competition and may change the rate approval method during the term of the contract to reflect changes in market conditions.

(d) The Director shall issue a response to a request by a concessioner to change rates and charges to the public within 30 days of receipt of a complete and timely request in accordance with the conditions described in the contract when possible. If the Director does not approve of the rates and charges proposed by the concessioner, the Director must provide in writing the basis for any disapproval at the time of the response by the Director.

■ 11. Amend § 51.87 by adding paragraph (i) to read as follows:

§ 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

* * * * *

(i) That a concession contract may not be assigned within twenty-four months following the effective date of the contract, unless the proposed assignment is compelled by circumstances beyond the control of the assigning concessioner.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–15650 Filed 7–16–20; 8:45 am]

BILLING CODE 4312–51–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0498; FRL–10011–38–Region 9]

Air Quality Implementation Plan; California; Calaveras County Air Pollution Control District and Mariposa County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Calaveras County Air Pollution Control District (CCAPCD) and the Mariposa County Air Pollution Control District (MCAPCD) portions of the California State Implementation Plan (SIP). In this action, we are proposing to approve two rules, one submitted by the CCAPCD and the other by the MCAPCD, governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and a final action will follow.

DATES: Written comments must be received on or before August 19, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0498 at *https://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Maggie Waldon or Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3987 or (415) 947–4174, or by email at *waldon.margaret@epa.gov or batchelder.amber@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal including the dates they were adopted by each District and submitted to the EPA by the California Air Resources Board (CARB or ''the State'').

TABLE 1—SUBMITTED RULES

District	Rule or regulation No.	Rule title	Adopted	Submitted [1]
Calaveras County APCD ..	Rule 428	NSR Requirements for New and Modified Major Sources in Nonattainment Areas.	03/12/19	04/05/19
Mariposa County APCD	Regulation XI	NSR Requirements for New and Modified Major Sources in the Mariposa County Air Pollution Control District.	03/12/19	04/05/19

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rules listed in Table 1 contain the relevant District's NNSR permit program applicable to new and modified major sources located in areas designated nonattainment for any ozoneNAAQS.

The EPA issued final rules on February 3, 2017, and December 11, 2017, that found (among other things) that the CCAPCD and the MCAPCD had

[1] Each submittal was transmitted to the EPA via a letter from CARB dated April 3, 2019.

failed to submit to the EPA for SIP approval an NNSR program as required for areas designated nonattainment for the 2008 Ozone NAAQS.[2] These findings of failure to submit triggered sanctions clocks, as per CAA section 179.

On April 12, 2019, the EPA determined that the California SIP submittals listed above in Table 1 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.[3] The EPA's April 12, 2019 findings of completeness represented the EPA's determination that the NNSR-related deficiencies that formed the basis for the February 3, 2017 and December 11, 2017 findings of failure to submit had been corrected, and as a result, the associated sanctions and running of the sanctions clocks were permanently stopped.[4] See 40 CFR 52.31(d)(5).

B. Are there other versions of these rules?

There are no previous versions of CCAPCD Rule 428 or MCAPCD Regulation XI in the California SIP.

C. What is the purpose of the submitted rules?

CCAPCD Rule 428 and MCAPCD Regulation XI are intended to address the CAA's statutory and regulatory requirements for NNSR permit programs for major sources emitting nonattainment air pollutants and their precursors.

II. The EPA's Evaluation

A. What is the background for today's proposal?

As federal ozone nonattainment areas, Calaveras and Mariposa Counties are required to have an approved NNSR program in the California SIP. Below, we provide the ozone designation history for each area, which forms the basis for each District's NNSR program needed to satisfy the NNSR requirements applicable to Moderate ozone nonattainment areas.

On July 18, 1997, the EPA issued a final rule revising the primary and secondary NAAQS for ozone to establish new 8-hour standards of 0.08 ppm.[5] On April 30, 2004, the EPA issued a final rule designating Calaveras and Mariposa Counties as nonattainment for the 1997 8-hour ozone NAAQS, effective June 15, 2004.[6] On May 14, 2012, Calaveras and Mariposa Counties were reclassified as Moderate nonattainment for the 1997 ozone NAAQS.[7] On December 3, 2012, the EPA issued a final rule that determined that Calaveras and Mariposa Counties had attained the 1997 ozone NAAQS by the attainment date.[8]

On March 27, 2008, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.075 ppm.[9] On May 21, 2012, the EPA issued a final rule designating Calaveras County and Mariposa County as nonattainment for the 2008 8-hour ozone NAAQS, with a Marginal classification.[10] On May 4, 2016, the EPA issued a final rule that determined that Calaveras County had attained the 2008 ozone NAAQS by the attainment date, and that Mariposa County had not attained the 2008 ozone NAAQS by the attainment date and would therefore be reclassified as a Moderate nonattainment area.[11] On August 23, 2019, the EPA issued a final rule that determined that Mariposa County had attained the 2008 8-hour ozone NAAQS by the July 20, 2018 applicable attainment date.[12]

On October 26, 2015, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.070 ppm.[13] On June 4, 2018, the EPA issued a final rule designating Calaveras County and Mariposa County as nonattainment for the 2015 8-hour ozone NAAQS, with a Marginal classification.[14]

The designation of Calaveras and Mariposa Counties as federal ozone nonattainment areas triggered the requirement for each of these Districts to develop and submit an NNSR program to the EPA for approval into the California SIP.[15] The Districts' NNSR programs must satisfy the NNSR requirements applicable to Moderate ozone nonattainment areas, as this is the highest ozone nonattainment classification to which each District is subject.[16]

On April 5, 2019, CARB submitted to the EPA for SIP approval, via correspondence dated April 3, 2019, CCAPCD Rule 428, ''NSR Requirements for New and Modified Major Sources in Nonattainment Areas,'' and MCAPCD Regulation XI, ''NSR Requirements for New and Modified Major Sources in the Mariposa County Air Pollution Control District,'' each of which had been adopted by the respective District on March 12, 2019.

B. How is the EPA evaluating the rules?

The EPA reviewed CCAPCD Rule 428 and MCAPCD Regulation XI for compliance with CAA requirements for: (1) Stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in a Moderate ozone nonattainment area; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);[17] and (5) SIP revisions as set forth in CAA section 110(l)[18] and 193.[19] Our review evaluated the submittals for compliance with the NNSR requirements applicable to nonattainment areas designated Moderate, and ensured that the submittals addressed the NNSR requirements for the 1997, 2008 and 2015 ozone NAAQS.

[2] See 82 FR 9158; 82 FR 58118.

[3] See letter dated April 12, 2019 from Elizabeth J. Adams, US EPA Region 9, to Richard Corey, CARB, regarding the April 5, 2019 submittal of CCAPCD Rule 428; and letter dated April 12, 2019 from Elizabeth J. Adams, US EPA Region 9, to Richard Corey, CARB, regarding the April 5, 2019 submittal of MCAPCD Regulation XI.

[4] See id.

[5] 40 CFR 50.10; see 62 FR 38856, 38894–38895.

[6] 69 FR 23858, 23881, 23885.

[7] 77 FR 28424; see also 77 FR 43521 (July 25, 2012).

[8] 77 FR 71551.

[9] 40 CFR 50.15; see 73 FR 16436, 16511.

[10] 77 FR 30088, 30099, 30103.

[11] 81 FR 26697.

[12] 84 FR 44238.

[13] 40 CFR 50.19; see 80 FR 65292, 65452.

[14] 40 CFR 81.305; see 83 FR 25776, 25786, 25788.

[15] 40 CFR 51.1100(o)(14), 51.1105(a), 51.1114, 51.1314. We note that, as a result of the EPA's determination that an area has attained a NAAQS by the attainment date, those SIP elements related to attaining the NAAQS are suspended for so long as the area continues to attain the standard; however, the requirement for an NNSR program is not one of the SIP elements suspended as a result of such a determination. See, *e.g.,* 40 CFR 51.1118.

[16] 40 CFR 51.1105(a).

[17] CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

[18] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

[19] CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

C. Do the rules meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the April 5, 2019 submittal of CCAPCD Rule 428 and MCAPCD Regulation XI, we find that the CCAPCD and MCAPCD have provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160–51.165, we have evaluated CCAPCD Rule 428 and MCAPCD Regulation XI in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS, including the 2015 ozone NAAQS. We find that CCAPCD Rule 428 and MCAPCD Regulation XI satisfy these requirements as they apply to sources subject to NNSR permit program requirements for ozone nonattainment areas classified as Moderate. We have also determined that these rules satisfy the related visibility requirements in 40 CFR 51.307. In addition, we have determined that the Rule 428 and Regulation XI rules satisfy the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and have determined that the submittals demonstrate in accordance with CAA section 110(a)(2)(E)(i) that the Districts have adequate personnel, funding, and authority under state law to carry out these proposed SIP revisions.

Our Technical Support Documents, which can be found in the docket for this rule, contain a more detailed discussion of our analysis of Rule 428 and Regulation XI.

III. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted rules because they fulfill all relevant CAA requirements. We have concluded that our approval of the submitted rules would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, and 40 CFR 51.160–51.165 and 40 CFR 51.307.

In support of this proposed action, we have concluded that our action would comply with section 110(l) of the Act because approval of CCAPCD Rule 428 and MCAPCD Regulation XI will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 428 and Regulation XI will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

We will accept comments from the public on this proposal until August 19, 2020.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules listed in Table 1 of this preamble. The EPA has made, and will continue to make, this document available electronically through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (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 Act. Accordingly, this proposed 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 proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: July 1, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–14823 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0177; FRL–10011–68–Region 4]

Air Plan Approval; FL; GA; KY; MS; NC; SC: Definition of Chemical Process Plants Under State Prevention of Significant Deterioration Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plans (SIP) for Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, North Carolina, and South Carolina. The SIP revisions incorporate changes to the definition of chemical process plants under the States' Prevention of Significant Deterioration (PSD) regulations. Consistent with an EPA regulation completed in 2007, EPA is proposing to approve the rules for Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, North Carolina, and South Carolina that modify the definition of chemical process plant to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. This will clarify that the PSD major source applicability threshold in the SIPs for these ethanol plants is 250 tons per year (tpy) (rather than 100 tpy) and removes the requirement to include fugitive emissions when determining if the source is major for PSD. EPA is proposing to find that the changes to the state and local rules described herein are approvable because the Agency believes that they are consistent with EPA regulations governing state PSD programs and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Clean Air Act (CAA or Act)), or any other applicable requirement of the CAA.

DATES: Comments must be received on or before August 19, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0177 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

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I. What is being addressed in this notice?

EPA is proposing to approve the following revisions to SIPs received by EPA from Florida, Georgia, Kentucky, Mississippi, North Carolina, and South Carolina: (1) A portion of a SIP revision provided to EPA through the Florida Department of Environmental Protection (FL DEP) via letter dated December 12, 2011; (2) a SIP revision provided to EPA through the Georgia Environmental Protection Division (GA EPD) via letter dated September 15, 2008; [1] (3) a SIP revision to the Jefferson County portion of the Kentucky SIP that was provided to EPA through the Kentucky Division for Air Quality (KDAQ) via a letter dated July 1, 2009; [2] (4) a SIP revision provided to EPA through the Mississippi Department of Environmental Quality (MDEQ) via letter dated November 28, 2007; (5) a SIP revision provided to EPA through the North Carolina Department of Environmental Quality (NC DEQ) [3] via letter dated June 20, 2008; [4] and (6) a portion of a SIP revision provided to EPA through the South Carolina Department of Health and Environmental Control (SC DHEC) via letter dated April 14, 2009, as updated in a portion of SIP revision provided to EPA via letter dated April 10, 2014. These revisions conform the State rules to changes to EPA regulations reflected in EPA's final rule entitled ''Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the ''Major Emitting Facility'' Definition'' (hereinafter referred to as the ''2007 Ethanol Rule'') as published in the **Federal Register** on May 1, 2007. *See* 72 FR 24060.

The 2007 Ethanol Rule amends the PSD definition of ''major stationary source'' to exclude certain ethanol facilities from the ''chemical process plant'' source category and clarifies that the PSD major source applicability threshold for certain ethanol plants is 250 tpy (rather than 100 tpy). The 2007 Ethanol Rule also removed the requirement to include fugitive emissions when determining if the source is major for PSD and Title V permitting. On October 21, 2019, EPA responded to a petition for reconsideration of the 2007 Ethanol Rule, and EPA denied the petition with respect to the revisions of the PSD Regulations reflected in that rule (as described in more detail below). EPA is now proposing to approve these SIP revisions that are based on a part of the 2007 Ethanol Rule.

[1] EPA received the submittal on September 29, 2008.

[2] In 2003, the City of Louisville and Jefferson County governments merged and the ''Jefferson County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' *See* The History of Air Pollution Control in Louisville, available at *https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville.* However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading ''Air Pollution Control District of Jefferson County.'' Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

[3] At the time of the 2008 submittal, the NC DEQ was the North Carolina Department of Environment and Natural Resources. Throughout this proposed rulemaking, EPA will refer to the State Agency as NC DEQ.

[4] EPA received the submission on June 25, 2008.

II. Background

A. PSD Permitting Thresholds for Chemical Processing Plants

Under the CAA, there are two potential thresholds for determining whether a source is a major emitting facility that is potentially subject to the construction permitting requirements under the PSD program; one threshold is 100 tpy per pollutant, and the other is 250 tpy per pollutant. Section 169(1) of the CAA lists twenty-eight source categories that qualify as major emitting facilities if their emissions exceed the 100 tpy threshold. If the source does not fall within one of twenty-eight source categories listed in section 169, then the 250 tpy threshold is applicable.

One of the source categories in the list of twenty-eight source categories to which the 100 tpy threshold applies is chemical process plants. Since the Standard Industrial Classification (SIC) code for chemical process plants includes facilities primarily engaged in manufacturing ethanol fuel, EPA and States had previously considered such facilities to be subject to the 100 tpy thresholds.

As a result of this classification, pursuant to EPA regulations interpreting CAA section 302(j), chemical process plants were also required to include fugitive emissions for determining the potential emissions of such sources. Thus, prior to promulgation of the 2007 Ethanol Rule, the classification of fuel and industrial ethanol facilities as chemical process plants had the effect of requiring these plants to include fugitive emissions of criteria pollutants when determining whether their emissions exceed the applicability thresholds for the PSD and nonattainment new source review (NA NSR) permit programs.

B. Ethanol Rule

On May 1, 2007, EPA published in the **Federal Register** the 2007 Ethanol Rule (72 FR 24060). This final rule amended EPA's PSD and NA NSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the ''chemical process plants'' category under the regulatory definition of ''major stationary source.''

This change to EPA's NSR regulations affected the threshold used to determine PSD applicability for these ethanol production facilities, clarifying that such facilities were subject to the 250 tpy major source threshold. The 2007 Ethanol Rule also included changes to other provisions which established that ethanol facilities need not count fugitive emissions when determining whether such a source is ''major'' under the Federal PSD, NA NSR, and Title V permitting programs.

C. Petitions for Review and Reconsideration of the 2007 Ethanol Rule

On July 2, 2007, the National Resources Defense Council (NRDC) petitioned the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to review the 2007 Ethanol Rule. On that same day, EPA received a petition for administrative reconsideration and request for stay of the 2007 Ethanol Rule from NRDC. On March 27, 2008, EPA denied NRDC's 2007 administrative petition for reconsideration.

On March 2, 2009, EPA received a second petition for reconsideration and request for stay from NRDC. In 2009, NRDC also filed a petition for judicial review challenging EPA's March 27, 2008, denial of NRDC's 2007 administrative petition in the D.C. Circuit. This challenge was consolidated with NRDC's challenge to the 2007 Ethanol Rule. In August of 2009, the D.C. Circuit granted a joint motion to hold the case in abeyance, and the case has remained in abeyance.

On October 21, 2019, EPA partially granted and partially denied NRDC's 2009 administrative petition for reconsideration. Specifically, EPA granted the request for reconsideration with regard to NRDC's claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 anti-backsliding requirements for nonattainment areas. EPA denied the remainder of the requests for reconsideration on the grounds that NRDC failed to establish that reconsideration was warranted under CAA section 307(d)(7)(B).

III. What SIP revisions are being proposed by EPA?

As mentioned above, EPA is proposing to approve revisions to SIPs dated: Florida on December 12, 2011; Georgia on September 15, 2008; Kentucky, corresponding to the Jefferson County portion of the Kentucky SIP, on July 1, 2009; Mississippi on November 28, 2007; North Carolina on June 20, 2008; and South Carolina on April 14, 2009, and April 10, 2014. These revisions adopt language that is the same or consistent with that contained in EPA's 2007 Ethanol Rule. EPA is not acting on any changes with respect to NA NSR. The State regulations that EPA is proposing to approve exclude ethanol production facilities that produce ethanol by natural fermentation from the ''chemical process plants'' category. The revisions thus clarify that an ethanol facility is subject to a PSD major source threshold of 250 tpy and that such sources need not count fugitive emissions to determine potential emissions that are compared to this threshold. The revisions proposed for approval in this action do not affect NA NSR. More detail on the SIP revisions that EPA is proposing to approve is provided below. Each subsection below begins by identifying the rules as modified by each state or local government to include the ethanol exemption in its PSD program.

A. Florida

Florida rule 62–210.200, *Definitions,* Florida Administrative Code (F.A.C.) at 62–210.200(189) ''Major Stationary Source'': ''Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Chemical process plants (the term ''chemical process plants'' shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140) . . .'' Florida rule 62–210.200(214) ''North American Industry Classification System'' or ''NAICS'': ''A federal system of classifying business establishments according to similarity in the process used to produce goods or services, as described in the 2007 NAICS definition file (available free of cost at *http://www.census.gov/eos/www/naics/* or available in CD ROM or book from at a cost from the US Department of Commerce at 1–800–553–6847), hereby adopted and incorporated by reference (*https://www.flrules.org/Gateway/reference.asp?No=Ref-00705*).'' Additionally, Chapter 62–212.400, *Prevention of Significant Deterioration,* at (3)(b): ''The requirements of subsections 62–212.400(4) through (12), F.A.C., shall not apply to a major stationary source or major modification if the source of modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one of the following categories . . . 20. Chemical process plants (the term ''chemical process plants'' shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification

System (NAICS) codes 325193 or 312140) . . .''

Chapter 62–210 of the F.A.C., which contains Florida's definitions regulation, generally applies to stationary sources in Florida. These definitions are referenced throughout Florida's rules, including in Chapter 62–212, which governs preconstruction review, including PSD. Chapter 62–212 of the F.A.C., which contains Florida's PSD regulation, applies to new or modified ''major stationary sources,'' as that term is defined in 62–210.200. As identified above, Florida revised 62–210.200 to exclude ethanol production facilities from the ''chemical process plants'' major stationary source category such that ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD.[5] Additionally, Florida incorporated a definition for NAICS as part of this rulemaking. Furthermore, Florida's PSD regulation at 62–212.400(3)(b)20. says that emissions from these same facilities are not considered in determining whether the facility is subject to PSD. The state effective date of Florida's revision to the definition of ''chemical process plants'' in Rule 62–210.200 and the change to applicability procedures in Rule 62–212.400 is December 12, 2011.

B. Georgia

Official Compilation of Rules and Regulations of the State of Georgia (Ga. Comp. R. & Regs.) 391–3–1-.02(7), *Prevention of Significant Deterioration of Air Quality,* (a)2.(iii): ''The definition of major stationary source contained in 40 CFR part 52.21(b)(1) is hereby incorporated by reference except as follows . . .'' Additionally, (b)6.: ''Review of major stationary sources and major modifications—source applicability and general exemptions: 40 CFR part 52.21 (i), as amended, is hereby incorporated and adopted by reference with the following exception . . .''

This regulation incorporates by reference portions of 40 CFR 52.21, including most portions of the federal definition of ''major stationary source'' and most portions of EPA's applicability procedures as revised and amended on July 1, 2007, which include the 2007 Ethanol Rule provisions. This revision aligns paragraph (a)2.(iii) with the incorporation by reference of provisions in 40 CFR 52.21 at paragraph (a)1.

The term ''major stationary source'' is defined in 40 CFR 52.21(b)(1)(i)(a) as ''[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: . . . Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).'' Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the ''chemical process plants'' category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because Georgia's incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

C. Jefferson County Portion of the Kentucky SIP

Jefferson County Regulation 2.05, *Prevention of Significant Deterioration of Air Quality.* This regulation incorporates by reference 40 CFR 52.21, as revised and amended on July 1, 2008, with exceptions.

The term ''major stationary source'' is defined in 40 CFR 52.21(b)(1)(i)(a) as ''[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: . . . Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).'' Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the ''chemical process plants'' category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because Jefferson County's incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

D. Mississippi

11 Mississippi Administrative Code (MAC) Part 2, Chapter 5, *Regulations for the Prevention of Significant Deterioration of Air Quality.* This regulation incorporates by reference 40 CFR 52.21, as revised and amended on June 15, 2007, with exceptions.

The term ''major stationary source'' is defined in 40 CFR 52.21(b)(1)(i)(a) as ''[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: . . . Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).'' Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the ''chemical process plants'' category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because Mississippi's incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

E. North Carolina

15 North Carolina Administrative Code (NCAC) 02D .0530, *Prevention of Significant Deterioration.* This regulation incorporates by reference 40 CFR 52.21, as revised and amended on June 13, 2007, with exceptions.

The term ''major stationary source'' is defined in 40 CFR 52.21(b)(1)(i)(a) as ''[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: . . . Chemical process plants (which does not include ethanol production facilities that produce

[5] Florida's definition of ''major stationary source'' at 62–210.200 is also cross-referenced in the portion of its SIP-approved NA NSR regulation, 62–212.500, *Preconstruction Review in Nonattainment Areas,* that sets the fugitive emissions exclusion for determining rule applicability. *See* Rule 62–212.500(2)(b). If the definition of ''chemical process plants'' within the term of ''major stationary source'' were updated to exclude these ethanol producing facilities for the purposes of NA NSR, then fugitive emissions would not need to be considered in determining whether the source is major. All sources in nonattainment areas are major at 100 tpy, and certain classifications of nonattainment areas for ozone and $PM_{2.5}$ establish lower thresholds for major source applicability. *See* 40 CFR 51.165(b)(iv)(A). However, Florida's December 12, 2011, submittal did not seek to revise, nor ask EPA to revise, the State's SIP-approved NA NSR program. Therefore, EPA is not approving the revision to the definition of ''chemical process plant'' within the term ''major stationary source'' to apply to the NA NSR program. Accordingly, if EPA finalizes this action, the ethanol production facility exclusion within the definition of ''major stationary source'' at 62–210.200 will not apply in the SIP for the purposes of determining applicability in Rule 62–212.500, and EPA will note this in the list of SIP-approved Florida regulations at 40 CFR 52.520(c). There are currently no nonattainment areas in Florida.

ethanol by natural fermentation included in NAICS codes 325193 or 312140).'' Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the ''chemical process plants'' category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because North Carolina's incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

F. South Carolina

South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.), Rule 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* at 61–62.5, Standard No. 7(b)(32) ''Major stationary source'' at (i)(a): ''Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: . . . chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industrial Classification System (NAICS) codes 325193 or 312140) . . .'' Additionally, another part of the definition at Standard No. 7(b)(32)(iii): ''The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this regulation whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: . . . (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industrial Classification System (NAICS) codes 325193 or 312140 . . .''

SC DHEC's Rule 61–62.5, Standard No. 7, applies to new or modified ''major stationary sources.'' As identified above, Standard No. 7 was revised to exclude ethanol production facilities from the ''chemical process plants'' major stationary source category such that ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD. Furthermore, South Carolina's PSD regulation at 61–62.5, Standard No. 7(b)(32)(iii) was revised to say that fugitive emissions at these same facilities are not considered in determining whether the facility is subject to PSD. The state effective date of SC DHEC's revision to the definition of ''major stationary source'' at 61–62.5, Standard No. 7(b)(32)(i) and (iii) was initially April 24, 2009, as transmitted in the April 14, 2009, SIP revision.

Subsequently, South Carolina made additional changes to Standard No. 7 regarding these provisions. Specifically, South Carolina made a minor change to spell out the term ''North American Industrial Classification System'' the first time it appears in Regulation No. 7 at Regulation No. 7(b)(32)(i)(a). The State published its proposed changes in the *South Carolina State Register* on August 23, 2013, and held a public hearing on December 12, 2013. South Carolina adopted the amended rule on December 27, 2013, at which point it became state effective. On April 10, 2014, South Carolina submitted a request to EPA Region 4 to revise the South Carolina SIP with these additional changes made to South Carolina's PSD program.

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

All of the aforementioned regulations are consistent with EPA's PSD program requirements in 40 CFR 51.166, as amended in the 2007 Ethanol Rule. Further, all submissions have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102.

FL DEP published a Notice of Proposed Rule on September 16, 2011, in the *Florida Administrative Weekly,* with a public hearing offered on October 13, 2011, if requested within 21 days of the published Notice. FL DEP received no request for a public hearing and therefore did not hold an official hearing. FL DEP received no comments from on its proposed revisions and therefore did not change the rules based on public input.

GA EPD issued a Notice of Public Hearing and Proposed Revisions on May 4, 2008. A public hearing was then held on June 3, 2008. No comments were received on the proposed revision, and GA EPD therefore did not make changes to the rule based on public input.

Louisville Metro Air Pollution Control District (LMAPCD) noticed proposed changes in newspapers published on February 20, 2009, and held a public hearing on May 20, 2009. Two sets of comments were received on the draft revisions, and LMAPCD responded to the comments received and noted that it made no substantive changes in response to the comments.

MDEQ published its notice of public hearing and proposed changes via newspapers on June 15, 2007, June 22, 2007, and June 29, 2007, and held a public hearing on July 17, 2007. MDEQ did not receive any comments on its proposed changes and therefore did not make any changes to its rules based on public input.

NC DEQ published a notice of proposed amendments in newspapers by October 7, 2007, and in the *North Carolina Register* on October 15, 2007, and a public hearing was held on November 7, 2007. NC DEQ received one set of public comments on the proposed rule and made changes to the rule based on those comments. No substantive comments were received on the adoption of regulations consistent with the 2007 Ethanol Rule.

SC DHEC issued a notice of proposed rulemaking in the *State Register* on January 23, 2009, for the April 14, 2009, submittal, and held a public hearing on April 9, 2009. In addition, for the April 10, 2014, submittal, SC DHEC issued a notice of proposed rulemaking on August 23, 2013, in the *State Register* and held a public hearing on December 12, 2013. SC DHEC received no comments on either of its proposed revisions, and therefore made no changes based on public input.

The SIP submissions also satisfy the completeness criteria of 40 CFR part 51, appendix V. In addition, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. A Technical Support Document (TSD) for each state or local revision, available as part of the docket to this proposed rulemaking, contains an analysis of the potential impact of the SIP revisions on air quality and whether approval of the SIP revisions will interfere with attainment or maintenance of the national ambient air quality standards (or standards) or any other CAA requirement. Existing ethanol plants, where a state has any, are listed with information from their permits, including applicable requirements, current PSD status, and applicable federal rules that control emissions in lieu of PSD. The existing ethanol plants, where a state has any, are mapped along with the ambient air monitors to demonstrate the relationship between ethanol production and air quality.

Emissions from ethanol plants are compared to other emissions data categories for four major pollutants revealing that for the major pollutants associated with ethanol production, ethanol plants make up less than 1 percent of the total anthropogenic emissions of that pollutant in all six states. EPA graphed air quality trends in each state, since the date of promulgation of the 2007 Ethanol Rule, for all criteria pollutants associated with

ethanol production. The air quality trends reveal that while ethanol production increased in certain areas, air quality improved for generally every pollutant monitored in each of the states.

EPA also describes requirements for each state or local government's minor source NSR program because the facilities that would be below the 250 tpy PSD major source threshold under this rulemaking will still need to obtain minor source construction permits.[6] EPA further analyzes the impact of increasing the threshold to 250 tpy on ozone and particulate matter (PM) precursors in each state. The analysis for ozone and secondary PM demonstrates that sources of this size will not cause any interference with attainment or maintenance of the standard in these states.

Based on EPA's analysis in each TSD, EPA proposes to conclude that approval of this action will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA), or any other applicable requirement of the CAA as required under CAA section 110(l).

V. What action is EPA proposing to take?

EPA is proposing to approve revisions to the Florida SIP, Georgia SIP, Jefferson County portion of the Kentucky SIP, Mississippi SIP, North Carolina SIP, and South Carolina SIP. EPA plans to take final action after consideration of any comments received on this proposed rulemaking.

The revisions to state rules that EPA is proposing to approve change the definition of ''major stationary source'' under each state or local PSD regulations. These proposed changes make clear that the PSD applicability threshold for certain ethanol plants is 250 tpy and remove the requirement to include fugitive emissions when determining if an ethanol plant is major for PSD. EPA proposes to determine that these revisions are consistent with EPA's PSD regulations and that approval of these revisions is consistent with the requirements of CAA section 110(l) and will not adversely impact air quality. EPA's analysis is available in the individual State TSDs that are part of the docket for this proposed rulemaking. This proposed action will ensure consistency between the State and federally approved rules and ensure Federal enforceability of the State's revised air program rules.

VI. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following regulations: Florida Rule 62–210.200, F.A.C., ''Definitions,'' state effective March 28, 2012;[7] [8] Florida Rule 62–212.400, ''Prevention of Significant Deterioration,'' state effective March 28, 2012;[9] Georgia Rule 391–3–1–.02(7), ''Prevention of Significant Deterioration of Air Quality (PSD),'' state effective July 20, 2017;[10] Jefferson County Regulation 2.05, ''Prevention of Significant Deterioration of Air Quality,'' version 13, state effective January 17, 2018[11] for the Jefferson County portion of the Kentucky SIP; Mississippi Rule 11 MAC Part 2, Rule 5.2, ''Adoption of Federal Rules by Reference,'' state effective May 28, 2016;[12] North Carolina Rule 02D .0530, ''Prevention of Significant Deterioration,'' state effective September 1, 2017;[13] and South Carolina Rule 61–62.5, Standard No. 7, ''Prevention of Significant Deterioration,'' state effective August 25, 2017.[14] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. 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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These proposed actions merely propose to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

[6] With the exception of facilities with a potential to emit between 100–250 tpy in several counties adjacent to the Atlanta, Georgia ozone nonattainment area for the 2015 8-hour ozone NAAQS, which are subject to Georgia's NA NSR program. See the TSD for Georgia in the docket for this proposed rulemaking for more information.

[7] Except for the purposes of determining applicability in Rule 62–212.500, ''Preconstruction Review for Nonattainment Areas.'' See footnote 5 for additional information.

[8] The effective date of the change to Florida Rule 62–210.200 made in Florida's December 12, 2011, SIP revision is December 4, 2011. However, for purposes of the state effective date included at 40 CFR 52.520(c), that change to Florida's rule is captured and superseded by Florida's update in a February 27, 2013, SIP revision, state effective on March 28, 2012, which EPA previously approved on October 6, 2017. *See* 82 FR 46682.

[9] The effective date of the change to Florida Rule 62–212.400 made in Florida's December 12, 2011, SIP revision is December 4, 2011. However, for purposes of the state effective date included at 40 CFR 52.520(c), that change to Florida's rule is captured and superseded by Florida's update in a February 27, 2013, SIP revision, state effective on March 28, 2012, which EPA previously approved on September 19, 2012. *See* 77 FR 58027.

[10] The effective date of the change to Georgia Rule 391–3–1-.02(7) made in Georgia's September 15, 2008, SIP revision is September 11, 2008. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Georgia's rule is captured and superseded by Georgia's update in a November 29, 2017, SIP revision, state effective on July 20, 2017, which EPA previously approved on December 4, 2018. *See* 83 FR 62466.

[11] The effective date of the change to Jefferson County Regulation 2.05 made in Kentucky's July 1, 2009, SIP revision is June 20, 2009. However, for purposes of the state effective date included at 40 CFR 52.920(c), that change to Jefferson County's rule is captured and superseded by Kentucky's update in a March 15, 2018, SIP revision, state effective on January 17, 2018, which EPA previously approved on April 10, 2019. *See* 84 FR 14268.

[12] The effective date of the change to Mississippi Rule APC–S–5, ''Regulations for the Prevention of Significant Deterioration of Air Quality'' made in Mississippi's November 28, 2007, SIP revision is August 23, 2007. However, for purposes of the state effective date included at 40 CFR 52.1270(c), that change to Mississippi's rule is captured and superseded by Mississippi's update in a June 7, 2016, SIP revision, state effective on May 28, 2016, which EPA previously approved on August 8, 2017. *See* 82 FR 37015. Furthermore, Mississippi has recodified previous Rule APC–S–5 as 11 MAC Part 2, Rule 5, with the relevant part from the November 28, 2007, SIP revision now included in Rule 5.2.

[13] The effective date of the change to North Carolina Rule 02D .0530 made in North Carolina's June 20, 2008, SIP revision is May 1, 2008. However, for purposes of the state effective date included at 40 CFR 52.1770(c), that change to North Carolina's rule is captured and superseded by North Carolina's update in a October 17, 2017, SIP revision, state effective on September 1, 2017, which EPA previously approved on September 11, 2018. *See* 82 FR 45827.

[14] The effective date of the change to South Carolina Rule 61–62.1, Standard No. 7 made in South Caorlina's April 10, 2014, SIP revision is December 27, 2013. However, for purposes of the state effective date included at 40 CFR 52.2120(c), that change to South Carolina's rule is captured and superseded by South Carolina's update in a September 5, 2017, SIP revision, state effective on August 25, 2017, which EPA previously approved on February 13, 2019. *See* 84 FR 3705.

• Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Do 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).

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

For South Carolina, because this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The Catawba Indian Nation also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 26, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–14425 Filed 7–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2010–0636; FRL–10010–94–Region 2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hormigas Ground Water Plume Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is issuing a Notice of Intent to Delete the Hormigas Ground Water Plume Superfund Site (Site) located in Caguas, Puerto Rico, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Puerto Rico, through the Department of Natural Resources and Environment, have determined that all appropriate response actions under CERCLA, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 19, 2020.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2010–0636. Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov* following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed, and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on the EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT: Dr. Adalberto Bosque, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, City View Plaza II–Suite 7000, 48 RD, 165 Km. 1.2, Guaynabo, PR 00968–8069, (787) 977–5825, email: *bosque.adalberto@epa.gov.*

You might also contact: Brenda Reyes, Community Involvement Coordinator, U.S. Environmental Protection Agency, Region 2, City View Plaza II–Suite 7000, 48 RD, 165 Km. 1.2, Guaynabo, PR 00968–8069, (787) 977–5825, email: *reyes.brenda@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this issue of the **Federal Register**, we are publishing a direct final Notice of Deletion of Hormigas Ground Water Plume Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive adverse comment(s) on this deletion action, we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, consider and address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete, if such action is determined to be appropriate. If so, we

will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.*

Peter Lopez,

Regional Administrator, Region 2.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 100

RIN 0906–AB24

National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Vaccine Injury Table (Table) by regulation. The proposed regulation will have effect only for petitions for compensation under the National Vaccine Injury Compensation Program (VICP) filed after the final regulations become effective. HHS is seeking public comment on the proposed revisions to the Table.

DATES: Written comments and related material to this proposed rule must be received to the online docket via *www.regulations.gov on or before* January 12, 2021.

ADDRESSES: Comments must be identified by HHS Docket No. HRSA–2020–0002. Because of staff and resource limitations, comments must be submitted electronically to *www.regulations.gov.* Follow the ''Submit a comment'' instructions.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Follow the search instructions on that website to view the public comments.

FOR FURTHER INFORMATION CONTACT: Please visit the National Vaccine Injury Compensation Program's website, *https://www.hrsa.gov/vaccinecompensation/,* or contact Tamara Overby, Acting Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, HRSA, Room 08N146B, 5600 Fishers Lane, Rockville, MD 20857; by email at *vaccinecompensation@hrsa.gov;* or by telephone at (855) 266–2427.

SUPPLEMENTARY INFORMATION: This is a notice of proposed rulemaking by which HHS proposes to amend the provisions of 42 CFR 100.3 by removing Shoulder Injury Related to Vaccine Administration, vasovagal syncope, and Item XVII from the Vaccine Injury Table.

I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written views, comments and arguments on all aspects of this proposed rule, as well as additional data that should be considered. HHS also invites comments that relate to the economic, legal, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to HRSA in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

A public hearing on this proposed rule will be held before the end of the public comment period. A separate document will be published in the **Federal Register** providing details of this hearing. Subject to consideration of the comments received, the Secretary intends to publish a final regulation.

Instructions: If you submit a comment, you must include the agency name and the HHS Docket No. HRSA–2020–0002 for this rulemaking. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to HHS. HHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

II. Background and Purpose

Vaccination is one of the best ways to protect against potentially harmful diseases that can be very serious, may require hospitalization, or even be deadly. Almost all individuals who are vaccinated have no serious reactions.[1] Nonetheless, in the 1980s, Congress became concerned that a small number of children who received immunizations had serious reactions to them, and it was not always possible to predict which children would have reactions, or what reactions they would have.[2] Claimants alleging vaccine-related injuries in civil litigation encountered a time-consuming, expensive, and often inadequate system.[3] Moreover, increased litigation against vaccine manufacturers resulted in difficulties in their ability to secure affordable product liability insurance, stabilize vaccine prices and supply, and enter the market.[4]

Therefore, Congress enacted the National Childhood Vaccine Injury Act of 1986, title III of Public Law 99–660 (42 U.S.C. 300aa–1 *et seq.*) (Vaccine Act), which established the National Vaccine Injury Compensation Program (VICP). The objectives of the VICP are to ensure an adequate supply of vaccines, stabilize vaccine costs, and establish and maintain an accessible and efficient forum for individuals found to be injured by certain vaccines to be federally compensated. Petitions for compensation under the VICP are filed

[1] National Vaccine Injury Compensation Program, Health Resources & Servs. Admin., *https://www.hrsa.gov/vaccine-compensation/index.html* (last reviewed Jan. 2020).

[2] H.R. Rep. No. 99–908, pt. 1, at 6 (1986). Even though in rare instances individuals may have adverse reactions to vaccines, the Centers for Disease Control and Prevention (CDC) recommends that individuals be vaccinated against a wide range of illnesses and diseases. *See* Recommended Vaccines by Age. Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/vaccines/vpd/vaccines-age.html* (last reviewed Nov. 22, 2016).

[3] H.R. Rep. No. 99–908, at 6.

[4] *See id.* at 4–6.

in the United States Court of Federal Claims (Court), rather than the civil tort system, with a copy served on the Secretary, who is the Respondent. The U.S. Department of Justice (DOJ) represents HHS in Court, and the Court, acting through judicial officers called Special Masters, makes the final decision as to eligibility for, and the type and amount of, compensation.

To gain entitlement to compensation under this Program, a petitioner must establish that a vaccine-related injury or death has occurred, either by proving that a vaccine actually caused or significantly aggravated an injury (causation-in-fact) or by demonstrating what is referred to as a ''Table injury.'' That is, a petitioner may show that the vaccine recipient (1) received a vaccine covered under the Act; (2) suffered an injury of the type enumerated in the regulations at 42 CFR 100.3–the ''Vaccine Injury Table'' (Table)—corresponding to the vaccination in question; and (3) that the onset of such injury took place within the time period specified in the Table. If so, the injury is presumed to have been caused by the vaccine, and the petitioner is entitled to compensation (assuming that other requirements are satisfied), unless the respondent affirmatively shows that the injury was caused by some factor unrelated to the vaccination (*see* 42 U.S.C. 300aa–11(c)(1)(C)(i), 300aa–13(a)(1)(B), and 300aa–14(a)).

42 U.S.C. 300aa–14(c) and (e) permit the Secretary to revise the Table. The Table currently includes 17 vaccine categories, with 16 categories for specific vaccines, as well as the corresponding illnesses, disabilities, injuries, or conditions covered, and the requisite time period when the first symptom or manifestation of onset or of significant aggravation after the vaccine administration must begin to receive the Table's legal presumption of causation. The final category of the Table, ''Item XVII,'' includes ''[a]ny new vaccine recommended by the Centers for Disease Control and Prevention for routine administration to children, after publication by the Secretary of a notice of coverage.'' [5] Two injuries—Shoulder Injury Related to Vaccine Administration (SIRVA) and vasovagal syncope—are listed as associated injuries for this category. Through this general category, new vaccines recommended by the CDC for routine administration to children and subject to an excise tax are deemed covered under the VICP prior to being added to the Table as a separate vaccine category through Federal rulemaking.

On January 19, 2017, the Department issued a final rule amending the Table (Final Rule) that, among other things, added SIRVA and vasovagal syncope to the Table. 85 FR 6294. That Final Rule was scheduled to take effect on February 21, 2017. A notice published in the **Federal Register** delayed the effective date until March 21, 2017. 82 FR 11321. The Final Rule followed a 2012 Institute of Medicine (IOM) [6] report, ''Adverse Effects of Vaccines: Evidence and Causality;'' the work of nine HHS workgroups that reviewed the IOM findings; and consideration of the Advisory Commission on Childhood Vaccines' (ACCV) recommendations.

The Department now proposes to remove SIRVA and vasovagal syncope from the Table found at 42 CFR 100.3(a) and to remove the corresponding descriptions of those injuries—''Qualifications and Aids to Interpretation'' (QAI)—from 42 CFR 100.3(c). This proposal is based upon a review of the relevant statutory provisions and the scientific literature, as well as the Department's experience since SIRVA and vasovagal syncope were added to the Table. The Department also proposes to remove Item XVII from the Table found at 42 CFR 100.3(a), because the Department has serious concerns that Item XVII is contrary to applicable law, for the reasons set forth below.

Scientific Literature Concerning SIRVA and Vasovagal Syncope

The scientific literature indicates that SIRVA likely results from poor vaccination technique, rather than the vaccine or its components alone. The notice of proposed rulemaking that preceded the Final Rule characterized SIRVA as an ''adverse event following vaccination thought to be *related to the technique* of intramuscular percutaneous injection (the procedure where access to a muscle is obtained by using a needle to puncture the skin) into an arm resulting in trauma from the needle and/or the unintentional injection of a vaccine into tissues and structures lying underneath the deltoid muscle of the shoulder.'' [7] The IOM similarly concluded that ''the injection, and not the contents of the vaccine, contributed to the development of deltoid bursitis.'' [8] Indeed, the primary case series relied upon by the Department in promulgating the proposed rule and Final Rule found that the medical literature supports the possibility that SIRVA may result from inappropriate needle length and/or injection technique.[9] There is nearly uniform agreement in the scientific community that SIRVA is caused by improper vaccine administration, rather than by the vaccine itself.[10] Since the Final Rule was promulgated, additional scientific research concluded that subdeltoid or subacromial bursitis and other shoulder lesions are ''more likely to be the consequence of a poor injection technique (site, angle, needle size, and failure to take into account [a] patient's characteristics, *i.e.,* sex, body weight, and physical constitution),'' rather than ''antigens or adjuvants contained in the vaccines that would trigger an immune or inflammatory response.'' [11]

[5] 42 CFR 100.3(a).

[6] The IOM is now known as the National Academy of Medicine.

[7] National Vaccine Injury Compensation: Revision to the Vaccine Injury Table (''2015 Proposed Rule''), 80 FR 45132, 45136 (July 29, 2015) (emphasis supplied); *see also* Adverse Effects of Vaccines: Evidence and Causality (''IOM Report''), at 620, *available at https://www.nap.edu/catalog/13164/adverse-effects-of-vaccines-evidence-and-causality.*

[8] IOM Report at 620. SIRVA is a medicolegal term, not a medical diagnosis, that is meant to capture a broad array of potential shoulder injuries. However the IOM only made findings concerning deltoid bursitis.

[9] Atanasoff S, Ryan T, Lightfoot R, and Johann Liang R, 2010, Shoulder injury related to vaccine administration (SIRVA), *Vaccine* 28(51): 8049–52 (recommending that injections avoid the top third of the deltoid muscle to avoid shoulder injury).

[10] *See* Barnes MG, Ledford C, Hogan K. A ''needling'' problem: Shoulder injury related to vaccine administration. J Am Board Fam Med. 2012 Nov–Dec; 25(6):919–22; Cross GB, Moghaddas J, Buttery J, Ayoub S, Korman TM. Don't aim too high: Avoiding shoulder injury related to vaccine administration. Aust Fam Physician. 2016 May; 45(5):303–6.

[11] Martín Arias, K.H., Fadrique, R., Sáinz Gil, M., and Salgueiro-Vazquez, M.E., Risk of bursitis and other injuries and dysfunctions of the shoulder following vaccinations, *Vaccine,* 2017; 35: 4870–4876. *See also* Bancsi A, Houle SKD, Grindrod KA. Shoulder injury related to vaccine administration and other injection site events. *Can. Fam. Physician.* 2019 Jan; 65(1): 40–42 (explaining that SIRVA ''is a preventable occurrence caused by the injection of a vaccine into the shoulder capsule rather than the deltoid muscle''); Macomb CV, Evans MO, Dockstater JE, Montgomery JR, Beakes DE. Treating SIRVA Early With Corticosteroid Injections: A Case Series. Mil Med. 2019 Oct 17 (noting that SIRVA does not occur unless the vaccine is mistakenly given in the shoulder capsule). Another recent study reviewed the Vaccine Adverse Event Reporting System (VAERS) database from July 2010 to June 2017 for reports of atypical shoulder pain and dysfunction following injection of inactivated influenza vaccine (IIV). *See* B. F. Hibbs, C. S. Ng, O. Museru *et al.,* Reports of atypical shoulder pain and dysfunction following inactivated influenza vaccine, Vaccine Adverse Event Reporting System (VAERS), 2010–2017, *Vaccine.* The review found that, of the 266 reports where contributing factors for the injury were reported, 216 (81.2%) described the vaccination as being given ''too high'' on the arm. Other reports described improper or poor administration technique (*e.g.,* bone strikes, ''administered in tendon''), uneven position between vaccinator and

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The scientific literature also indicates that vasovagal syncope results from the act of injection, rather than the vaccine or its components. Vasovagal syncope is the loss of consciousness (fainting) caused by a transient decrease in blood flow to the brain.[12] In proposing the addition of vasovagal syncope to the Table, the Department noted that the IOM found that syncope did not result from any particular antigen, but instead from the act of the injection.[13] The scientific literature suggests that those administering vaccines can take steps to significantly reduce the likelihood of injury from vasovagal syncope, such as having the patient sit or lie down for the vaccination, and observing the patient for 15 to 20 minutes after administering the vaccine.[14]

Reasons for Removal of SIRVA and Vasovagal Syncope

The Department has concluded that several reasons merit removal of SIRVA and vasovagal syncope from the Table found at 42 CFR 100.3(a), and to correspondingly remove the descriptions of those injuries from the QAI found at 42 CFR 100.3(c).

First, the Department has concluded that the Vaccine Act should be read as not applying to cover injuries, like SIRVA and vasovagal syncope, which involve negligence by the vaccine administrator. At best, the Vaccine Act is ambiguous in how it handles such injuries, and in the Department's view there are strong reasons to exclude them from coverage under the Act's compensation scheme.

The Act creates a compensation program ''for a vaccine-related injury or death.'' 42 U.S.C. 300aa–11(a)(1). Under the Act, ''only . . . a person who has sustained a vaccine-related injury or death'' can recover. 42 U.S.C. 300aa–11(a)(9). The Act defines ''[v]accine-related injury or death'' as ''an illness, injury, condition, or death *associated with* one or more of the *vaccines* set forth in the Vaccine Injury Table, except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to such a vaccine.'' 42 U.S.C. 300aa–33(5) (emphasis added); *see also Dean* v. *HHS,* No. 16–1245V, 2018 WL 3104388, at * 9 (Fed. Cl. Spec. Mstr. May 29, 2018) (defining ''vaccine'' as '''any substance designed to be administered to a human being for the prevention of 1 or more diseases'''') (quoting 26 U.S.C. 4132(a)(2)). Thus, the compensation program covers injuries ''associated with'' the vaccine itself.

SIRVA is, of course, not a vaccine, and it is not an injury caused by a vaccine antigen, but by administration of the vaccine by the health care provider. The Department does not think the term ''associated with'' was meant to sweep in injuries caused by negligent administration of the vaccine. Although the Act permits petitioners to recover for Vaccine Table injuries without demonstrating causation in individual cases, the term ''associated with'' nevertheless requires that the injury, in general, be causally related to the vaccine itself. This is clear both from dictionary definitions of ''associated,'' which means ''related, connected, or combined together'' (Merriam-Webster.com Dictionary, Merriam-Webster, *https://www.merriam-webster.com/dictionary/associated.* Accessed 10 Jul. 2020), and from the text of the Act itself, *see, e.g.,* 42 U.S.C. 300aa–22(b)(1) (focusing on injuries that ''resulted'' from vaccine side effects); 42 U.S.C. 300aa–13(a)(1)(B) & (2)(B) (excluding ''trauma'' that has ''no known relation to the vaccine involved''). Importantly, in the key operative provisions discussed above, the phrase ''associated with'' is linked to the vaccine itself, not to the technique in administering the vaccine. *See Decker* v. *Nw. Envtl. Def. Ctr.,* 568 U.S. 597, 611 (2013) (in interpreting phrase ''associated with industrial activity,'' the key consideration is the scope of ''industrial activity''; the ''statute does not foreclose a more specific definition by the agency'' and ''a reasonable interpretation . . . could . . . require the discharges to be related in a direct way to operations at 'an industrial plant' ''); *Chevron, U.S.A., Inc.* v. *Nat. Resources Def. Council, Inc.,* 467 U.S. 837, 861 (1984) (''[T]he meaning of a word must be ascertained in the context of achieving particular objectives, and the words associated with it may indicate that the true meaning of the series is to convey a common idea.'').

That basic requirement is not met with SIRVA and vasovagal syncope. While the act of being vaccinated may be a but-for cause of those injuries, the injury is not associated with the vaccine itself because, with proper administration technique, those injuries will not result from the vaccine. Rather, SIRVA and vasovagal syncope result from the use of improper—that is, negligent—administration technique. Furthermore, to the extent there is ambiguity about the scope of injuries encompassed by the phrase ''associated with,'' this reading, grounded in tort law principles, better achieves the Act's objectives for the reasons below.

There are several indicators in the language and structure of the Vaccine Act that show it was not meant to cover negligent administration of the vaccine. First, as the Federal Circuit has explained, troubling issues arise if the Act were to apply to ''negligence facially unrelated to the vaccine's effects.'' *Amendola* v. *Sec., Dept. of Health & Human Servs.,* 989 F.2d 1180, 1187 (Fed. Cir. 1993). It could include, for example, ''the doctor's negligent dropping of an infant patient'' or use of contaminated equipment. *Id.* at 1186–87. The better reading of the statute is that it does not reach this far.

Second, the definition of vaccine-related injury carves out ''an adulterant or contaminant *intentionally added* to such a vaccine. 42 U.S.C. 300aa–33(5) (emphasis added). By excluding from the definition those injuries associated with an adulterant or contaminant intentionally added to the vaccine, Congress indicated its intent to permit suit only where the injury was caused by the components of the vaccine itself, not individual fault. Relatedly, in the provisions setting forth the standard for awarding compensation, Congress specified that an award is not appropriate when injury was ''due to factors unrelated to the administration of the vaccine,'' and further defined that phrase to include ''trauma . . . which have no known relation to the vaccine involved.'' 42 U.S.C. 300aa–13(a)(1)(B) & (2)(B). In other words, Congress excluded compensation for injuries that were not related ''to the vaccine involved.''

Third, the statutory scheme requires that the patient ''received a vaccine set forth in the Vaccine Injury Table,'' 42

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the patient (*e.g.,* vaccinator standing while patient sitting), vaccination needle too long, and others (*e.g.,* difficulty injecting vaccine). A small minority of reports also indicated the patient had a history of thyroid dysfunction or diabetes.

It is possible that certain injuries characterized as SIRVA occur when an immunologically active substance designed to trigger an inflammatory response (*i.e.,* the vaccine antigen) is injected into an area where the inflammatory response can cause joint damage (*i.e.,* the bursa or tendons) as opposed to an area where the inflammatory response will not cause joint damage or permanent harm (*i.e.,* the deltoid muscle). Such injuries are fairly characterized as resulting from the vaccination technique, since they would not have occurred if the injection occurred in the proper part of the body.

[12] 82 FR 6294–01, 6304 (Jan. 19, 2017).

[13] 80 FR 45137 (The IOM found that one case report suggested that ''the injection, and not the contents of the vaccine, contributed to the development of syncope''). *See also* IOM Report at 18 (''injection of vaccine, independent of the antigen involved, can lead to'' syncope).

[14] Miller, E. and Woo, E.J. 2006 Time to prevent injuries from postimmunization syncope, *Nursing,* 36 (12): 20; Braun, M., Patriarca, P., and Ellenberg, S. Syncope After Immunization, *Arch. Pediatr. Adolesc. Med.* 1997; 151: 255–259.

U.S.C. 300aa–11(c)(1)(A), tying compensation to the receipt of a specific listed vaccine. *See* 42 U.S.C. 300aa–11(c)(1)(C)(i) (speaking to an injury aggravated ''*in association with the vaccine* referred to'' on the Vaccine Injury Table); 42 U.S.C. 300aa–11(c)(1)(C)(ii)(I) (for conditions not on the Vaccine Injury Table, allowing proof that the condition ''was caused by a vaccine'' on the Table); 42 U.S.C. 300aa–11(c)(1)(C)(ii)(II) (same). But negligent administration can occur without regard to the specific vaccine and, as noted above, can encompass anything from negligent needle placement to ''the doctor's negligent dropping of an infant patient.'' *Amendola,* 989 F.2d at 1186–87. Congress strongly signaled that it was focused on compensation for harm caused by the vaccine by requiring that the Table list the vaccines themselves and the types of injuries the vaccines themselves would cause.

Fourth, in the provision preempting state tort liability, Congress protected manufacturers from liability when the injury ''resulted from side effects that were unavoidable even though the vaccine was properly prepared. . .'' 42 U.S.C. 300aa–22(b)(1). This language shows Congress wanted to preserve a state tort remedy for certain avoidable injuries, such as those caused by negligent vaccine administration. Given that the Vaccine Act seeks to replace state tort remedies for the injuries it covers, this reinforces the conclusion that the Act does not reach SIRVA and vasovagal syncope.

Fifth, Congress provided for health care providers who administer vaccines to record detailed information about the vaccination, including the date of administration; the manufacturer; the name of the provider; and other identifying information. 42 U.S.C. 300aa–25. This information is well suited to a program designed to compensate for injuries associated with the vaccine itself, since it provides the key details about the vaccine provided and when. But this reporting requirement is woefully inadequate if the Program was designed to compensate for negligence by the provider, which would require maintaining careful records regarding the actual administration of the vaccine.

To be sure, the Vaccine Act does in certain places refer to ''administration of'' or the ''administrator'' of the vaccine. But we think that those usages were not meant to suggest the Program covers negligence in the administration of the vaccine, but served other purposes. At most, these usages render the statute ambiguous with respect to needle injuries. In Section 300aa–11(a)(2)(A), the statute precludes suits against ''a vaccine administrator,'' but this reference does not define the scope of the compensation program—instead, it protects administrators from suits ''arising from a vaccine-related injury or death associated with the administration of a vaccine.'' This language is not entirely clear, as it appears to impose two distinct qualifications that both must be met but are worded slightly differently. It may be a belt and suspenders approach to ensure that vaccine administrators are protected from tort claims like in *Amendola,* where the vaccine itself was properly administered and caused the injury, but the petitioner alleged the administrator was negligent in deciding to give the vaccine. *See* 989 F.2d at 1186 (holding Vaccine Program does not exclude cases of ''negligence in deciding, for example, whether to administer an otherwise satisfactory vaccine''). The important point is that the first qualification—''arising from a vaccine-related injury''—is also included here and, as discussed above, Congress defined this requirement to include only injuries associated with the vaccine itself. *See also* 42 U.S.C. 300aa–11(b)(1)(A) (referencing individuals who ''died as the result of the administration of a vaccine'' but only if the individual sustained a ''vaccine-related injury''). In setting up the original Vaccine Injury Table, Congress referenced conditions ''resulting from the administration of such vaccines.'' 42 U.S.C. 300a–14(a). But this phrase was not designed to define the scope of the program or the Table; instead, Congress directed the Secretary to add conditions to the Table if they were ''associated with such vaccines.'' 42 U.S.C. 300aa–14(e)(1)(B) & (2)(B). And it is telling that Congress included nothing similar to SIRVA or other injuries caused by negligent vaccine administration in the original Table, rather than injuries associated with the vaccine components themselves. Finally, that Congress asked the Secretary to ''make or assure improvements'' in the ''administration'' of vaccines, 42 U.S.C. 300aa–27(a)(2), among many areas of improvement in the vaccination process, does not imply that the compensation program covers negligent administration.

Perhaps for some or all of these reasons, state courts have found that injuries arising from negligent administration of a vaccine are not ''vaccine-related injuries'' under 42 U.S.C. 300aa–33(5), and therefore are not preempted by the Vaccine Act. *See, e.g., Neddeau* v. *Rite Aid of Conn.,* 2015 WL 5133151, at *3 (Super. Ct. Conn. July 28, 2015) (state court action did not allege a ''vaccine-related'' injury and therefore was not barred by the Vaccine Act, because plaintiff's allegation that the administrator struck the needle too high was an allegation that her injuries ''were caused by negligence in the physical process of injecting the vaccine, not by the effects of the vaccine''); *Nwosu ex rel. Ibrahim* v. *Adler,* 969 So. 2d 516, 519 (Ct. App. Fla. 2007) (claim arising from a physician's negligent injection of a vaccine was not a ''vaccine-related injury,'' and adding that ''[i]t is true that had the child not been vaccinated, she would not have been injured. However, her injury as alleged, does not flow from the inoculant injected into her body [so] it is not the type of injury covered under the Act'').

The Table should only include injuries caused by a vaccine or its components, not the manner in which the vaccine was administered. Thus, a petitioner must have an injury or death ''associated'' with the vaccine, not one resulting from poor injection technique or other improper administration of the vaccine.

Moreover, strong policy considerations support this reading of the Vaccine Act. It is the Department's belief that Congress intended for the Vaccine Act's compensation system to be used for unavoidable injuries and illnesses that cannot be predicted in advance and can occur without fault. SIRVA and vasovagal syncope are generally not those types of injuries or illnesses. With proper injection technique, SIRVA is likely preventable. The scientific literature also suggests that those administering vaccines can take steps to significantly reduce the likelihood of vasovagal syncope. However, while the Department is grateful for the many health care professionals and pharmacists who improve public health by vaccinating the American public, and does not believe they would intentionally administer a vaccine in an improper manner, awarding no-fault compensation from the VICP to those with SIRVA and vasovagal syncope claims lessens the incentive to take appropriate precautions. Since Vaccine Act proceedings are generally sealed and not made available to the public, vaccine administrators may be left unaware that they used an improper technique.[15] If SIRVA and vasovagal

[15] *See* Jodie Fleischer *et al., Half of All New Federal Vaccine Cases Allege Injury from Shots*

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syncope are included in the Table, petitioners will continue to seek to recover from the VICP, where they can recover more easily because they need not prove causation, rather than from those who failed to properly administer the vaccine.

Furthermore, the Department has found that SIRVA petitions are likely to unnecessarily risk reductions in the funding available for children and others who sustained an unavoidable vaccine-related injury or death that did not result from improper technique or negligent administration. In the VICP's early years, the overwhelming majority of cases brought, and compensation awarded, involved injuries to children.[16] However, over 99.2% of SIRVA cases (3,034 out of 3,057) filed since FY 2010 were filed by adults. From FY 2016 through FY 2019, approximately $119,154,985 has been paid out of the Vaccine Injury Compensation Trust Fund (Trust Fund) to compensate SIRVA petitioners, who are overwhelmingly adults. The sheer prevalence of shoulder injuries in the country's adult population and the low burden of proof placed on petitioners have made it attractive to file SIRVA petitions, even when such claims are dubious.[17] Petitioners in such cases often prevail because of the low burden of proof and because it is not necessary to prove causation. If SIRVA and vasovagal syncope were removed from the Table, individuals could still file SIRVA and vasovagal syncope claims in state court [18] where they would be required to prove causation between the manner of administration and the claimed injury. Requiring plaintiffs to prove causation in state court would mitigate the filing of frivolous claims in the VICP that are diminishing the Trust Fund.

The removal of SIRVA and vasovagal syncope from the Table is intended to also preclude VICP claims for SIRVA or vasovagal syncope based on causation in fact, given that they are not injuries associated with vaccines or their components, nor are they unavoidable injuries or illnesses that cannot be predicted in advance, or that can occur without fault. While only eight and nine vasovagal syncope claims were filed in FY 18 and FY 19 respectively, the number of SIRVA claims has increased since the agency began suggesting that SIRVA could be a Table injury, and increased dramatically after SIRVA was in fact added to the Table in FY 17:

Fiscal year	Total number of SIRVA claims filed
FY 2010	5
FY 2011	10
FY 2012	20
FY 2013	34
FY 2014	116
FY 2015	225
FY 2016	433
FY 2017	605
FY 2018	671
FY 2019	711
FY 2020	227
Totals	3,057

Prior to SIRVA's addition to the Table, SIRVA claims were sometimes awarded due to a combination of the government resolving the claims without litigating them to conclusion, and public statements by the Department suggesting SIRVA was a cognizable injury. The proposal to add SIRVA to the Table was in the works for several years before the 2015 notice of proposed rulemaking was published, and there was a great deal of public discussion about it at the ACCV and at the Court of Federal Claims' annual judicial conference. The Department has in the past not always contested cases alleging injuries that have been proposed for addition to the Table if the case as pleaded fulfilled the criteria for entitlement to compensation. However, for the reasons discussed in this notice of proposed rulemaking, including the Department's review of the statute and more recent scientific literature, the Department no longer believes such claims should be included on the Table or can be based on causation in fact, because they are not injuries associated with vaccines or their components, nor are they unavoidable injuries or illnesses that cannot be predicted in advance, or that can occur without fault.

In addition, DOJ informs the Department that, out of 2,214 SIRVA claims filed since 2017, DOJ has identified 27 cases in which altered medical records have been filed, some of which involved changes to the site of vaccination. 2,214 SIRVA claims have been filed in this time period. Additionally, the median award for SIRVA claims is far higher than the damages awarded for comparable injuries in the civil tort system. *See* Memo re: Damages for Shoulder Injuries Outside of the Vaccine Program, Dep't of Justice (Sept. 21, 2018) (indicating the median award for SIRVA claims resolved by stipulation, which ostensibly include a litigative risk discount, is $71,355.26, but is $22,530 for comparable claims awarded either by settlement or judgment in the civil tort system in 2015–2018); *see also Bossenbroek* v. *HHS,* 2020 WL 2510454, Appendix 2 (Fed. Cl. Spec. Mstr. Apr. 3, 2020) (citing the DOJ memo). The Department is concerned that the alteration of records and excessive awards to petitioners seen in SIRVA cases threaten the integrity of the VICP.

In FY 10, SIRVA claims made up 5 (1.1%) of the 448 claims filed in the VICP. However, for FY17–FY19, SIRVA claims made up 52.6% of all claims filed in the VICP. Thus, indications that SIRVA claims were cognizable and then adding SIRVA to the Table dramatically increased the number of claims filed in the VICP. Such claims, which are not associated with vaccines or their components, therefore erroneously suggest that vaccines are less safe than they in fact are. For example, if no SIRVA claims were filed, the number of claims filed in FY 19 would have fallen from 1,282 to 575. Thus, reductions in VICP petitions, particularly those claiming SIRVA, will support the overwhelming scientific understanding that vaccines are both safe and effective.

Item XVII

As discussed in further detail below, the Department also proposes to remove Item XVII from the Table found at 42 CFR 100.3(a), and to remove 42 CFR 100.3(e)(8), which describes the mechanism for adding new vaccines to Item XVII. The Department proposes these changes because it has serious concerns that Item XVII is contrary to law, including the procedures described in the Vaccine Act for amending the Table. Specifically, to the extent that Item XVII provides a unilateral mechanism for adding injuries and vaccines to the Table, it may be inconsistent with the Vaccine Act, as discussed in more detail below. SIRVA and vasovagal syncope are the only illnesses, disabilities, injuries, or conditions listed for Item XVII.

Given Incorrectly, NBC Washington, *https://www.nbcwashington.com/investigations/Half-of-All-New-Federal-Vaccine-Injury-Cases-Allege-Shots-Given-Incorrectly-481441201.html* (explaining that ''the program has no mechanism [due to privacy laws] to notify the shot-giver of the injury he or she likely caused,'' and ''[t]hus, they would have no reason to seek additional training'').

[16] Peter H. Meyers, *Fixing the Flaws in the Federal Vaccine Injury Compensation Program,* 63 Admin. L. Rev. 785, 795 (2011).

[17] *See also* B.F. Hibbs, C.S. Ng, O. Museru *et al.,* Reports of atypical shoulder pain and dysfunction following inactivated influenza vaccine, Vaccine Adverse Event Reporting System (VAERS), 2010–2017, *Vaccine, https://doi.org/10.1016/j.vaccine.2019.11.023* (reports of atypical shoulder pain following IIV are uncommon and the level of reporting has remained fairly constant in recent years, ''in contrast to the substantial increase in SIRVA claims filed with the VICP for IIV during the same time period'').

[18] Or Federal district court if they satisfy the requirements of 28 U.S.C. 1332 or 28 U.S.C. 1367.

Guiding Principles for Recommending Changes to the Vaccine Injury Table

In 2006, the ACCV established ''Guiding Principles for Recommending Changes to the Vaccine Injury Table'' (Guiding Principles) to assist the ACCV in evaluating proposed Table revisions and determining whether to recommend changes to the Table to the Secretary. The Guiding Principles consist of two overarching principles: (1) The Table should be scientifically and medically credible, and (2) where there is credible scientific and medical evidence both to support and to reject a proposed change (addition or deletion) to the Table, the change should, whenever possible, be made to the benefit of petitioners. The Guiding Principles also state, among other factors, that ''[t]o the extent that the [IOM] has studied the possible association between a vaccine and an adverse effect, the conclusions of the IOM should be considered by the ACCV and deemed credible but those conclusions should not limit the deliberations of the ACCV.'' As part of its mandate under the Act, the ACCV considered the proposed changes set forth in this NPRM on March 6, 2020 and May 18, 2020.[19] Four members of the ACCV also held a workgroup meeting on April 3, 2020 to discuss the proposed changes. For each proposed change by the Secretary, the ACCV voted for one of three options:

1. ACCV concurs with the proposed change(s) to the Table and would like the Secretary to move forward (with or without comments);

2. ACCV does not concur with the proposed change(s) to the Table and would not like the Secretary to move forward; or

3. ACCV would like to defer a recommendation on the proposed change(s) to the Table pending further review at a future ACCV meeting.

The Guiding Principles are not binding on the Secretary. The ACCV's findings and recommendations are discussed at page 26–31.

Findings

In prior Table revisions, the Secretary determined that the appropriate framework for making changes to the Table is to make specific findings as to the illnesses or conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by the vaccines under review and the circumstances under which such causation or aggravation can reasonably be determined to occur. The Secretary continues this approach, and finds that the scientific literature does not provide a sufficient association between either SIRVA or vasovagal syncope and any vaccine component alone so as to support including SIRVA or vasovagal syncope in the Table. Accordingly, the Secretary proposes to remove SIRVA and vasovagal syncope from the Table and from the QAI found at 42 CFR 100.3(c) for the reasons discussed in this NPRM. The Secretary also has serious concerns that Item XVII does not comport with applicable law, and therefore also recommends removal of Item XVII from the Table and the removal of 42 CFR 100.3(e)(8) for the reasons discussed in this NPRM. For any vaccine adverse event pairs for which future scientific evidence develops to support a finding of a causal relationship, the Secretary will consider future rulemaking to revise the Table accordingly.

In support of his proposals, and notwithstanding the recommendations of the ACCV, the Secretary makes the following findings:

Findings That Result in Removals From the Table Because the Evidence Favors Rejection of a Causal Relationship

1. The scientific evidence does not adequately support a causal relationship between any specific vaccine's antigen or other component and SIRVA. For reasons detailed below, the Secretary proposes removing SIRVA from the Table.

2. The scientific evidence does not adequately support a causal relationship between any specific vaccine's antigen or other components and vasovagal syncope. For reasons detailed below, the Secretary proposes removing vasovagal syncope from the Table.

Findings That Result in Removals From the Table for Procedural Reasons

1. Item XVII in the Table may not comport with applicable law. For reasons detailed below, the Secretary proposes removing Item XVII from the Table.

III. Discussion of Proposed Rule

The Secretary has examined the relevant statutory provisions, the scientific literature, the Department's experience since SIRVA and vasovagal syncope were added to the Table, and the recommendations of the ACCV and proposes that the Table set forth at 42 CFR 100.3(a) be revised to remove SIRVA, vasovagal syncope, and Item XVII, as described below. Due to these amendments, the Secretary also proposes making the corresponding changes of removing 42 CFR 100.3(c)(10), 42 CFR 100.3(c)(13), and 42 CFR 100.3(e)(8), which describe the injuries or items that the Secretary proposes to remove from the Table. Following each proposed removal from the Table, as applicable, there is a discussion of the 2017 addition of each injury to the Table, the IOM's 2012 conclusions about that injury cited by HHS in its 2015 Proposed Rule, and other relevant research and conclusions, as well as the Department's proposal. Each of the changes proposed by the Department and the rationale for the proposal is described in detail.

As provided in 42 U.S.C. 300aa–14(c)(4), the modified Table will apply only to petitions filed under the Program after the effective date of the final regulation. Petitions must also be filed within the applicable statute of limitations. The general statute of limitations applicable to petitions filed with the VICP, set forth in 42 U.S.C. 300aa–16(a), continues to apply. In addition, the statute identifies a specific exception to this statute of limitations that applies when the effect of a revision to the Table makes a previously ineligible person eligible to receive compensation or when an eligible person's likelihood of obtaining compensation significantly increases.

Under 42 U.S.C. 300aa–16(b), an individual who may be eligible to file a petition based on the revised Table may file the petition for compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table. This is true even if such individual previously filed a petition for compensation, and is thus an exception to the ''one petition per injury'' limitation of 42 U.S.C. 300aa–11(b)(2).

Based on the requirements of the Administrative Procedure Act, the Department publishes a Notice of Proposed Rulemaking in the **Federal Register** before a regulation is promulgated. The public is invited to submit comments on the proposed rule. In addition, a public hearing will be held for this proposed rule.

After the public comment period has expired, the comments received and the Department's responses to the comments will be addressed in the preamble to the final regulation. The Department will publish the final rule in the **Federal Register**.

In the following sections, background information on different injuries and Item XVII, as well as the Secretary's rationale for the proposed Table changes, is provided.

[19] The Department first provided the proposed revisions to the Table and requested recommendations and comments by the ACCV on or about February 15, 2020.

1. Shoulder Injury Related to Vaccination

SIRVA is an adverse event following vaccination thought to be related to the technique of intramuscular percutaneous injection (the procedure where access to a muscle is obtained by using a needle to puncture the skin) into an arm resulting in trauma from the needle and/or the unintentional injection of a vaccine into tissues and structures lying underneath the deltoid muscle of the shoulder.

On March 21, 2017, HHS adopted the Final Rule adding SIRVA to the Table. As defined in the Final Rule, SIRVA is an injury related to the intramuscular injection of a vaccine. Since the addition of SIRVA to the Table, SIRVA has become the predominant claim under the National Vaccine Injury Compensation Program. In Fiscal Year 2018, of the 1,238 claims filed, 671 were SIRVA claims (54.2%). In Fiscal Year 2019, of the 1,282 claims filed, 711 were SIRVA claims (55.4%). Thus, the number of SIRVA claims have increased dramatically, having comprised only 5 (1.1%) of the 448 claims filed in Fiscal Year 2010 and 10 (2.6%) of the 386 claims filed in Fiscal Year 2011.

By definition, a Table injury of SIRVA results from the injection technique. For that reason, the Department did not include SIRVA as an injury on the 2017 revised Table for vaccines that are not administered by intramuscular injection, including oral polio and rotavirus; subcutaneous MMR, MMRV, varicella, and meningococcal-polysaccharide; and intranasal influenza. In addition, the Department did not add a SIRVA injury to the revised 2017 Table for vaccines administered via a needleless jet device. Similarly, the Department found that a SIRVA injury would not apply to formulations of influenza vaccine where the route of administration was intradermal, such as those delivered through a needle that was only 1.5 millimeters long, because the ''needle is not long enough to enter the deltoid bursa or any other structure in the shoulder related to the development of SIRVA.'' [20]

In addition, in the 2012 IOM review of medical and scientific literature related to SIRVA cited by the Department in the 2015 Proposed Rule, the IOM found a causal connection between the injury of deltoid bursitis and vaccine injection *with a needle only*.[21] The IOM did *not* find a causal connection between the injury of deltoid bursitis and the components of the vaccine itself.

Since the final rule was promulgated, additional scientific research has concluded that subdeltoid or subacromial bursitis and other shoulder lesions are ''more likely to be the consequence of a poor injection technique (site, angle, needle size, and failure to take into account patient's characteristics, *i.e.,* sex, body weight, and physical constitution),'' rather than ''antigens or adjuvants contained in the vaccines that would trigger an immune or inflammatory response.'' [22] The evidence is thus insufficient to support an adequate causal connection between the contents of any vaccine by themselves and SIRVA.

As discussed above, it is the Department's belief that SIRVA is not a ''vaccine-related injury'' and therefore should not be included on the Table or compensable under the VICP.[23] Moreover, as discussed in the Background section, the Department has concluded that there are strong policy reasons for removing SIRVA from the Table. Accordingly, the Secretary recommends removing SIRVA altogether from the Table.

2. Vasovagal Syncope

Vasovagal syncope is the loss of consciousness (fainting) caused by a transient decrease in blood flow to the brain. Vasovagal syncope is usually a benign condition but may result in falling and injury.

On January 19, 2017, the Department adopted the Final Rule adding vasovagal syncope to the Table. 82 FR 6294; 82 FR 11321. In making that revision, the Department relied on the IOM's 2012 review of medical and scientific literature concerning a possible link between the injection of a vaccine and syncope. The IOM found insufficient epidemiologic evidence of an association between the injection of a vaccine and syncope, but it found sufficient mechanistic evidence supporting the conclusion that syncope is ''directly related to vaccine administration.'' [24] The IOM explained that evidence it examined as part of its review suggested ''that the injection, and not the contents of the vaccine, contributed to the development of syncope.'' [25] In addition, because syncope is an injury related *solely* to the injection of a vaccine, the Department did not add syncope to the 2017 revisions to the Table as an injury for vaccines that are not administered by injection, such as oral polio and rotavirus vaccine.

Other scientific and medical literature support the conclusion that syncope may be caused by the act of vaccination, but not its contents.[26] The evidence is thus insufficient to support a causal connection between the contents of any vaccine and vasovagal syncope.

As discussed above, it is the Department's belief that vasovagal syncope is not a ''vaccine-related injury'' and therefore should not be included on the Table or compensable under the VICP.[27] Moreover, as discussed in the Background section, the Department has concluded that there are strong policy reasons for removing vasovagal syncope from the Table. Accordingly, the Secretary recommends removing vasovagal syncope from the Table.

3. Category for Any New Vaccine Recommended by the Centers for Disease Control and Prevention for Routine Administration to Children After Publication by the Secretary of a Notice of Coverage

Item XVII of the current Table includes ''[a]ny new vaccine recommended by the CDC for routine administration to children, after publication by the Secretary of a notice of coverage.'' [28] Through this general category, new vaccines recommended by the CDC for routine administration to children and subject to an excise tax are deemed covered under the VICP prior to being added to the Table as a separate vaccine category through Federal rulemaking. SIRVA and vasovagal syncope are the only illnesses, disabilities, injuries, or conditions listed in Item XVII of the Table.

[20] 80 FR 45144.

[21] 80 FR 45136. *See also* IOM Report.

[22] Martín Arias, K.H., Fadrique, R., Sáinz Gil, M., and Salgueiro-Vazquez, M.E., Risk of bursitis and other injuries and dysfunctions of the shoulder following vaccinations, *Vaccine,* 2017 35:4870–4876; Bancsi A, Houle SKD, Grindrod KA. Shoulder injury related to vaccine administration and other injection site events. Can. Fam. Physician. 2019 Jan; 65(1):40–42 (explaining that SIRVA ''is a preventable occurrence caused by the injection of a vaccine into the shoulder capsule rather than the deltoid muscle''); Macomb CV, Evans MO, Dockstater JE, Montgomery JR, Beakes DE. Treating SIRVA Early With Corticosteroid Injections: A Case Series. Mil Med. 2019 Oct 17 (noting that SIRVA does not occur unless the vaccine is mistakenly given in the shoulder capsule).

[23] 42 U.S.C. 300aa–11, 300aa–14(e).

[24] 80 FR 45137.

[25] 80 FR 45137. *See also* IOM Report.

[26] 80 FR 45137 (The IOM found that one case report suggested that ''the injection, and not the contents of the vaccine, contributed to the development of syncope''). *See also* IOM Report at 18 (''injection of vaccine, independent of the antigen involved, can lead to'' syncope); Miller, E. and Woo, E.J. Time to prevent injuries from postimmunization syncope, *Nursing,* 2006 36 (12): 20.

[27] 42 U.S.C. 300aa–11, 300aa–14(e).

[28] 42 CFR 100.3(a).

The Department has serious concerns that Item XVII is contrary to law. The Vaccine Act provides a method for adding new vaccines to the Table, and it is far from clear that the approach in Item XVII complies with that method. The Vaccine Act provides that the Secretary may promulgate regulations to modify the Table, but in doing so, he ''shall provide for notice and opportunity for a public hearing and at least 180 days of public comment.'' [29] Moreover, the Table cannot be revised unless ''the Secretary has first provided to the [ACCV] a copy of the proposed regulation or revision, requested recommendations and comments by the [ACCV], and afforded the [ACCV] at least 90 days to make such recommendations.'' [30] Item XVII, by contrast, suggests that vaccines are added to the Table once the CDC recommends them for routine administration to children and an excise tax is imposed, even prior to notice and public comment or comments from the ACCV.[31] This may be inconsistent with the rulemaking requirements of the Administrative Procedure Act 5 U.S.C. 553, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* various Executive Orders that cabin rulemaking (*see, e.g.,* Executive Order 12866), and the Vaccine Act.

Further, SIRVA and vasovagal syncope are the only illnesses, disabilities, injuries, or conditions listed for Item XVII.

4. The ACCV's Recommendations and Comments

More than 90 days after it received the Department's proposed changes to the Table, on May 20, 2020 the ACCV sent a letter to the Secretary (May 20 Letter) explaining why it opposed the proposed changes.[32] The Department is grateful to the ACCV for its time spent considering the proposed changes and for providing its comments.

However, the Department found the ACCV's comments not adequately persuasive, and for the reasons stated above has decided to issue this notice of proposed rulemaking and provide for public comment and notice and opportunity for a public hearing. The May 20 Letter stated that, although rare, SIRVA and vasovagal syncope are injuries that can be caused by vaccination, so they should be eligible for compensation from the VICP. However, for the reasons stated herein, only ''vaccine-related injuries or deaths,'' as defined in the statute, are eligible for compensation. The May 20 Letter also stated that one intent of the VICP is to provide liability protection to vaccine manufacturers and administrators, and that removing SIRVA or vasovagal syncope could (1) result in higher malpractice premiums for those who administer vaccines and (2) disincentivize administering vaccines, thereby resulting in lower vaccination rates. However, the May 20 Letter failed to cite any evidence that these issues were problematic in the United States before SIRVA and vasovagal syncope were added to the Table in 2017, and the Department has been unable to locate any evidence that premiums have materially declined due to the addition of SIRVA and vasovagal syncope to the Table. Moreover, the vaccination rate has gone down slightly since SIRVA and vasovagal syncope were added to the Table.[33] The Department is grateful for the many health care professionals and pharmacists who improve public health by vaccinating the American public, and does not believe they would intentionally administer a vaccine in an improper manner, but the Department also wants to incentivize those who administer vaccines to do so properly. Doing so will improve public confidence in vaccinations.

The May 20 Letter also stated that the Vaccine Act has a subrogation clause which permits the Federal government to seek recompense if the VICP compensates a claim, but determines later that a health care professional was negligent in administering a vaccine. Thus, injury claims resulting from the administration of vaccines should still be eligible for VICP compensation. However, this subrogation provision does not properly incentivize the vaccine administrator, since it is unlikely that the Federal government would assert many claims against administrators, given the burden and expense compared to the relatively small potential recovery for the Federal government. Individuals would have a greater incentive to assert such claims if the administrator were negligent.

The May 2020 Letter further stated that the explanations in the proposal that the Department submitted to the ACCV do not meet the tenets of the ACCV's Guiding Principles. As noted above, the Guiding Principles state: ''When recommending changes to the Vaccine Injury Table (''the Table''), members of the Advisory Commission on Childhood Vaccines (ACCV) shall utilize the following overarching guiding principles:

- The Table should be scientifically and medically credible; and
- Where there is credible scientific and medical evidence both to support and to reject a proposed change (addition or deletion) to the Table, the change should, whenever possible, be made to the benefit of petitioners.''

The Guiding Principles are not binding on the Secretary.[34] Nonetheless, the Department believes that credible scientific and medical evidence supports removing SIRVA and vasovagal syncope from the Table. In addition, the Secretary must consider what will benefit the public, not only petitioners. Furthermore, in determining whether a proposed change benefits petitioners, it is important to consider all petitioners. The inclusion of SIRVA has harmed the petitioners with injuries that the VICP was primarily designed to compensate, including children, because the high number of SIRVA claims has significantly slowed down the adjudication process. The Vaccine Act established a compensation program that was ''designed to work faster and with greater ease than the civil tort system.'' *Bruesewitz* v. *Wyeth,* 562 U.S. 223, 228 (2011) (quoting *Shalala* v. *Whitecotton,* 514 U.S. 268, 269, (1995)). However, since 2017, the average amount of time for a case to finally resolve has increased significantly (from 575 days to 751 days). As of March 2020, 926 petitions awaited initial review, including 530 that had been filed in FY 2019.[35] Prior to FY 2014, there generally were not even 530 total petitions filed per year. Non-SIRVA cases, including those filed on behalf of children, are adversely affected as resources are stretched or diverted to litigate SIRVA cases. Because SIRVA claims are lucrative to pursue and simpler to prosecute than childhood vaccine injuries, there is little reason to

[29] 42 U.S.C. 300aa–14(c)(1).

[30] 42 U.S.C. 300aa–14(d).

[31] The language in Item XVII also raises Constitutional concerns. Item XVII in effect allows CDC to add vaccines to the Table so long as the Secretary publishes notice of coverage. The Office of Legal Counsel has previously opined that a statute that sought to authorize the CDC director to take certain action unilaterally was inconsistent with the Executive Powers Clause. (Statute Limiting The President's Authority To Supervise The Director Of The Centers For Disease Control In The Distribution Of An AIDS Pamphlet, 12 U.S. Op. Off. Legal Counsel 47, 48, 1988 WL 390999, at * 1). For the same reasons, it is not clear that the CDC director, as an inferior officer, has the authority to unilaterally add vaccines to the Table without the approval of the Secretary.

[32] *https://www.hrsa.gov/advisory-committees/vaccines/reports-recommendations.html.*

[33] *See, e.g., https://www.cdc.gov/flu/fluvaxview/coverage-1718estimates.htm; https://www.cdc.gov/nchs/data/hus/2018/031.pdf.*

[34] 80 FR 45134.

[35] *https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/vaccines/meetings/2020/03062020-dicp-update.pdf.*

believe this is a temporary phenomenon.

The May 20 Letter also stated that since enactment of the Vaccine Act and the inception of the program, claims resulting from the administration of a vaccine have been filed and some have been compensated. The May 20 Letter added that the ACCV was not presented with any new peer-reviewed medical or scientific literature on SIRVA or syncope. Thus, since no new medical and scientific literature has been published about the proposed changes, HHS should not be proposing any changes to the Table. However, the proposal that the Department provided to the ACCV, as well as this notice of proposed rulemaking, includes the findings of additional studies concluded since SIRVA and vasovagal syncope were added to the Table. The Department has also learned from its experience since SIRVA and vasovagal syncope were added to the Table, and believes this experience supports the proposed changes. Additionally, the Department believes the changes are supported by the IOM, which found that (1) ''the injection, and not the contents of the vaccine, contributed to the development of deltoid bursitis'' [36] and (2) ''the injection, and not the contents of the vaccine, contributed to the development of syncope.'' [37] Thus, there was insufficient scientific evidence to support adding SIRVA and vasovagal syncope in the first place, as there was insufficient evidence that either are vaccine-related injuries.

The May 20 Letter added that the Trust Fund has a balance of over $4 billion, so funds are available to pay valid claims resulting from the administration of vaccines. However, it is the Department's belief that the availability of funds at this moment does not justify their dispersal for claims that are not associated with vaccines or vaccine components. Lastly, the May 20 Letter also recommended that the Secretary support an increase in the number of Special Masters and staffing and funding resources for the VICP in order to reduce the backlog caused by SIRVA claims. It is Congress's decision whether to increase funding and the number of Special Masters. Moreover, any increase in staffing or funding by Congress would only address one of the several issues identified above.

The May 20 Letter did not provide any reasons why it opposed the Department's proposal to remove Item XVII from the Table.[38]

One member of the ACCV sent a letter to the Secretary on May 26, 2020. The letter stated that the member was concerned that the large number of SIRVA claims has clogged the VICP, resulting in delayed resolution of claims; the large amount paid annually from the Trust Fund has reinforced vaccine hesitancy among some who incorrectly believe this figure reflects lack of vaccine safety; and the number of awards for SIRVA are in excess of the true number of cases. This member recommended revising the definition of SIRVA so that those with true shoulder injuries are able to recover while reducing the number of ''inappropriate claims.'' The Department believes the concerns expressed in this letter can best be accomplished by removing SIRVA from the Table. If SIRVA is removed from the Table, those with SIRVA injuries would still be able to recover in state court. Removal is preferable to redefining SIRVA, because it better addresses the vaccine hesitancy concern, is more in line with the Vaccine Act and Congressional intent, and incentivizes learning proper administration technique. Indeed, because Vaccine Act proceedings are generally sealed and not made available to the public, vaccine administrators often are left unaware that they used an improper technique.

IV. Statutory Authority

The primary statutory authority for this rulemaking is 42 U.S.C. 300aa–14. 42 U.S.C. 300aa–14(c)(1) provides that the ''Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, he shall provide for notice and opportunity for a public hearing and at least 180 days of public comment.'' 42 U.S.C. 300aa–14(c)(3), in turn, provides: ''A modification of the Vaccine Injury Table under paragraph (1) may add to, or delete from, the list of injuries, disabilities, illnesses, conditions, and deaths for which compensation may be provided or may change the time periods for the first symptom or manifestation of the onset or the significant aggravation of any such injury, disability, illness, condition, or death.''

V. Request for Comment

HHS and HRSA request comment on all aspects of this proposed rule, including its likely costs and benefits and the impacts that it is likely to have on the public health, as compared to the current requirements under 42 CFR 100.3.

VI. Statutory and Regulatory Requirements

A. Executive Orders 12866, 13563, and 13771: Regulatory Planning and Review

E.O. 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 supplements and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866, which emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues require special analysis. The Department anticipates that the proposed rule would save limited compensation funds under the National Vaccine Injury Compensation Program. Specifically, it will reduce the amount of program funds spent on program administration, reduce the amount of funds paid out to those with SIRVA or vasovagal syncope claims, and ensure that funds awarded from the VICP are awarded to individuals whose claims arise from vaccine-related injuries, which is consistent with the original intent of the VICP. Moreover, the Department anticipates that the proposed rule may result in fewer individuals suffering from SIRVA or vasovagal syncope, because it will better incentivize those administering vaccines to use proper injection technique. If those who administer vaccines can be held liable when a patient suffers from SIRVA or vasovagal syncope as a result of the administration

[36] IOM Report at 620.

[37] 80 FR 45137. *See also* IOM Report.

[38] The May 20 Letter also stated that the ACCV wished it could have heard from an HHS official who could provide the evidence and reasoning to support the proposal and to explain and discuss the original basis for the inclusion of SIRVA and vasovagal syncope on the Table. While perhaps an understandable concern, the proposal, which synthesized the views of many within the Department, was the Department's best explanation for why it was proposing the changes to the Table.

of the vaccine, those who administer vaccines will have greater incentive to use proper injection technique. In addition, the proposed rule may also limit the ability of those opposed to vaccinations to cite to the high number of SIRVA awards to misleadingly suggest that vaccines are less safe than they truly are.

The Department considered, as an alternative to this NPRM, issuing a NPRM that would revise the definition of SIRVA so that those with true shoulder injuries were able to recover while reducing the number of less appropriate claims. However, the Department concluded that removing SIRVA from the Table is preferable. If SIRVA is removed from the Table, those with actual SIRVA injuries would still be able to recover in state court. Removal is preferable to redefining SIRVA, because it better addresses the vaccine hesitancy concern, is more in line with the Vaccine Act and Congressional intent, and incentivizes learning and utilizing proper administration technique. Indeed, because Vaccine Act proceedings are generally sealed and not made available to the public, vaccine administrators often are left unaware that they used an improper technique.

The Department also considered, as alternatives to this NPRM, not removing one or more of (1) SIRVA, (2) vasovagal syncope, or (3) Item XVII from the Table. For the reasons discussed herein, the Department rejected these alternatives.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more in any one year, or adversely or materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis bust be prepared for major rules with economically significant effects ($100 million or more in any one year), and a ''significant'' regulatory action is subject to Office of Management and Budget (OMB) review. As discussed below regarding the anticipated effects, these proposals are not likely to have economic impacts of $100 million or more in any one year, and therefore do not meet the definition of ''economically significant'' under Executive Order 12866. OMB has determined, however, that the actions are significant within the meaning of section 3(f)(4) of the Executive Order. Accordingly, this rule has been reviewed by OMB.

B. Economic and Regulatory Impact

In accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. Between FY 2017 and FY 2019, the VICP on average paid out $30,893,481.90 per year to petitioners alleging SIRVA claims. The VICP on average paid out $124,489.56 per year to petitioners alleging vasovagal syncope claims. If this proposed rule went into effect, the Department anticipates that small entities would not actually pay these amounts, because fewer SIRVA and vasovagal syncope claims would be filed if petitioners had to prove causation. In addition, vaccines are often administered by non-small entities, so even if total amounts paid approximated the amounts paid on average between FY 2017 and FY 2019, claims against small entities would be less. Should this rule be finalized as proposed, it is the Department's belief that should the amounts paid equal the amounts annually paid out of the VICP between FY 2017 and FY 2019, and such claims were paid in full by small entities, these amounts would not constitute a significant impact on a substantial number of small entities for purposes of the RFA.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any 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 in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $154 million. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Department has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $154 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The provisions of this rule will also not negatively affect family well-being or the following family elements: Family safety; family stability; marital commitment; parental rights in the education, nurture and supervision of their children; family functioning; disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

On January 30, 2017, the White House issued Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This proposed rule would partially repeal prior regulations and is not expected to increase incremental costs, so it is not anticipated to be a regulatory or deregulatory action under Executive Order 13771. Public comments will inform the ultimate designation of this rule.

As stated above, this proposed rule would modify the Vaccine Injury Table to ensure that the Table complies with applicable law, the Table is consistent with medical and scientific literature, those administering vaccines have additional incentive to use proper injection technique, and the VICP has sufficient funds to adequately compensate those injured by vaccines listed in the Table.

Summary of Impacts

This proposed rule will have the effect of removing injuries from the Table that are not encompassed by the provisions of the Vaccine Act and that are reducing the pool of funds available to those injured by vaccines or vaccine components. It will therefore align the Table with the Department's understanding of Congress' intent and

public policy in favor of compensating those harmed by injuries associated with the vaccine or vaccine components, and particularly children who have suffered such harm. The rule will also have the effect of ensuring that the limited compensation resources available under the National Vaccine Injury Compensation Program are provided to those with vaccine-related injuries or deaths. In addition, because of the large volume of SIRVA claims, removing SIRVA from the Table will reduce the amount of program funds spent on program administration and ensure that funds awarded from the VICP are awarded to individuals whose claims arise from vaccine-related injuries, which is consistent with the Department's interpretation of the original intent of the VICP.

The rule will also better incentivize those who administer vaccines to use proper injection technique. It may also help correct misleading and erroneous suggestions that vaccines are not safe. Because COVID–19 and a potential COVID–19 vaccine are not currently on the Table, the Department does not believe this rule would have an impact on patients with COVID–19 or a COVID–19 vaccine. However, HHS requests public comment on this determination.

Moreover, the rule is unlikely to unduly burden the civil tort system. The Department conducted a search in the WestLaw legal database for cases in state court that contained both the terms ''SIRVA'' and ''vaccine,'' and found only 20 hits, at least two of which were cases involving an entity named SIRVA and not the injury.[39] It is possible that some additional cases were filed in federal district court. Nonetheless, the Department believes based on this data that any additional burden on the civil tort system, which would be dispersed across States and not concentrated in any one or few States, from removing SIRVA and vasovagal syncope from the Table and reverting to the status quo as of January 2017 will be minimal.

A. Executive Order 13132—Federalism

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

B. Collection of Information

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA) requires that OMB approve all collections of information by a federal agency from the public before they can be implemented. This proposed rule is projected to have no impact on current reporting and recordkeeping burden, as the amendments proposed in this rule will not impose any data collection requirements under the PRA.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, Immunization.

Dated: June 22, 2020.

Thomas J. Engels,

Administrator, Health Resources and Services Administration.

Approved: July 9, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

Accordingly, 42 CFR part 100 is proposed to be amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

■ 1. The authority citation for 42 CFR part 100 continues to read as follows:

Authority: Secs. 312 and 313 of Public Law 99–660 (42 U.S.C. 300aa–1 note); 42 U.S.C. 300aa–10 to 300aa–34; 26 U.S.C. 4132(a); and sec. 13632(a)(3) of Public Law 103–66.

■ 2. In § 100.3, revise paragraph (a) and remove paragraphs (c)(10) and (13) and (e)(8).

The revision reads as follows:

§ 100.3 Vaccine injury table.

(a) In accordance with section 312(b) of the National Childhood Vaccine Injury Act of 1986, title III of Public Law 99–660, 100 Stat. 3779 (42 U.S.C. 300aa–1 note) and section 2114(c) of the Public Health Service Act, as amended (PHS Act) (42 U.S.C. 300aa–14(c)), the following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program. Paragraph (b) of this section sets forth additional provisions that are not separately listed in this Table but that constitute part of it. Paragraph (c) of this section sets forth the Qualifications and Aids to Interpretation for the terms used in the Table. Conditions and injuries that do not meet the terms of the Qualifications and Aids to Interpretation are not within the Table. Paragraph (d) of this section sets forth a glossary of terms used in paragraph (c).

TABLE 1 TO § 100.3(a)—VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. Vaccines containing tetanus toxoid (*e.g.,* DTaP, DTP, DT, Td, or TT).	A. Anaphylaxis	≤4 hours.
	B. Brachial Neuritis	2–28 days (not less than 2 days and not more than 28 days).
II. Vaccines containing whole cell pertussis bacteria, extracted or partial cell pertussis bacteria, or specific pertussis antigen(s) (*e.g.,* DTP, DTaP, P, DTP-Hib).	A. Anaphylaxis	≤4 hours.
	B. Encephalopathy or encephalitis	≤72 hours.
III. Vaccines containing measles, mumps, and rubella virus or any of its components (*e.g.,* MMR, MM, MMRV).	A. Anaphylaxis	≤4 hours.
	B. Encephalopathy or encephalitis	5–15 days (not less than 5 days and not more than 15 days).

[39] *https://1.next.westlaw.com/Search/Results.html?query=%22sirva%22%20%26%20%22vaccine%22&jurisdiction=ALLSTATES&saveJuris=False&contentType=CASE&querySubmissionGuid=i0ad6ad3f00000 1733a44933a7bf4372d&startIndex=1&searchId=i0ad6ad3f000001733a44933a7bf4372d&kmSearchIdRequested=False&simpleSearch=False&isAdvancedSearchTemplatePage=False&skipSpellCheck=False&isTrDiscoverSearch=False&thesaurusSearch=False&thesaurusTermsApplied=False&ancillaryChargesAccepted=False&proviewEligible=False&eventingTypeOfSearch=FRM&transitionType=Search&contextData=%28sc.Search%29.*

TABLE 1 TO § 100.3(a)—VACCINE INJURY TABLE—Continued

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
IV. Vaccines containing rubella virus (*e.g.,* MMR, MMRV).	A. Chronic arthritis	7–42 days (not less than 7 days and not more than 42 days).
V. Vaccines containing measles virus (*e.g.,* MMR, MM, MMRV).	A. Thrombocytopenic purpura	7–30 days (not less than 7 days and not more than 30 days).
	B. Vaccine-Strain Measles Viral Disease in an immunodeficient recipient.	
	—Vaccine-strain virus identified	Not applicable.
	—If strain determination is not done or if laboratory testing is inconclusive.	≤12 months.
VI. Vaccines containing polio live virus (OPV)	A. Paralytic Polio.	
	—in a non-immunodeficient recipient	≤30 days.
	—in an immunodeficient recipient	≤6 months.
	—in a vaccine associated community case	Not applicable.
	B. Vaccine-Strain Polio Viral Infection	
	—in a non-immunodeficient recipient	≤30 days.
	—in an immunodeficient recipient	≤6 months.
	—in a vaccine associated community case	Not applicable.
VII. Vaccines containing polio inactivated virus (*e.g.,* IPV).	A. Anaphylaxis	≤4 hours.
VIII. Hepatitis B vaccines	A. Anaphylaxis	≤4 hours.
IX. Haemophilus influenzae type b (Hib) vaccines.	No Condition Specified	Not applicable.
X. Varicella vaccines	A. Anaphylaxis	≤4 hours.
	B. Disseminated varicella vaccine-strain viral disease.	
	—Vaccine-strain virus identified	Not applicable.
	—If strain determination is not done or if laboratory testing is inconclusive.	7–42 days (not less than 7 days and not more than 42 days).
	C. Varicella vaccine-strain viral reactivation	Not applicable.
XI. Rotavirus vaccines	A. Intussusception	1–21 days (not less than 1 day and not more than 21 days).
XII. Pneumococcal conjugate vaccines	No Condition Specified	Not applicable.
XIII. Hepatitis A vaccines	No Condition Specified	Not applicable.
XIV. Seasonal influenza vaccines	A. Anaphylaxis	≤4 hours.
	B. Guillain-Barrè Syndrome	3–42 days (not less than 3 days and not more than 42 days).
XV. Meningococcal vaccines	A. Anaphylaxis	≤4 hours.
XVI. Human papillomavirus (HPV) vaccines	A. Anaphylaxis	≤4 hours.

* * * * *

[FR Doc. 2020–15673 Filed 7–16–20; 4:15 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 414, 424, and 484

[CMS–1730–P]

RIN 0938–AU–06

Medicare and Medicaid Programs; CY 2021 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Home Infusion Therapy Services Requirements

Correction

In proposed rule document 2020–13792 beginning on page 39408 in the issue of Tuesday, June 30, 2020, make the following correction:

On page 39408, in the first column, in the **DATES** section, ''August 31, 2020'' should read ''August 24, 2020''.

[FR Doc. C1–2020–13792 Filed 7–17–20; 8:45 am]

BILLING CODE 1301–00–D

Notices

Federal Register
Vol. 85, No. 139
Monday, July 20, 2020

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 15, 2020.

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

Comments regarding this information collection received by August 19, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

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

Farm Service Agency

Title: Guaranteed Farm Loans.

OMB Control Number: 0560–0155.

Summary of Collection: The Consolidated Farm and Rural Development Act (CONACT), as amended, authorize the Secretary of Agriculture to make and service loans guaranteed by the Farm Service Agency (FSA) to eligible farmers and ranchers. The statutory authority for the guaranteed loan program is set out in the Code of Federal Regulations (CFR), title 7, chapter VII, part 762. The loans made and serviced under 7 CFR part 762 include farm operating, farm ownership loans. FSA also provides guarantees of loans made by private sellers of a farm or ranch on a land contract sales basis. The reporting requirements imposed on the public by the regulations at 7 CFR part 762 and 7 CFR part 763 are necessary to administer the Farm Loan Program guaranteed loan program in accordance with statutory requirements of the CONACT as specified in the 2008 Farm Bill.

Need and Use of the Information: FSA uses the forms and written evidence to collect needed information. The basis objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The information collected is used to determine lender and loan applicant eligibility for farm loan guarantees, and to ensure the lender protects the government's financial interest. The information FSA collects is needed to effectively administer the FSA guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating lenders.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 14,357.

Frequency of Responses: Reporting: Other (when applying for loans).

Total Burden Hours: 165,724.

Farm Service Agency

Title: 7 CFR 765, Direct Loan Servicing—Regular.

OMB Control Number: 0560–0236.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR part 765 is provided under 5 U.S.C. 301, which provides that ''The Head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business . . .'' The Secretary delegated authority to administer the provisions of the applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in § 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The regulations covered by this information collection request describes, the policies and procedures FLP uses to service most FLP loans to ensure borrowers are meeting the requirements of their loan agreements.

Need and Use of the Information: Information requested under this collection is submitted by borrowers to the local agency office serving the county in which their business is headquartered. The information is used by FLP to manage application of proceeds from the sale of agency security, consider whether a borrower is in compliance with their loan covenants, assist the borrower in achieving their business goals, conduct day-to-day management of the agency's loan portfolio, and ensure that the agency's interests are protected. Failure to collect the information or collecting it less frequently could result in the failure of the farm operation or loss of agency security property or position.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 94,121.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 30,315.

Farm Service Agency

Title: Farm Loan Program, General Program Administration.

OMB Control Number: 0560–0238.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR part 761 and 7 CFR part 763, is derived from 5 U.S.C. 301 which provides that ''The Head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business . . .'' The Secretary delegated authority to administer the provisions of the Act applicable to the Farm Loan

Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in § 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The regulations covered by this information collection package describes, the policies and procedures the agency uses to provide supervised credit to direct FLP applicants and borrowers in accordance with the provisions of the Consolidated Farm and Rural Development Act (Pub. L. 87–128), as amended.

Need and Use of the Information: Information collections are submitted by applicants and borrowers to the local FSA office serving the county in which their business is headquartered. The information is necessary to provide supervised credit as legislatively mandated and is used by Agency Officials to: (1) Ensure that when loan funds or insurance proceeds are used for construction and development, projects, work is completed according to applicable state and local requirements, and in a manner that protects the Agency's financial interest. (2) Ensure that the loan repayment plan is developed using realistic data, based on the actual history of the operation and any planned improvements. (3) Identify potential concerns limiting the success of the operation and develop a loan assessment outlining the course of action to be followed, to improve the operation so that commercial credit is available.

The agency is mandated to provide supervised credit; therefore, failure to collect the information, or collecting it less frequently, could result in the failure of the farm operation or loss of agency security property.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 64,802.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 168,029.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–15626 Filed 7–17–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 15, 2020.

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

Comments regarding this information collection received by August 19, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Rural Housing Service

Title: 7 CFR 1942–A, Community Facility Loans.

OMB Control Number: 0575–0015.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency within the Rural Development mission area of the U.S. Department of Agriculture. The Community Programs Division of the RHS administers the Community Facilities program under 7 CFR part 1942, subpart A. Rural Development provides loan and grant funds through the Community Facilities program to finance many types of projects varying in size and complexity, from large general hospitals to small fire trucks. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs. RHS will collect information using multiple forms and in written format.

Need and Use of the Information: Information will be collected by Rural Development field offices from applicants/borrowers and consultants. The information is used to determine eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

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

Number of Respondents: 4,458.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 79,512.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–15620 Filed 7–17–20; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0040]

Pioneer Hi-Bred International; Availability of a Preliminary Pest Risk Assessment and Draft Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a preliminary plant pest risk assessment and draft environmental assessment regarding a request from Pioneer Hi-Bred International seeking a determination of nonregulated status for corn designated DP202216 Maize, which has been genetically engineered for enhanced grain yield potential and Glufosinate-ammonium herbicide resistance. We are making these documents available for public review and comment.

DATES: We will consider all comments that we receive on or before August 19, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0040.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No.

APHIS–2019–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The draft environmental assessment, preliminary plant pest risk assessment, and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0040* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents for this petition are also available on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status.*

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3892, email: *cynthia.a.eck@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. APHIS received a petition (APHIS Petition Number 19–101–01p) from Pioneer Hi-Bred International, Inc. (Pioneer) seeking a determination of nonregulated status of a maize event designated as DP202216, which has been genetically engineered for enhanced grain yield potential and glufosinate-ammonium resistance. The Pioneer petition stated that this maize is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

According to our process [1] for soliciting public comment when considering petitions for determination of nonregulated status of GE organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. On July 25, 2019, APHIS announced in the **Federal Register** [2] (84 FR 35850–35851, Docket No. APHIS–2019–0040) the availability of the Pioneer petition for public comment. APHIS solicited comments on the petition for 60 days ending September 23, 2019, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

Four comments were received. Two were opposed to deregulating DP202216 Maize, one comment was in favor of deregulation, and one comment was unrelated to the petition. APHIS evaluated the issues raised during the initial comment period and, where appropriate, provided a discussion of these issues in our draft environmental assessment (EA).

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our decisionmaking process. According to our public review process (see footnote 1), the second opportunity for public involvement follows one of two approaches, as described below.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its draft EA, preliminary finding of no significant impact (FONSI), and its preliminary plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period.

For this petition, we are following Approach 2. Under this approach, if APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises substantive new issues, APHIS first solicits written comments from the public on a draft EA and preliminary PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and preliminary PPRA and other information, APHIS will revise the preliminary PPRA as necessary. It will then prepare a final EA, and based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement).

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a PPRA to assess the plant pest risk of the article. APHIS also prepares the appropriate environmental documentation—either an EA or an environmental impact statement—in accordance with NEPA. This will provide the Agency and the public with a review and analysis of any potential environmental impacts that may result if the petition request is approved.

APHIS concludes in its preliminary PPRA that DP202216 Maize, which as stated above has been genetically engineered for increased yield and resistance to the herbicide glufosinate-ammonium, is unlikely to pose a plant pest risk. In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

APHIS has also prepared a draft EA in which we present two alternatives based on our analysis of data Pioneer submitted, a review of other scientific data, field tests conducted under APHIS' oversight, and comments received on the petition (see footnote 2). APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of DP202216 Maize, or (2) make

[1] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

[2] To view the notice, its supporting documents, or the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0040.*

a determination of nonregulated status for enhanced grain yield and glufosinate-ammonium resistant DP202216 Maize.

The draft EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Based on APHIS' analysis of field and laboratory data submitted by Pioneer, references provided in the petition, peer-reviewed publications, information analyzed in the draft EA, the preliminary PPRA, comments provided by the public on the petition, and discussion of issues in the draft EA, APHIS has determined that corn designated as event DP202216 Maize is unlikely to pose a plant pest risk.

We are making available for a 30-day review period our preliminary PPRA and draft EA. The draft EA and preliminary PPRA are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. Copies of these documents may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

After the 30-day review period closes, APHIS will review and evaluate any information received during the 30-day review period. APHIS will revise the preliminary PPRA as necessary and prepare a final EA and, based on the final EA, a NEPA decision document (either a FONSI or a notice of intent to prepare an environmental impact statement).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 15th day of July 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–15631 Filed 7–17–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0056]

Notice of Request for Extension of Approval of an Information Collection; South American Cactus Moth; Quarantine and Regulations

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the interstate movement of regulated articles to prevent the spread of South American cactus moth.

DATES: We will consider all comments that we receive on or before September 14, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0056.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0056, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0056* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the interstate movement of regulated articles to prevent the spread of South American cactus moth, contact Dr. Herb Bolton, National Policy Manager, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737; (301) 851–3594; *herbert.bolton@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS Information Collection Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: South American Cactus Moth; Quarantine and Regulations.

OMB Control Number: 0579–0337.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture, either independently or in cooperation with States, may carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests that are new to or not widely distributed within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, which administers regulations to implement the PPA.

In accordance with the regulations in ''Subpart K—South American Cactus Moth'' (7 CFR 301.55 through 301.55–9), APHIS restricts the interstate movement of cactus moth host material, including nursery stock and plant parts for consumption, from infested areas of the United States to help prevent the spread of South American cactus moth into noninfested areas of the United States. The regulations contain requirements for the interstate movement of regulated articles and involve information collection activities, including completion of Federal certificates, compliance agreements, and limited permits.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.41 hours per response.

Respondents: State plant health officials and businesses.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 7.

Estimated annual number of responses: 39.

Estimated total annual burden on respondents: 16 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of July 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–15600 Filed 7–17–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0057]

Notice of Request for Extension of Approval of an Information Collection; Export Certification: Accreditation of Nongovernment Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with accrediting nongovernment facilities to perform services related to the export of plants or plant products.

DATES: We will consider all comments that we receive on or before September 18, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0057.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0057, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0057* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on accrediting nongovernment facilities to perform plant related export services, contact Ms. Sarika Negi, Accreditation and Certification Policy Manager, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 851–2349. For information on the information collection process, contact Mr. Joseph Moxey, APHIS Information Collection Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Certification: Accreditation of Nongovernment Facilities.

OMB Control Number: 0579–0130.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country. This activity is authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

The export certification regulations, which are contained in 7 CFR part 353, describe the procedures for obtaining certification for plants and plant products offered for export or reexport. Our regulations do not require that we engage in export certification activities; however, we perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

After assessing the condition of the plants or plant products intended for export (*i.e.,* after conducting a phytosanitary inspection), an inspector will issue an internationally recognized phytosanitary certificate, a phytosanitary certificate for reexport, or an export certificate for processed plant products. An important component of the certification process, when required, is laboratory testing of plant or plant product samples.

The regulations allow nongovernment facilities (such as commercial laboratories and private inspection services) to be accredited by APHIS to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. The accreditation process requires the use of several information collection activities to ensure that nongovernment facilities applying for accreditation possess the necessary qualifications.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 3.9 hours per response.

Respondents: U.S. growers, shippers, exporters, and State and local plant health regulatory authorities.

Estimated annual number of respondents: 9.

Estimated annual number of responses per respondent: 6.

Estimated annual number of responses: 54.

Estimated total annual burden on respondents: 209 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of July 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–15597 Filed 7–17–20; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a teleconference meeting of the New Mexico Advisory Committee will be held at 2:00 p.m. Mountain Time on Wednesday, August 5, 2020. The purpose of the meeting is to discuss testimony received for the Committee's current project on wage theft and subminimum wages.

DATES: The meeting will be held on Wednesday, August 5, 2020 at 2:00 p.m. MT.

Public Call Information:

Dial: 800–353–6461
Conference ID: 6706904

FOR FURTHER INFORMATION CONTACT: Brooke Peery at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 6706904. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may also be emailed to Brooke Peery at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.* Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion and Debrief of Testimony Received
IV. Public Comment
V. Adjournment

Dated: July 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–15579 Filed 7–17–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alaska Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a teleconference meeting of the Alaska Advisory Committee (Committee) to the Commission will be held at 2:00 p.m. Alaska Time (AKT) on Monday, August 3, 2020. The purpose of this meeting will be to narrow the scope of their project focused on voting rights and to discuss their statement of concern regarding the impact of COVID 19 on civil rights.

DATES: The meeting will be held on Monday, August 3, 2020 at 2:00 p.m. AKT.

Public Call Information:

Dial: 800–437–2398
Conference ID: 9661573

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (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: 800–437–2398, conference ID number: 9661573. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may also be emailed to 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 meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzljAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Discussion Regarding Voting Rights Project
III. Discussion Regarding Statement of Concern
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: July 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–15545 Filed 7–17–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia 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 Georgia Advisory Committee (Committee) will hold a meeting via teleconference on Wednesday, August 12, 2020, at 3:00 p.m. ET for the purpose of discussing civil rights concerns in the state.

DATES: The meeting will be held on Wednesday, August 12, 2020 at 3:00 p.m. ET.

Public Call Information: Dial: 800–353–6461; Conference ID: 3939327.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

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 *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkxAAA* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

Welcome and Roll Call
Discussion: Civil Rights in Georgia
Public Comment
Adjournment

Dated: July 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–15546 Filed 7–17–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the New Hampshire Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of briefings.

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 New Hampshire State Advisory Committee to the Commission will convene web briefings on the following third Mondays of the month: July 20, August 17, and September 21, 2020 at 4:00 p.m. (EDT). The purpose of the briefings is to hear from speakers related to the use of solitary confinement in New Hampshire.

DATES: July 20, August 17, and September 21, 2020 from 4:00 p.m.–5:30 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–800–437–2398; Conference ID: 5226726

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: These briefings are available to the public through the telephone number and conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. 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-in numbers: 1–800–437–2398; Conference ID: 5226726.

Members of the public are entitled to make comments during the open period at the end of each briefing. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the FACA Link (*https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlXAAQ*); click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above phone number or email address.

Agenda

Monday July 20, August 17, September 21, 2020 from 4:00 p.m.–5:30 p.m. (EDT)

I. Welcome and Roll Call
II. Briefing: Solitary Confinement in New Hampshire
III. Discussion: Committee Business
  a. Approval of Minutes
  b. Other Business
  c. Next Steps
IV. Public Comment
V. Adjournment

Dated: July 7, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14947 Filed 7–17–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–907]

Ultra-High Molecular Weight Polyethylene From the Republic of Korea: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

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

DATES: Applicable July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Ian Hamilton, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1791 or (202) 482–4798, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of ultra-high molecular weight polyethylene from the Republic of Korea.[1] Currently, the preliminary determination is due no later than August 11, 2020.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On June 24, 2020, the petitioner[2] submitted a timely request that Commerce postpone the preliminary determination in this LTFV investigation.[3] The petitioner stated that it requests postponement of the preliminary determination to allow Commerce to review supplemental questionnaire responses it has not yet received, to permit a thorough investigation, and ensure the calculation of an accurate dumping margin.[4]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 733(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to September 30, 2020, 190 days after the date on which this investigation was initiated. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless extended.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 11, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–15601 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 17861 (March 31, 2020).

[2] The petitioner is Celanese Corporation.

[3] *See* Petitioner's Letter, ''Petitioners for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Petitioner's Request for Postponement of the Preliminary Determination,'' dated June 24, 2020.

[4] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–113]

Certain Collated Steel Staples From the People's Republic of China: Countervailing Duty Order

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

SUMMARY: Based on the affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing its countervailing duty order on certain collated steel staples (collated staples) from the People's Republic of China (China).

DATES: Applicable July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Joshua Simonidis, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–9068 or (202) 482–0608, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2020, Commerce published its *Final Determination* in the countervailing duty investigation of collated staples from China.[1] On July 13, 2020, the ITC notified Commerce of its final affirmative determination pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Tariff Act of 1930, as amended (the Act) that an industry in the United States is materially injured by reason of subsidized imports of collated staples from China, and of its determination that critical circumstances do not exist with respect to imports of collated staples from China.[2]

Scope of the Order

The product covered by this order is collated staples from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Countervailing Duty Order

On July 13, 2020, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of subsidized imports of collated staples from China.[3] In accordance with section 705(c)(2) of the Act, we are publishing this countervailing duty order.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of collated staples from China entered, or withdrawn from

[1] *See Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 85 FR 33626 (June 2, 2020) (*Final Determination*), and accompanying Issues and Decision Memorandum.

[2] *See* ITC Notification Letter, Investigation Nos. 701–TA–626 and 731–TA–1452 (July 13, 2020).

[3] *Id.*

warehouse, for consumption on or after November 12, 2019, the date on which Commerce published its preliminary countervailing duty determination in the **Federal Register**,[4] and before March 11, 2020, the effective date on which Commerce instructed CBP to discontinue the suspension of liquidation, in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Therefore, entries of collated staples from China made on or after March 11, 2020, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not subject to the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of collated staples from China, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of collated staples from China, entered or withdrawn from warehouse, for consumption on or after August 14, 2019 (*i.e.,* 90 days prior to the date of publication of the *Preliminary Determination*), but before November 12, 2019 (*i.e.,* the date of the publication of the *Preliminary Determination* for this investigation).

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of collated staples from China, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would deposit estimated normal customs duties on this merchandise, a cash deposit equal to the subsidy rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed below.

Company	Subsidy rate (percent)
Zhejiang Best Nail Industrial Co., Ltd	12.32
Hai Sheng Xin Group Co., Ltd	192.64
Ningbo Deli Stationery	192.64
All Others	12.32

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on November 12, 2019.[5] Therefore, entries of collated staples from China made on or after March 11, 2020, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not subject to the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

In accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of collated staples from China entered, or withdrawn from warehouse, for consumption on or after March 11, 2020, the date on which the provisional countervailing duty measures expired, through the day preceding the date of publication of the ITC final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC final injury determination in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to collated staples from China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: July 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by the scope of the order is certain collated steel staples. Certain collated steel staples subject to this order are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel, and are included in the scope of the order regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion.

Certain collated steel staples may be collated using any material or combination of materials, including but not limited to adhesive, glue, and adhesive film or adhesive or paper tape.

Certain collated steel staples are generally made to American Society for Testing and Materials (ASTM) specification ASTM F1667–18a, but can also be made to other specifications.

Excluded from the scope of the order are any carton-closing staples covered by the scope of the existing antidumping duty order on Carton-Closing Staples from the People's Republic of China. *See Carton-Closing Staples from the People's Republic of China:* Antidumping Duty Order, 83 FR 20792 (May 8, 2018).

Also excluded are collated fasteners commonly referred to as ''C-ring hog rings'' and ''D-ring hog rings'' produced from stainless or carbon steel wire having a nominal diameter of 0.050 to 0.081 inches, inclusive. C-ring hog rings are fasteners whose legs are not perpendicular to the crown, but are curved inward resulting in the fastener forming the shape of the letter ''C.'' D-ring hog rings are fasteners whose legs are straight but not perpendicular to the crown, instead intersecting with the crown at an angle ranging from 30 degrees to 75 degrees. The hog rings subject to the exclusion are collated using glue, adhesive, or tape. The hog rings subject to this exclusion have either a 90 degree blunt point or 15–75 degree divergent point.

Certain collated steel staples subject to the order are currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2020–15623 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 84 FR 61021 (November 12, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[5] *See Preliminary Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–112]

Certain Collated Steel Staples From the People's Republic of China: Antidumping Duty Order

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

SUMMARY: Based on the affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on certain collated steel staples (collated staples) from the People's Republic of China (China).

DATES: Applicable July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or William Horn, AD/CVD Operations, Office V, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6478 or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2020, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of collated staples from China.[1] On July 13, 2020, the ITC notified Commerce of its affirmative determination, pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of LTFV imports of collated staples from China, and of its determination that critical circumstances do not exist with respect to imports of collated staples from China.[2]

Scope of the Order

The product covered by this order is collated staples from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Antidumping Duty Order

On July 13, 2020, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of collated staples from China.[3] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this antidumping duty order. Because the ITC determined that imports of collated staples from China are materially injuring a U.S. industry, all unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of collated staples from China. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below, antidumping duties will be assessed on unliquidated entries of collated staples from China entered, or withdrawn from warehouse, for consumption, on or after January 8, 2020, the date of publication of the *Preliminary Determination*.[4]

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of collated staples from China, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of collated staples from China, entered or withdrawn from warehouse, for consumption on or after October 10, 2019 (*i.e.,* 90 days prior to the date of publication of the preliminary determination), but before January 8, 2020 (*i.e.,* the date of publication of the preliminary determination for this investigation).

Continuation of Suspension of Liquidation

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of collated staples from China. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated dumping margins indicated in the tables below, adjusted by the export subsidy offset. Given that the provisional measures period has expired, as explained below, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP must require, at the same time as importers would deposit estimated normal customs duties on this merchandise, a cash deposit equal to the rates noted below.[5]

The China-wide entity rate applies to all exporter-producer combinations not specifically listed.

Estimated Weighted-Average Dumping Margins

The estimated dumping margins are as follows:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Tianjin Heston Fasteners Manufacturing Co., Ltd	Tianjin Hweschun Fasteners Manufacturing Co., Ltd	96.15	85.61
Tianjin Jin Xin Sheng Long Metal Products Co., Ltd	Tianjin Jin Xin Sheng Long Metal Products Co., Ltd	122.55	112.01
China Staple (Tianjin) Co., Ltd	China Staple (Tianjin) Co., Ltd	96.15	85.61
Shanghai Yueda Nails Co., Ltd	Shanghai Yueda Nails Co., Ltd	96.15	85.61
Shijiazhuang Shuangming Trade Co., Ltd	Shijiazhuang Shuangming Trade Co., Ltd	96.15	85.61

[1] *See Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination,* 85 FR 33623 (June 2, 2020).

[2] *See* ITC Notification Letter, Investigation Nos. 701–TA–626 and 731–TA–1452 (July 13, 2020).

[3] *Id.*

[4] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures,* 85 FR 882 (January 8, 2020) (*Preliminary Determination*).

[5] *See* section 736(a)(3) of the Act.

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Tianjin Jinyifeng Hardware Co., Ltd	Tianjin Jinyifeng Hardware Co., Ltd	96.15	85.61
Unicom Fasteners Co., Ltd	Unicom Fasteners Co., Ltd.	96.15	85.61
Zhejiang Best Nail Industrial Co., Ltd	Zhejiang Best Nail Industrial Co., Ltd	96.15	85.61
China-Wide Entity		122.55	112.01

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of collated staples from China, Commerce extended the four-month period to six months in the proceeding. In the underlying investigation, Commerce published the preliminary determination on January 8, 2020.[6] The extended provisional measures period, beginning on the date of publication of the preliminary determination, ended on July 5, 2020. Therefore, in accordance with section 737(b) of the Act and our practice,[7] Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of collated staples from China entered, or withdrawn from warehouse, for consumption after July 5, 2020, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the antidumping duty order with respect to collated staples from China pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

The antidumping duty order is published in accordance with section 736(a) of the Act and § 351.211(b).

Dated: July 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

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Certain collated steel staples subject to this order are currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2020–15622 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Preliminary Determination.*

[7] *See, e.g., Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016).

DEPARTMENT OF COMMERCE

Minority Business Development Agency

President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Advisory Commission on Asian Americans and Pacific Islanders (AAPI Commission) will convene an open meeting to discuss issues related to the draft Commission report to the President. This meeting is open to the public and interested persons may listen to the teleconference by using the call-in number and pass code provided below (see **ADDRESSES**).

DATES: This meeting will be held on Wednesday, August 5, 2020, from 4:00 p.m. to 6:00 p.m., Eastern Time (ET).

ADDRESSES: This meeting will be held by teleconference, beginning at 4:00 p.m. (ET) on Wednesday, August 5, 2020. Advance registration is required to access the teleconference. Interested persons may register at URL: *https://www.mbda.gov/form/second-open-meeting-presidents-advisory-commission-aapis.* Access to the teleconference will be shared the day prior to the open meeting.

FOR FURTHER INFORMATION CONTACT: For information regarding the teleconference, please contact Ms. Tina Wei Smith, Executive Director, Office of the White House Initiative on Asian

Americans and Pacific Islanders; telephone (202) 482–1375; email: *whiaapi@doc.gov.*

SUPPLEMENTARY INFORMATION:

Background. The President, through Executive Order 13872 (May 13, 2019), re-established the President's Advisory Commission on Asian Americans and Pacific Islanders to advise the President, through the Secretary of Commerce and the Secretary of Transportation. The AAPI Advisory Commission provides advice to the President on executive branch efforts to broaden access of AAPI communities, families and businesses to economic resources and opportunities that empower AAPIs to improve the quality of their lives, raise the standard of living of their communities and families, and more fully participate in the U.S. economy.

Public Participation. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), this notice is the public announcement of the Commission's intent to hold a teleconference on August 5, 2020. This meeting is open to the public and interested persons may listen to the teleconference by using the call-in number and pass code to be provided upon registration (see **ADDRESSES**). Prospective agenda items for the meeting include a deliberation of the draft Commission report to the President, discussion regarding ratification of the report, administrative tasks and such other Commission business as may arise during the meeting. The Commission welcomes interested persons to submit written comments at any time before or after the meeting to the Office of the White House Initiative on Asian Americans and Pacific Islanders (see **FOR FURTHER INFORMATION CONTACT**). To facilitate distribution of written comments to Commission members prior to the meeting, the Commission suggests that comments be submitted by facsimile or by email no later than August 4, 2020. The Commission will reserve a portion of the meeting to receive pertinent oral comments from members of the public.

Copies of the Commission open meeting minutes will be made available to the public.

Josephine Arnold,

Chief Counsel, Minority Business Development Agency.

[FR Doc. 2020–15549 Filed 7–17–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Day 8–10 Timeline Forecast Survey and Focus Groups

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 18, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0757 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to James A. Nelson, Jr., Development and Training Branch Chief at the Weather Prediction Center, NOAA/NWS/NCEP/WPC, 5830 University Research Court—College Park, MD 20740, (301) 683–1493, *james.a.nelson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Increasingly, user demand is reflecting a need for probabilistic forecasts in the 8 to 10-day time frame. Improved forecast capability means the NOAA National Weather Service Weather Prediction Center (WPC) can begin to address this user need, but the task is complicated by the range of possible forecast format and delivery needs and options. WPC is seeking user-tested and informed guidance on how to present forecasts at the 8 to 10-day timeframe. WPC is looking to understand how probabilistic forecasts can improve core user decision-making in this range, and for guidance on the format and design of forecasts, based on iterative field-testing of core users. WPC requires a robust understanding of core user needs in this time frame, as well as explanation of the preferred web delivery methods and the optimal mix of design and delivery considerations. WPC also requires information about what products end-users are utilizing and how they are being used. To assess ways to improve guidance products for producing forecasts, the project will include meeting with forecasters, conducting phone interviews and web-based focus groups with core partners and posting an online public survey.

The information will provide WPC staff with the guidance needed to develop 8 to 10-day weather prediction products. Creating easier to use visualizations and communication products will provide the public and decision-makers accurate information that is understandable and will enhance value for a variety of weather-related decision processes. Survey and focus group results will define how to present the probabilistic forecast tools clearly and concisely.

II. Method of Collection

The information collected via the online survey will make use of automated, electronic, mechanical, and other technological techniques. The online survey will use a ''responsive'' web-based survey, meaning that its display will adapt to a desktop or mobile device screen allowing the public to take the survey whenever they have internet access. The focus group data will be collected manually and entered directly into a desktop computer.

III. Data

OMB Control Number: 0648–0757.

Form Number(s): None.

Type of Review: Extension of a current information collection.

Affected Public: Individuals or households and Business or other for-profit organizations.

Estimated Number of Respondents: 775.

Estimated Time per Response: 30 min for survey, 1 hour for interviews, 2 hours for focus groups.

Estimated Total Annual Burden Hours: 485 hours.

Estimated Total Annual Cost to Public: None.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15645 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA287]

Marine Mammals; File No. 23932

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the New York Genome Center, 101 Avenue of the Americas, New York City, NY 10013 [Responsible Party: Catherine Reeves], has applied in due form for a permit to import specimens from southern hemisphere humpback whales (*Megaptera novaeangliae*).

DATES: Written, telefaxed, or email comments must be received on or before August 19, 2020.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23932 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23932 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to import biological samples from up to six individual humpback whales (East Australia distinct population segment) annually. These samples will be used in genetic analyses. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 14, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15565 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA289]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Northeast Trawl Advisory Panel (NTAP) Working Group will hold a meeting.

DATES: The meeting will be held on Monday, August 3, 2020, beginning at 1 p.m. and conclude by 4 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar (*http://www.mafmc.org/ntap*).

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to: (1) Discuss timing concerns due to COVID–19, (2) working group member roles and responsibilities, (3) objectives, approaches, and the implementation plan of NTAP side-by-side research, and (4) develop talking points for a full panel update.

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

Dated: July 15, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–15603 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV183]

Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Phase II Restoration Plan and Environmental Assessment #3.3: Large-Scale Barataria Marsh Creation: Upper Barataria Component

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

ACTION: Notice of availability.

SUMMARY: The *Deepwater Horizon* Federal natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared a Final Phase II Restoration Plan #3.3 and Environmental Assessment (Final RP/EA #3.3). The Final RP/EA #3.3 describes and, in conjunction with the associated Finding of No Significant Impact (FONSI), selects the preferred design alternative considered by the Louisiana TIG to restore natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. The Federal Trustees of the Louisiana TIG have determined that the implementation of the Final RP/EA #3.3 is not a major Federal action significantly affecting the quality of the human environment within the context of the NEPA. They have concluded a FONSI is appropriate, and, therefore, an Environmental Impact Statement will not be prepared.

ADDRESSES: *Obtaining Documents:* You may download the Final RP/EA #3.3 at: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.* Alternatively, you may request a CD of the Final RP/EA #3.3 (see **FOR FURTHER INFORMATION CONTACT** below). Also, you may view the document at any of the public facilities listed in Appendix A of the Final RP/EA #3.3.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Mel Landry, NOAA Restoration Center, 225–425–0583, *mel.landry@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

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

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

The *Deepwater Horizon* Trustees are:

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

The Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are selected and implemented by the Louisiana TIG. The Louisiana TIG is composed of the following Trustees: CPRA, LOSCO, LDEQ, LDWF, LDNR, NOAA, DOI, EPA, and USDA.

This restoration planning activity is proceeding in accordance with the *Deepwater Horizon* Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/EIS). Information on the Restoration Type considered in the Final RP/EA #3.3, as well as the OPA criteria against which project ideas are evaluated can be viewed in the PDARP/PEIS (*http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan*) and in the Overview of the PDARP/PEIS (*http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan*).

Background

On March 20, 2018, the Louisiana TIG completed its Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA #3). In addition to identifying a restoration strategy for the Barataria Basin and confirming its 2018 decision to move forward the Spanish Pass Increment of the Barataria Basin Ridge and Marsh Creation project, the SRP/EA #3 also advanced the Mid-Barataria Sediment Diversion and Large Scale Marsh Creation: Component E in northern Barataria Basin for further evaluation and planning in a future Phase II restoration plan. After approval of the SRP/EA #3, engineering and design (E&D) was initiated for the Large Scale Marsh Creation: Component E. A portion of that project, now identified as Large Scale Barataria Marsh Creation: Upper Barataria Component, is now at a stage of E&D where NEPA analyses can be conducted on the design alternatives. Therefore, tiering from the SRP/EA #3, the Louisiana TIG proposed in RP/EA #3.3 implementation of the Large-Scale Barataria Marsh Creation:

Upper Barataria Component Restoration project.

The RP/EA #3.3 evaluated three design alternatives and the No Action alternative in accordance with the OPA and the NEPA. Prior to finalizing the Draft RP/EA #3.3, public review was solicited. A Notice of Availability was published in the **Federal Register** at 85 FR 16081 on March 20, 2020. The Louisiana TIG hosted a public webinar on April 2, 2020, and the public comment period for the Draft RP/EA #3.3 closed on April 20, 2020.

The Louisiana TIG considered the public comments received on the Draft RP/EA #3.3 which informed the analyses and selection of the preferred design alternative for implementation in the Final RP/EA #3.3. A summary of the public comments received and the Trustees' responses to those comments are included in Chapter 6 of the Final RP/EA #3.3 and all correspondence received are provided in the DWH Administrative Record.

Overview of the Final RP/EA #3.3

The Final RP/EA #3.3 is being released in accordance with the OPA, NRDA implementing regulations, and the NEPA. The analysis focuses on an area (''the Project Area'') in the upper Barataria Basin, 15 miles (24 km) south of New Orleans, in Jefferson and Plaquemines Parishes, Louisiana, from approximately 5.4 miles (8.7 km) west of the Mississippi River to the Mississippi River between river miles (RM) 64 and 67. In the Final RP/EA #3.3, the Louisiana TIG proposes a preferred design alternative to be funded under the DWH Louisiana Restoration Area Wetlands, Coastal and Nearshore Habitats restoration type allocation. The preferred design alternative would include filling of a combination of marsh creation areas (MCAs) for the creation of approximately 1,207 acres (12.1 km^2) of intertidal marsh platform with a design life of 20 years. A total of approximately 10.6 million cubic yards (MCY) of fill (sediment), comprising 8.4 MCY of currently available material to be dredged from the borrow areas and an additional 2.2 MCY expected to accumulate at the borrow areas during the construction time frame. This alternative would require a single construction mobilization and has an estimated time frame of 26 months for an estimated total project cost of approximately $172 million, inclusive of Phase I design, construction, contingency, project management, and monitoring & adaptive management.

The Louisiana TIG has examined the injuries assessed by the DWH Trustees and evaluated restoration alternatives to address the injuries. In Final RP/EA #3.3, the Louisiana TIG presents to the public its plan for providing partial compensation to the public for injured natural resources and ecological services in the Louisiana Restoration Area. The proposed alternative is intended to continue the process of using DWH restoration funding to restore natural resources injured or lost as a result of the *Deepwater Horizon* oil spill. Additional restoration planning for the Louisiana Restoration Area will continue.

Administrative Record

The documents comprising the Administrative Record for the Final RP/EA #3.3 can be viewed electronically at *http://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: July 14, 2020.

Carrie Selberg,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2020–15586 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA295]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments/modifications.

SUMMARY: Notice is hereby given that permits and permit amendments/modifications have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sara Young (Permit Nos. 19108–04 and 23283) and Malcolm Mohead (Permit Nos. 19641–02 and 20314–01); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment/modification had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS

Permit No.	RTID	Applicant	Previous **Federal Register** Notice	Issuance date
19108–04	0648–XD953	Daniel P. Costa, Ph.D., University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA 95064.	84 FR 27767; June 14, 2019.	June 15, 2019.
19641–02	0648–XA109	Connecticut Department of Energy and Environmental Protection, P.O. Box 719, Old Lyme, CT 06371 (Responsible Party: Tom Savoy).	85 FR 21833; April 20, 2020	June 16, 2020.
20314–01	0648–XA143	U.S. Fish and Wildlife Service, Virginia Fisheries Field Office, 11110, Kimages Road, Charles City, VA 23030 (Responsible Party: Albert Spells).	85 FR 23813; April 29, 2020	June 16, 2020.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS—Continued

Permit No.	RTID	Applicant	Previous **Federal Register** Notice	Issuance date
23283	0648–XR098	NMFS Marine Mammal Laboratory, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115 (Responsible Party: John Bengtson, Ph.D.).	85 FR 11966; February 28, 2020.	June 5, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: July 14, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15560 Filed 7–17–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0079: Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards With Counterparties

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the information collections included in Subpart H of Part 23 of the Commission's regulations and Commission regulation 23.605, requiring swap dealers (SDs) and major swap participants (MSPs) to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

DATES: Comments must be submitted on or before September 18, 2020.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0079,'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* 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. 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.*

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496; email: *jchachkin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.

Title: Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards with Counterparties (OMB Control No. 3038–0079). This is a request for an extension of a currently approved information collection.

Abstract: Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111–203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to add sections 4s(h) and 4s(j)(5) (7 U.S.C. 6s(h) and (j)(5)) which provide the Commission with both mandatory and discretionary rulemaking authority to impose business conduct requirements on SDs and MSPs in their dealings with counterparties, including ''Special Entities,'' [1] and require that each SD and MSP implement conflicts of interest systems and procedures. Congress granted the Commission broad discretionary authority to promulgate business conduct requirements, as appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA.[2]

[1] Such entities are generally defined to include Federal agencies, States and political subdivisions, employee benefit plans as defined under the Employee Retirement Income Security Act of 1974 (ERISA), governmental plans as defined under ERISA, and endowments.

[2] See CEA Section 4s(h)(3)(D) (Business conduct requirements adopted by the Commission shall establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the

Continued

Accordingly, the Commission has adopted Subpart H of Part 23 of its regulations (EBCS Rules) and Commission regulation 23.605,[3] requiring swap dealers and major swap participants to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

The recordkeeping and third-party disclosure obligations imposed by the regulations are essential to ensuring that swap dealers and major swap participants develop and maintain procedures and disclosures required by the CEA and Commission regulations.[4]

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

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, 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.[5]

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 ICR 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 Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection based on the current number of registered SDs.[6] The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 107.

Estimated Average Burden Hours per Respondent: 2,352.9 hours.

Estimated Total Annual Burden Hours: 251,765 hours.

Frequency of Collection: Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.)*

Dated: July 15, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–15604 Filed 7–17–20; 8:45 am]

BILLING CODE 6351–01–P

CEA.); see also Sections 4s(h)(1)(D), 4s(h)(5)(B) and 4s(h)(6).

[3] 17 CFR part 23, subpart H and 17 CFR 23.605. Subpart H of Part 23 is titled ''Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, Including Special Entities.'' Subpart H includes the following provisions: § 23.400 (Scope); § 23.401 (Definitions); § 23.402 (General Provisions); § 23.410 (Prohibition on fraud, manipulation and other abusive practices); § 23.430 (Verification of counterparty eligibility); § 23.431 (Disclosures of material information); § 23.432 (Clearing disclosures); § 23.433 (Communications—fair dealing); § 23.434 (Recommendations to counterparties—institutional suitability; § 23.440 (Requirements for swap dealers acting as advisors to Special Entities); § 23.450 (Requirements for swap dealers and major swap participants acting counterparties to Special Entities); and § 23.451 (Political contributions by certain swap dealers). § 23.605 is titled Conflicts of interest policies and procedures.

[4] Reporting under Commission regulation 23.451 (Political contributions by certain swap dealers) is optional and it is unknown how many registrants, if any, will engage in such reporting and how much burden, if any, will be incurred. Nevertheless, the Commission is providing an estimate of the regulation's burden for purposes of the PRA below.

[5] 17 CFR 145.9.

[6] Specifically, the change for the renewal is based solely on the increased number of entities registered as swap dealers (102 previously and 107 currently), since the annual total burden hours has remained the same—at 2,352.9 hours per respondent. And just as before, there are no entities currently registered as MSPs.

CONSUMER PRODUCT SAFETY COMMISSION

CPSC Micromobility Products Forum

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of meeting.

SUMMARY: Consumer Product Safety Commission (CPSC) staff is holding a forum on micromobility products (e-scooters, e-bicycles, and hoverboards). CPSC staff invites interested parties to attend or participate in the forum via webinar.

DATES: The Micromobility Product Forum (Forum) will be held from 9 a.m. to 4 p.m. Eastern Standard Time (EST) on September 15, 2020, via CPSC webinar. All attendees should pre-register for the webinar. Individuals interested in serving on panels or presenting information at the Forum should register by August 3, 2020. All other individuals who wish to attend the Forum should register by August 28, 2020.

ADDRESSES: The Forum will be held via webinar. Attendance is free of charge. Persons interested in serving on a panel, presenting information, or attending the Forum should register online at: *https://attendee.gotowebinar.com/register/2064441241545141776* and fill in the information. After registering, you will receive a confirmation email containing information about joining the webinar. Detailed instructions for the Forum participants and other interested parties will be made available on the CPSC website on the public calendar: *https://cpsc.gov/newsroom/public-calendar.*

FOR FURTHER INFORMATION CONTACT: Lawrence Mella, Directorate for Engineering Sciences, 5 Research Place, Rockville, MD 20850; telephone 301–987–2537; email: *LMella@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC staff is hosting a Micromobility Products Forum to collect information on the product market, hazards, risk, and risk-reduction efforts associated with micromobility products. The information collected from the Forum will assist staff in making recommendations for improving the safety of these consumer products.

I. Background

A. Micromobility Product Descriptions

''Micromobility products'' [1] (e-scooters, e-bicycles, and hoverboards, each discussed in turn) are an emerging mode of personal transportation. Micromobility products can occupy space alongside bicycles on dedicated bike lanes or paths, but they are not intended for sidewalks with pedestrians or for vehicle-occupied roads with cars and trucks.[2] Micromobility products now use electric motors as a propulsion system because of advancements in rechargeable battery technology. These products are popular with consumers because they are convenient for short-distance travel.

An electric standing scooter (e-scooter) has the following characteristics:

- Foot platform for the operator (and passenger) to stand on,
- center column with a handlebar for steering,
- speed controlled by the operator using the accelerator/throttle and brakes,
- powered partially or fully by a motor,
- manufactured primarily for transportation of not more than one person (except for specifically designed vehicles), and
- composed of two or three wheels held in a frame in the longitudinal direction of travel.

CPSC's regulation at 16 CFR 1512.2(a)(2) defines ''bicycle'' as a ''two- or three- wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.'' Staff refers to this product as an ''electric bicycle,'' an ''e-bicycle,'' or ''e-bike.'' E-bicycles can be equipped with an electric motor that provides assistance while pedaling, or full propulsion.

Hoverboards have the following characteristics:

- Foot platforms or footpegs for the operator to stand on,
- may have self-balancing mechanism (not statically stable),
- controlled by the operator via controls on a center column and/or the operator distributing their weight for speed and steering,
- powered solely by a motor,
- manufactured primarily for transportation of not more than one person, and
- one or two wheels in parallel.

B. Micromobility Product Use

Consumers purchase micromobility products for personal transportation, as well as rent and use them through ride-share applications. For example, e-scooters and e-bicycles are increasingly used in ride-sharing programs in cities across the United States, where each product can be used by many different riders, multiple times a day. Some ride-sharing systems offer rental transportation products that have docking stations for drop-off and pickup, while other systems use smartphone applications to provide a dockless option.[3]

C. Relevant Voluntary Standards

ASTM has two voluntary standards related to powered scooters and skateboards for children: ASTM F2641–08(2015), *Standard Consumer Safety Specification for Recreational Powered Scooters and Pocket Bikes* and ASTM F2642–08(2015), *Standard Consumer Safety Specification for Safety Instructions and Labeling for Recreational Powered Scooters and Pocket Bikes.* CPSC staff is involved in ASTM's development of two additional voluntary standards: The *Standard Consumer Safety Specification for Commercial Electric-Powered Scooters for Adults,* and the *Standard Consumer Safety Specification for Self-Balancing Scooters (Hoverboards).* UL has two relevant electrical safety standards: UL 2272, *Standard for Electrical Systems for Personal E-Mobility Devices* and UL 2849, *Standard for Electrical Systems for E-bikes.*

II. Forum Topics

The Micromobility Products Forum will cover three specific micromobility products: E-scooters, e-bicycles, and hoverboards.[4] CPSC staff is interested in safety-related information on these products, including, but not limited to:

A. Research

- Braking performance, such as brake distance, reliability, durability, and variability on level ground versus inclines and various system power levels;
- Product dynamics, such as handling characteristics, stability over various surfaces, and chassis integrity;
- Software integration, such as functionality after power loss or system shut down, speed restriction, brake assist, and application (app) security;
- Battery safety, such as factors related to various battery types, power output, and battery management systems; and
- Human interaction with micromobility products, such as foreseeable uses, expectations, and body positioning in various situations.

B. Injury Data and Statistics

- Information on injury scenarios and severity, and
- Injuries in relation to consumer age.

C. Safety Standards Development

- Existing standards, developing standards, and gaps in the standards.

D. Impact of Micromobility Products on the Urban Infrastructure

- Use of micromobility products in bike lanes, streets, sidewalks, or urban areas;
- Charging products at residential versus commercial locations; and
- Differences between commercial and consumer micromobility products.

E. Safety Gear and Protective Equipment

- Equipment or safety practices that may decrease hazards.

F. Safety Instructions and Labeling

- Warning labels and on-product and point-of-sale warning information relevant to micromobility product usage.

III. Forum Details

A. Forum Time and Place

CPSC staff will hold the Forum from 9 a.m. to 4 p.m. EST on Tuesday, September 15, 2020, via webinar.

B. Forum Registration

If you would like to make a presentation at the Micromobility Products Forum, or wish to be considered as a panel member for a specific topic or topics, you should register online by August 3, 2020. (*See* the **ADDRESSES** portion of this document for the website link and instructions on where to register.) If you would like to attend the Forum, but do not wish to make a presentation or participate on a panel, please register online by September 4, 2020.

When registering online, please indicate whether you would like to

[1] Taxonomy and Classification of Powered Micromobility Vehicles. SAE International, 2019.

[2] Zarif, Rasheq, *et al.,* ''Small Is Beautiful.'' Deloitte Insights, 15 Apr. 2019, *www2.deloitte.com/us/en/insights/focus/future-of-mobility/micro-mobility-is-the-future-of-urban-transportation.html?id=us%3A2ps%3A3gl%3Aconfidence%3Aeng%3Acons%3A42319%3Anonem%3Ana%3AnhRV7UOl%3A1149484916%3A344865936385%3Ab%3AFuture_of_Mobility%3AMicromobility_BMM%3Anb.*

[3] DuPuis, Nicole, and Jason Griess. Micromobility in Cities A History and Policy Overview. National League of Cities (NLC), Micromobility in Cities A History and Policy Overview.

[4] The Forum will not discuss various other categories of micromobility products not described in this notice.

serve on a panel or make a presentation, and if so, submit to the email provided an abstract of your topic of less than one page. Staff will select panelists and individuals to make presentations at the Forum based on considerations such as: The submitted abstract information, the individual's demonstrated familiarity or expertise with the topic to be discussed, the practical utility of the information to be presented, and the individual's viewpoint or ability to represent certain interests (such as large manufacturers, small manufacturers, consumer advocates, and consumers). Staff would like the presentations to represent and address a wide variety of stakeholders and interests.

Although staff will make an effort to accommodate all persons who wish to make a presentation, the time allotted for presentations will depend on the agenda and the number of persons who wish to speak on a given topic. Staff recommends that individuals and organizations with common interests consolidate or coordinate their presentations and request time for a joint presentation. If you have any questions regarding participating in the Forum, or if you wish to make a presentation, you should email an electronic version of the presentation abstract to Lawrence Mella, *LMella@cpsc.gov,* 301–987–2537 by August 3, 2020. Staff will notify those who are selected to make a presentation or participate in a panel at least 2 weeks before the Forum.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2020–15583 Filed 7–17–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0062]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading in Early Elementary School

AGENCY: Institute for Education Sciences, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 19, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Lauren Angelo, 202–245–7474.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading in Early Elementary School.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 22,560.

Total Estimated Number of Annual Burden Hours: 4,660.

Abstract: This study will provide much needed evidence on strategies to support U.S. students' development of foundational reading skills, essential to later learning.

A third of U.S. students fail to develop foundational reading skills by 4th grade that are necessary to succeed academically. In addition, the achievement gap is growing as demonstrated by The Nation's Report Card. To address, the Every Student Succeeds Act (ESSA) promotes the use of evidence-based literacy interventions. And, the Department of Education (ED) has made supporting educators with the knowledge, skills, professional development, or materials necessary to improve reading instruction a key priority. The Individuals with Disabilities Education Act (IDEA) similarly encourages high quality instruction along with better identification of students needing extra support to prevent or mitigate student reading issues.

This study will provide much needed evidence by evaluating two professional development strategies for bolstering core reading instruction and supplemental supports, guided by data, within a MTSS–R framework. MTSS–R is a widely used framework for providing high-quality reading instruction for all students, identifying students needing supplemental or more intensive supports, and providing these additional supports for those who need it.

Dated: July 14, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–15568 Filed 7–17–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Update on Reimbursement for Costs of Remedial Action at Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the Title X claims during fiscal year (FY) 2020.

SUMMARY: This Notice announces the Department of Energy's (DOE) acceptance of claims in FY 2021 from eligible uranium and thorium processing site licensees for reimbursement under Title X of the Energy Policy Act of 1992. The FY 2021 DOE Office of Environmental Management's Congressional Budget Request included $21.284 million for the Title X Uranium and Thorium Reimbursement Program.

DATES: The closing date for the submission of FY 2020 Title X claims is September 12, 2020. The claims will be processed for payment together with any eligible unpaid approved claim balances from prior years, based on the availability of funds from congressional appropriations. If the total approved claim amounts exceed the available funding, the approved claim amounts will be reimbursed on a prorated basis. All reimbursements are subject to the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to Jalena Dayvault, U.S. DOE Department of Energy, Office of Legacy Management, 2597 Legacy Way, Grand Junction, Colorado 81503. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Julia Donkin, Title X Program Lead at (202) 586–5000 or email: *Julia.Donkin@em.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (*e.g.,* statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites. The eligible licensees incurred these costs to remediate byproduct material, generated as an incident of sales to the United States Government of uranium or thorium that was extracted or concentrated from ores processed primarily for their source material contents. To be reimbursable, costs of remedial action must be for work that is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Signing Authority

This document of the Department of Energy was signed on July 15, 2020, by Julia Donkin, Office of Waste Disposal, Office of Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 15, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–15590 Filed 7–17–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1017–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—EQT Amended NRA 911235 eff 7–8–2020 to be effective 7/8/2020.

Filed Date: 7/8/20.

Accession Number: 20200708–5085.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: RP20–1018–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Vol. 2—Amended Non-Conforming Discount Agreement—Empire District Electric Co. to be effective 7/8/2020.

Filed Date: 7/8/20.

Accession Number: 20200708–5086.

Comments Due: 5 p.m. ET 7/20/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 10, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15612 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–471–000]

Texas Eastern Transmission LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bailey East Mine Panel 12J Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Bailey East Mine Panel 12J Project involving construction and operation of facilities by Texas Eastern Transmission LP (Texas Eastern) in Marshall County, West Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into

account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 12, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on June 1, 2020, you will need to file those comments in Docket No. CP20–471–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) under the natural gas Landowner Topics link.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address using the U.S. Postal Service. Be sure to reference the project docket number (CP20–471–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent through carriers other than the U.S. Postal Service must be sent to 12225 Wilkins Avenue, Rockville, Maryland 20852 for processing.

Summary of the Proposed Project

Texas Eastern proposes to excavate and elevate sections of four natural gas transmission pipelines due to longwall mining activities. According to Texas Eastern, its project would allow for safe and efficient operation of Texas Eastern's existing pipeline facilities for the duration of the longwall mining activities planned by CONSOL Energy Inc. in the area beneath Texas Eastern's pipelines. The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 37.7 acres of land for the excavation and elevation of the pipeline segments. Following construction, Texas Eastern would maintain about 15.2 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The proposed pipeline excavation and elevation parallels existing pipeline rights-of-way for 100 percent of the project.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/*

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

natural-gas/environment/environmental-documents). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP20–471). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: July 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15575 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–55–001.

Applicants: The East Ohio Gas Company.

Description: Tariff filing per 284.123(b),(e)/: Amend Operating Statement for The East Ohio Gas Company 4/30/2020 to be effective.

Filed Date: 7/10/20.

Accession Number: 202007105074.

Comments Due: 5 p.m. ET 7/24/2020.

Docket Numbers: RP20–1019–000.

Applicants: Midwestern Gas Transmission Company.

Description: § 4(d) Rate Filing: Operational Flow Orders to be effective 8/8/2020.

Filed Date: 7/9/20.

Accession Number: 20200709–5110.

Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: RP20–1020–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX—2020–07–09 Administrative Change to be effective 6/26/2020.

Filed Date: 7/9/20.

Accession Number: 20200709–5136.

Comments Due: 5 p.m. ET 7/21/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15609 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–489–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

Take notice that on June 30, 2020, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Route 56, Owensboro, Kentucky 42301, filed an

application in the above referenced docket pursuant to sections 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization to abandon by sale to Fort Cobb Fuel Authority, LLC (Fort Cobb) 388 domestic meters associated with farm taps in the State of Oklahoma. Southern Star states that the transfer of ownership of these domestic meters to a local distribution company in Oklahoma will enable Southern Star to better manage its system while ensuring that the domestic users behind these meters receive safe and reliable service from an entity whose primary business is the local distribution of natural gas. Southern Star further states that there will be no change to Southern Star's certificated capacity and no impact on firm shippers as a result of the proposed abandonment by sale, 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://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, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Cindy Thompson, Manager, Regulatory, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, KY 42301, or by calling (270) 852–4655 or (270) 302–9280, or by email at *cindy.thompson@southernstar.com.*

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 final environmental impact statement (FEIS) or 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 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 FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 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.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

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 U.S. Department of Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on August 4, 2020.

Dated: July 14, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15625 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–487–000; PF19–8–000]

Northern Natural Gas Company; Notice of Application

Take notice that on June 29, 2020, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, NE 68124, filed an application in Docket No. CP20–487–000, pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a certificate of public convenience and necessity to construct and operate new facilities as part of its Pipeline and Facilities Construction Project (Project). All relevant information is more fully set forth in the application which is on file with the

[1] Tennessee Gas Pipeline Company, L.L.C., 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director of Certificates and External Affairs for Northern, 1111 South 103rd Street, Omaha, NE 68124, at (402) 398–7103.

Specifically, Northern intends to (1) abandon in-place approximately 79.21 miles of its 14- and 16-inch-diameter South Sioux City to Sioux Falls M561 A-line (A-line) and appurtenances and to replace the abandoned pipeline with approximately 82.23 miles of 12-inch-diameter pipeline 1 and appurtenances in Dakota and Dixon counties, Nebraska, and Lincoln and Union counties, South Dakota; (2) install an approximately 3.15-mile-long 12-inch-diameter tie-over pipeline and appurtenances in Lincoln County, South Dakota; (3) abandon in-place the existing 0.16-mile-long 2-inch-diameter Ponca branch line and replace it with an approximately 1.87-mile-long 3-inch-diameter branch line and appurtenances in Dixon County, Nebraska; (4) abandon in-place the existing 0.06-mile-long 2-inch-diameter Jackson branch line and appurtenances in Dakota County, Nebraska; (5) modify existing and install new above-grade facilities in various counties in Nebraska and South Dakota; and (6) abandon and remove short segments of pipeline in various counties in Nebraska and South Dakota.

On July 23, 2019, the Commission staff granted Northern's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF19–8–000 to staff activities involving the Project. Now, as of the filing of this application on June 29, 2020, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP20–487–000, as noted in the caption of this Notice.

Pursuant to § 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 final environmental impact statement (FEIS) or 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 FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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.

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, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' 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.

Comment Date: 5:00 p.m. Eastern Time on August 4, 2020.

Dated: July 14, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15628 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 13, 2020.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–79–000.

Applicants: Bellevue Solar, LLC, Yamhill Solar, LLC.

Description: Joint Application for Authorization Under Section 203 of the

Federal Power Act, et al. of Bellevue Solar, LLC, et al.

Filed Date: 7/10/20.

Accession Number: 20200710–5162.

Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: EC20–80–000.

Applicants: Peetz Logan Interconnect, LLC, Peetz Table Wind Energy, LLC, Peetz Table Wind, LLC, Northern Colorado Wind Energy, LLC, Northern Colorado Wind Energy Center, LLC, Northern Colorado Wind Energy Center II, LLC, Logan Wind Energy LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Peetz Logan Interconnect, LLC, et al.

Filed Date: 7/10/20.

Accession Number: 20200710–5197.

Comments Due: 5 p.m. ET 7/31/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2901–003; ER10–1852–041; ER10–1951–023; ER10–1966–013; ER11–4462–044; ER12–2225–012; ER12–2226–012; ER14–2138–009; ER17–838–019; ER18–2091–005; ER19–2389–003; ER20–1219–001.

Applicants: Bronco Plains Wind, LLC, Florida Power & Light Company, Grazing Yak Solar, LLC, Limon Wind, LLC, Limon Wind II, LLC, Limon Wind III, LLC, Logan Wind Energy LLC, NextEra Energy Marketing, LLC, NextEra Energy Services Massachusetts, LLC, NEPM II, LLC, Peetz Table Wind, LLC, Titan Solar, LLC.

Description: Notification of Change in Status of the NextEra Entities.

Filed Date: 7/10/20.

Accession Number: 20200710–5204.

Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–1590–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing Concerning Load Management Testing Requirements to be effective 6/17/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5053.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2382–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–07–13_SA 3516 Ameren-Broadlands Wind Farm FSA (J468) to be effective 10/1/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5072.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2383–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Revised ISA, Service Agreement No. 3753; Queue No. AE1–050 to be effective 6/11/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5055.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2384–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Amendment to WMPA, SA No. 4962; Queue No. AB1–001 (consent) to be effective 3/9/2018.

Filed Date: 7/13/20.

Accession Number: 20200713–5054.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2385–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–07–13 SA 3025 Ameren-Broadlands Wind Farm 1st Rev FCA (J468) to be effective 7/9/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5056.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2386–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–07–13_SA 3024 Broadlands-Ameren 2nd Rev GIA (J468) to be effective 7/9/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5070.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2387–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original WMPA, Service Agreement No. 5695; Queue No. AF1–133 to be effective 6/11/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5087.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2388–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Second Revised ISA No. 3754; Queue No. 3754 to be effective 6/11/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5088.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2389–000.

Applicants: Arthur Kill Power LLC.

Description: Section 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5089.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2390–000.

Applicants: Astoria Gas Turbine Power LLC.

Description: Section 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5090.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2391–000.

Applicants: Connecticut Jet Power LLC.

Description: Section 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5091.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2392–000.

Applicants: Devon Power LLC.

Description: Section 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5092.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2393–000.

Applicants: Indian River Power LLC.

Description: Section 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5093.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2394–000.

Applicants: Middletown Power LLC.

Description: Section 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5097.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2395–000.

Applicants: Montville Power LLC.

Description: Section 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5102.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2397–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Section 205(d) Rate Filing: Amendment to Tri-State Rate Schedule FERC No. 250 to be effective 7/14/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5195.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2398–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Section 205(d) Rate Filing: Revisions to Cancelled Rate Schedule No. 333 to be effective 1/1/2018.

Filed Date: 7/13/20.

Accession Number: 20200713–5198.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2399–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original WMPA, Service Agreement No. 5696; Queue No. AF1–140 to be effective 6/11/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5207.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2400–000.

Applicants: Sky River LLC.

Description: Tariff Cancellation: Sky River LLC Notice of Cancellation of Open Access Transmission Tariff to be effective 9/12/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5208.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2401–000.

Applicants: Alabama Power Company.

Description: Section 205(d) Rate Filing: Tri-State Solar Project (Phase 2) LGIA Filing to be effective 6/30/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5211.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: ER20–2402–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original ISA, SA No. 5682; Queue No. AF1–190/AF1–191 to be effective 6/11/2020.

Filed Date: 7/13/20.

Accession Number: 20200713–5212.

Comments Due: 5 p.m. ET 8/3/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15611 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–10–000]

Commission Information Collection Activities (FERC Form Nos. 2 and 2A); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC Form No. 2 (Annual Report for Major Natural Gas Companies) and FERC Form No. 2–A (Annual Report for Non-Major Natural Gas Companies).[1]

DATES: Comments on the collection of information are due August 19, 2020.

ADDRESSES: You may submit written comments on FERC Form Nos. 2 and 2–A to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control numbers (1902–0028 and 1902–0030) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments to the Commission (identified by Docket No. IC20–10–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Express Services:* 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.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC Form No. 2, Annual Report for Major Natural Gas Companies; OMB Control No. 1902–0028.

FERC Form No. 2–A, Annual Report for Non-Major Natural Gas Companies; OMB Control No. 1902–0030.

OMB Control Nos.: 1902–0028, 1902–0030.

Type of Request: Three-year extension of the FERC Form No. 2 and FERC Form No. 2–A information collection requirements without a change to the current reporting and recordkeeping requirements.

Abstract: Pursuant to sections 8, 10 and 14 of the Natural Gas Act (NGA), (15 U.S.C. 717g, 717i, and 717m), the Commission is authorized to conduct investigations and collect and record data, and to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

The Commission collects FERC Form Nos. 2 and 2–A information as prescribed in 18 CFR 260.1 and 18 CFR 260.2. These forms provide information concerning a company's current performance, compiled using the Commission's Uniform System of Accounts (USofA).[2] FERC Form No. 2 is filed by ''Major'' natural gas companies that have combined natural gas transported or stored for a fee that exceeds 50 million Dekatherms in each of the three previous calendar years. FERC Form No. 2–A is filed by ''Non-Major'' natural gas companies that do not meet the filing threshold for the FERC Form No. 2, but have total gas sales or volume transactions that

[1] FERC Form Nos. 2 and 2–A are part of the ''Forms Refresh'' effort, which is a separate activity and not addressed here. See Revisions to the Filing Process for Commission Forms, 166 FERC ¶ 61,027 (2019) (started in Docket No. AD15–11–000 and ongoing in Docket No. RM19–12–000). OMB issued its decisions on the proposed changes in the Forms Refresh Notice of Proposed Rulemaking in Docket No. RM19–12–000 on March 14, 2019.

[2] *See* 18 CFR part 201 (Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act).

exceeds 200,000 Dekatherms in each of the three previous calendar years.

The forms provide information concerning a company's financial and operational information. The forms contain schedules which include a basic set of financial statements: Comparative Balance Sheet, Statement of Income and Retained Earnings, Statement of Cash Flows, and the Statement of Comprehensive Income and Hedging Activities. Supporting schedules containing supplementary information are filed, including revenues and the related quantities of products sold or transported; account balances for various operating and maintenance expenses; selected plant cost data; and other information.

The information collected assists the Commission in the administration of its jurisdictional responsibilities and is used by Commission staff, state regulatory agencies, customers, financial analysts and others in the review of the financial condition of regulated companies. The information is also used in various rate proceedings, industry analyses and in the Commission's audit programs and as appropriate, for the computation of annual charges. The information is made available to the public, interveners and all interested parties to assist in the proceedings before the Commission. For financial information to be useful to the Commission, it must be understandable, relevant, reliable and timely. The Form Nos. 2 and 2–A financial statements are prepared in accordance with the Commission's USofA and related regulations, and provide data that enables the Commission to develop and monitor cost-based rates, analyze costs of different services and classes of assets, and compare costs across lines of business. The use of the USofA permits natural gas companies to account for similar transactions and events in a consistent manner, and to communicate those results to the Commission on a periodic basis. Comparability of data and financial statement analysis for a particular entity from one period to the next, or between entities, within the same industry, would be difficult to achieve if each company maintained its own accounting records using dissimilar accounting methods and classifications to record similar transactions and events.

In summary, without the information collected in the forms, it would be difficult for the Commission to ensure, as required by the NGA, that a pipeline's rates remain just and reasonable, respond to Congressional and outside inquires, and make decisions in a timely manner.

On April 30, 2020, the Commission published a Notice in the **Federal Register** in Docket No. IC20–10–000 requesting public comments.[3] The Commission received no public comments.

Type of Respondent: Major and Non-Major Natural Gas Companies.

Estimate of Annual Burden:[4] The Commission estimates the annual public reporting burden and cost[5] for the information collection as shown in the following table:

Information collection (FERC form No.)	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & cost[6]	Annual cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
2	100	1	100	1,671.66 hrs.; $133,733	167,166 hrs.; $13,373,280	$133,733
2–A	81	1	81	296 hrs.; $23,680	23,976 hrs.; $1,918,080	23,680

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

Dated: July 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15577 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–13–000]

Equitrans, L.P.; Notice of Request for Extension of Time

Take notice that on July 10, 2020, Equitrans L.P. (Equitrans) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until December 1, 2020, to complete the complete the abandonment of the Pratt Compressor Station facilities located in Greene County, Pennsylvania, as authorized as part of the Equitrans Expansion Project in the October 13, 2017 Order Issuing Certificates and Granting Abandonment[1] (October 13 Order).

On July 31, 2019, Equitrans placed the Redhook Compressor Station and the H–305 and H–316 pipelines into service as part of the Project. On August 29, 2019, Equitrans placed the M–80 and H–158 pipelines into service. The old Pratt Compressor Station facilities have since been decommissioned, dismantled, and are no longer available for service. The remaining Project facilities (Webster Interconnect, Mobley Tap, and H–319 Pipeline in Wetzel County, West Virginia) are complete and awaiting service. Equitrans has not requested authorization to commence service on

[3] 85 FR 23954.

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[5] The Commission staff believes the FERC FTE (full-time equivalent) average cost for wages plus benefits is representative of the corresponding cost for the industry respondents. Based upon the FERC's 2019 average cost for salary plus benefits, the average hourly cost is $80/hour.

[6] Every figure in this column is rounded to the nearest dollar.

[1] *Equitrans, L.P.,* 162 FERC ¶ 61,191 at P 5 (2018) (Granting Equitrans' requested clarification that the Pratt Compressor Station facilities must be abandoned within one year of placing the Redhook Compressor Station into service).

those facilities because they are directly associated with natural gas deliveries to the Mountain Valley Pipeline Project.

On March 5, 2020, the Commission granted Equitrans' request for a variance to abandon-in-place several existing facilities that were approved for removal at the Pratt Compressor Station in order to reduce ground disturbance. Specifically, the variance permits Equitrans to abandon-in-place the H–117 pipeline receiver; the D–497 pipeline pig launcher and associated appurtenances; five buildings, including storage buildings, an office building, an electronics building, and the main water service building; a garage; and the foundation floor of the building housing the old Pratt compressor units.

Equitrans has experienced delays related to extra safety precautions taken due to the age of the building and equipment, safeguards taken with removal of the compressor building to ensure safety in direct vicinity of remaining equipment at the station, and the inefficiencies directly related to the newly developed processes as it relates to the COVID–19 pandemic. To date, the following facilities remain to be removed from the site: (a) 2,200 linear feet of piping; (b) six vessels; (c) five coolers; (d) compressor building basement; and (e) five compressors. Thus, Equitrans seeks additional time until December 1, 2020 to complete this work.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Equitrans' request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[2]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[3] the Commission will aim to issue an order acting on the request within 45 days.[4] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[5] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[6] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[7] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

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 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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' 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.

Comment Date: 5:00 p.m. Eastern Time on July 29, 2020.

Dated: July 14, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15627 Filed 7–17–20; 8:45 am]

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[2] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 39 (2020).

[3] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[4] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[5] *Id.* at P 40.

[6] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[7] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

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: EC20–81–000.

Applicants: Fowler Ridge Wind Farm LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Fowler Ridge Wind Farm LLC.

Filed Date: 7/13/20.

Accession Number: 20200713–5225.

Comments Due: 5 p.m. ET 8/3/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–208–000.

Applicants: Reloj del Sol Wind Farm LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Reloj del Sol Wind Farm LLC.

Filed Date: 7/14/20.

Accession Number: 20200714–5029.

Comments Due: 5 p.m. ET 8/4/20.

Docket Numbers: EG20–209–000.

Applicants: Wildcat Creek Wind Farm LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wildcat Creek Wind Farm LLC.

Filed Date: 7/14/20.

Accession Number: 20200714–5030.

Comments Due: 5 p.m. ET 8/4/20.

Docket Numbers: EG20–210–000.

Applicants: Copper Mountain Solar 5, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 7/14/20.

Accession Number: 20200714–5077.

Comments Due: 5 p.m. ET 8/4/20.

Docket Numbers: EG20–211–000.

Applicants: Battle Mountain SP, LLC.

Description: Self-Certification of EG of Battle Mountain SP, LLC.

Filed Date: 7/14/20.

Accession Number: 20200714–5082.

Comments Due: 5 p.m. ET 8/4/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1421–005.
Applicants: Diamond State Generation Partners, LLC.
Description: Report Filing: Refund Report [ER14–1421 and EL19–74] to be effective N/A.
Filed Date: 7/14/20.
Accession Number: 20200714–5090.
Comments Due: 5 p.m. ET 8/4/20.
Docket Numbers: ER19–1904–001.
Applicants: Nevada Power Company.
Description: Compliance filing: OATT Revision Attachment N 07.13.20 to be effective 5/22/2019.
Filed Date: 7/13/20.
Accession Number: 20200713–5240.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER19–2165–002.
Applicants: Western Interconnect LLC.
Description: Compliance filing: Order Nos. 845 and 845–A Compliance (ER19–2165-) Filing to be effective 5/22/2019.
Filed Date: 7/13/20.
Accession Number: 20200713–5204.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–1683–001.
Applicants: Wabash Valley Power Association, Inc.
Description: Tariff Amendment: Filing of Distributed Generation Policy D–11—Response to Deficiency Letter to be effective 7/14/2020.
Filed Date: 7/14/20.
Accession Number: 20200714–5028.
Comments Due: 5 p.m. ET 8/4/20.
Docket Numbers: ER20–1747–001.
Applicants: South Fork Wind, LLC.
Description: Compliance filing: South Fork Compliance Filing to be effective 7/8/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5193.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–1748–001.
Applicants: Ewington Energy Systems, LLC.
Description: Compliance filing: Ewington Energys Compliance Filing to be effective 7/8/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5201.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2403–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5694; Queue No. AF1–022 to be effective 6/11/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5215.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2404–000.
Applicants: Midwest Generation, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5219.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2405–000.
Applicants: Oswego Harbor Power LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5221.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2406–000.
Applicants: Vienna Power LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/14/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5223.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2407–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: City of Seattle Tolt River Agreements to be effective 7/1/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5224.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2408–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–13 SA 3524 Ameren-Broadlands Wind Farm FSA for FCA (J468) to be effective 10/1/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5227.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2409–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) Rate Filing: Interconnection Agreement with OVEC to be effective 9/11/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5235.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2410–000.
Applicants: Kentucky Utilities Company.
Description: § 205(d) Rate Filing: KU Concurrence OVEC IA to be effective 9/11/2020.
Filed Date: 7/13/20.
Accession Number: 20200713–5244.
Comments Due: 5 p.m. ET 8/3/20.
Docket Numbers: ER20–2411–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–14_SA 2959 NSP-Stoneray Power Partners 2nd Rev GIA (J426) to be effective 12/31/9998.
Filed Date: 7/14/20.
Accession Number: 20200714–5037.
Comments Due: 5 p.m. ET 8/4/20.
Docket Numbers: ER20–2412–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–14_SA 3513 NSP-Stoneray Power Partners FSA (J426) to be effective 6/30/2020.
Filed Date: 7/14/20.
Accession Number: 20200714–5038.
Comments Due: 5 p.m. ET 8/4/20.
Docket Numbers: ER20–2413–000.
Applicants: Ohio Valley Electric Corporation.
Description: § 205(d) Rate Filing: Certificate of Concurrence for Transmission Interconnection Agreement to be effective 9/11/2020.
Filed Date: 7/14/20.
Accession Number: 20200714–5039.
Comments Due: 5 p.m. ET 8/4/20.
Docket Numbers: ER20–2414–000.
Applicants: Moss Landing Energy Storage 1, LLC.
Description: Baseline eTariff Filing: Baseline New to be effective 9/13/2020.
Filed Date: 7/14/20.
Accession Number: 20200714–5045.
Comments Due: 5 p.m. ET 8/4/20.
Docket Numbers: ER20–2415–000.
Applicants: Moss Landing Energy Storage 2, LLC.
Description: Baseline eTariff Filing: Baseline New to be effective 9/13/2020.
Filed Date: 7/14/20.
Accession Number: 20200714–5046.
Comments Due: 5 p.m. ET 8/4/20.
Docket Numbers: ER20–2416–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2020–07–14 NSP–SHKP–SISA–678–0.0.0 to be effective 7/15/2020.
Filed Date: 7/14/20.
Accession Number: 20200714–5068.
Comments Due: 5 p.m. ET 8/4/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 14, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15607 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14851–001]

White Pine Waterpower, 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.:* 14851–001.

c. *Date Filed:* May 15, 2020.

d. *Submitted By:* White Pine Waterpower, LLC.

e. *Name of Project:* White Pine Pumped Storage Project.

f. *Location:* About 8 miles northeast of the city of Ely, in White Pine County, Nevada. The project would occupy approximately 916.33 acres of Bureau of Land Management land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Matthew Shapiro, Chief Executive Officer, White Pine Waterpower, LLC, c/o rPlus Energies, 800 W. Main St., Ste. 1220, Boise, ID 83702; (208) 246–9925; *mshapiro@gridflexenergy.com.*

i. *FERC Contact:* Shannon Boyle at (202) 502–8417 or *shannon.boyle@ferc.gov.*

j. White Pine Waterpower, LLC (White Pine) filed its request to use the Traditional Licensing Process on May 15, 2020. White Pine provided public notice of its request on May 15, 2020. In a letter dated July 13, 2020, the Director of the Division of Hydropower Licensing approved White Pine's request to use the Traditional Licensing Process.

k. With this notice, we are designating White Pine Waterpower, LLC 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.

l. White Pine 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.

m. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. 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).

n. The applicant states its unequivocal intent to submit an application for an original license for Project No. 14851–001.

o. Register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15576 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–193–000]

Columbia Gulf Transmission, LLC; Notice of Request for Extension of Time

Take notice that on July 7, 2020, Columbia Gulf Transmission, LLC (Columbia Gulf) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until November 15, 2021, in order to place the replacement facilities of the Mainline 100 and Mainline 200 Replacement Project (Project) into service, in Menifee and Montgomery Counties, Kentucky, as authorized as part of Columbia Gulf's Project in the November 15, 2019 Order Granting Certificate and Approving Abandonment [1] (November 15 Order). The November 15 Order required Columbia Gulf to complete construction and make the facilities available for service within one year of the order date. Columbia Gulf states that, due to increased population density in the area along certain discrete sections of Mainline 100 and Mainline 200, Columbia Gulf is required, pursuant to Part 192 of the U.S. Department of Transportation (DOT) regulations,[2] to remediate the pipelines to allow continued operation at the current maximum allowable operating pressures (MAOP). Columbia Gulf states that, as provided by 49 CFR 190.341 Special Permit, an operator of a pipeline may submit an application for a special permit, and provided that certain conditions are met, the DOT may waive compliance from the regulations for specific natural gas transmission pipeline segments. If granted, the special permit allows the operator to continue to operate each special permit segment at its current MAOP without first performing remediation work.

Columbia Gulf states that, on October 15, 2019, Columbia Gulf applied for a special permit under the circumstances that the class location changed due to development usage of land near the pipeline. Columbia Gulf anticipates that a determination from DOT on its special permit application may not be received until after the November 15, 2020 in-service deadline stipulated in the November 15 Order. If the Commissions grants Columbia Gulf's request for an extension of time, Columbia would take one of the following actions based on whether it receives a special permit from DOT. If Columbia Gulf received the special permit, Columbia Gulf would submit a motion to vacate the authorization granted in the November 15 Order. If Columbia Gulf doesn't obtain the special permit, Columbia Gulf would notify the Commission of its intent to begin construction of the Project and submit a revision to its Implementation Plan reflecting an updated construction schedule.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Columbia Gulf's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[3]

As a matter of practice, the Commission itself generally acts on

[1] *Columbia Gulf Transmission, LLC,* 169 FERC ¶ 62,084 (2019).

[2] 49 CFR 192.611 (2020).

[3] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 39 (2020).

requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[7] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[8] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

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 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.

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.

Comment Date: 5:00 p.m. Eastern Time on July 29, 2020.

Dated: July 14, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15624 Filed 7–17–20; 8:45 am]

BILLING CODE 6717–01–P

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[6] *Id.* at P 40.

[7] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1202; FRS 16928]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 18, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1202.

Title: Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies.

Form Number: Not Applicable (annual on-line certification).

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents and Responses: 200 respondents; 200 responses.

Estimated Time per Response: 834 hours (average). Varies by respondent.

Total Annual Burden: 166,350 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation To Respond: Mandatory. The statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3),301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not consider the fact of filing a certification to be confidential or the responses provided on the face of the certification. The Commission will treat as presumptively confidential and exempt from routine public disclosure under the federal Freedom of Information Act: (1) Descriptions and documentation of alternative measures to mitigate the risks of nonconformance with certification standards; (2) information detailing specific corrective actions taken; and (3) supplemental information requested by the Commission or Bureau with respect to a certification.

Needs and Uses: This is a renewal of an information collection necessary to ensure that all Americans have access to

reliable and resilient 911 communications, particularly in times of emergency, by requiring certain 911 service providers to certify implementation of key best practices or reasonable alternative measures. The information will be collected in the form of an electronically-filed, annual certification from each covered 911 service provider, as defined in the Commission's 2013 *Report and Order,* in which the provider will indicate whether it has implemented certain industry-backed best practices. Providers that are able to respond in the affirmative to all elements of the certification will be deemed to satisfy the ''reasonable measures'' requirement in Section 9.19(b) of the Commission's rules. If a provider does not certify in the affirmative with respect to one or more elements of the certification, it must provide a brief explanation of what alternative measures it has taken, in light of the provider's particular facts and circumstances, to ensure reliable 911 service with respect to that element(s). Similarly, a service provider may also respond by demonstrating that a particular certification element is not applicable to its networks and must include a brief explanation of why the element(s) does not apply.

The information will be collected by the Public Safety and Homeland Security Bureau, FCC, for review and analysis, to verify that covered 911 service providers are taking reasonable measures to maintain reliable 911 service. In certain cases, based on the information included in the certifications and subsequent coordination with the provider, the Commission may require remedial action to correct vulnerabilities in a service provider's 911 network if it determines that (a) the service provider has not, in fact, adhered to the best practices incorporated in the FCC's rules, or (b) in the case of providers employing alternative measures, that those measures were not reasonably sufficient to mitigate the associated risks of failure in these key areas. The Commission delegated authority to the Bureau to review certification information and follow up with service providers as appropriate to address deficiencies revealed by the certification process.

The purpose of the collection of this information is to verify that covered 911 service providers are taking reasonable measures such that their networks comply with accepted best practices, and that, in the event they are not able to certify adherence to specific best practices, that they are taking reasonable alternative measures. The Commission adopted these rules in light of widespread 911 outages during the June 2012 derecho storm in the Midwest and Mid-Atlantic states, which revealed that multiple service providers did not take adequate precautions to maintain reliable service.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–15665 Filed 7–17–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–1215; Docket No. CDC–2020–0075]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS)

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Awardee Lead Profile Assessment (ALPA).'' The ICR includes a survey to collect information to identify jurisdictional legal frameworks governing funded childhood lead poisoning prevention programs in the United States, and strategies for implementing childhood lead poisoning prevention activities in the United States.

DATES: CDC must receive written comments on or before September 18, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0075 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Awardee Lead Profile Assessment (ALPA) (OMB Control No. 0920–1215, Exp. 02/28/2021)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is requesting Paperwork Reduction Act (PRA) clearance for a three-year revised information collection request (ICR) titled ''Awardee Lead Profile Assessment (ALPA)'' (OMB Control No. 0920–1215; expiration date of 02/28/2021). The goal of this ICR is to build on the CDC's existing childhood lead poisoning prevention program. Based on program successes over the past three years, CDC has made ALPA an annual reporting requirement for ongoing and new CDC Childhood Lead Poisoning Prevention Programs (CLPPPs), including the FY17 ''Lead Poisoning Prevention—Childhood Lead Poisoning Prevention—financed partially by Prevention and Public Health Funds'' (CDC–RFA–EH17–1701PPHF17); the FY18 ''Childhood Lead Poisoning Prevention Projects, State and Local Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children'' (CDC–RFA–EH18–1806); and the FY20 ''Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children'' (CDC–RFA–EH20–2001). This annual information collection will be used to (1) identify common characteristics of funded childhood lead poisoning prevention programs, and (2) inform guidance and resource development in support of the ultimate program goal, which is blood lead elimination in children.

The dissemination of these ALPA results will ensure that both funded and non-funded jurisdictions are able to (1) identify policies and other factors that support or hinder childhood lead poisoning prevention efforts; (2) understand what strategies are being used by funded public health agencies to implement childhood lead poisoning prevention activities; and (3) use this knowledge to develop and apply similar strategies to support the national agenda to eliminate childhood lead poisoning.

This program management information collection has been revised in several ways. Due to an increase in funding and program growth, CDC is requesting an increase in the number of respondents from 48 to a maximum of 61 recipients, defined as state and local governments, or their bona fide agents.

CDC will continue to use two data collection modes, a web survey and an email survey. We anticipate that most of the respondents (n = 60; 98 percent) will use the web survey. The estimates of the number and percentage of respondents by mode of data collection are based on previous data collections. In the past, respondents only used the email survey if they had technical difficulties with the web survey, which was rare. For this purpose, we estimate that only 2% (n = 1) of the respondents may need to submit an email survey. This represents a change in distribution from the 2018 estimates, which were initially assumed as 83.3% for the web survey and 16.7% for the email survey.

A redistribution by mode of collection will not affect the total time burden requested as the time per response is the same for either mode; however, the time to take the survey has increased from seven minutes in 2018 to 47 minutes per response due to a revision of the survey. This revised time estimate per response is based on pilot tests of the revised survey among nine respondents, and includes the time needed to review the ALPA Training Manual, which is a new addition in this revision ICR. Thus, CDC is requesting an increase in the total annual time burden from six hours in 2018 to 48 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State or Local Governments (or their bona fide fiscal agents).	ALPA Web Survey	60	1	47/60	47
	ALPA Email Survey	1	1	47/60	1
Total					48

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15660 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20KH]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Injection Drug Use Surveillance Project to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 9, 2020, to obtain comments from the public and affected agencies. CDC received one non-substantive comment that was not related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Injection Drug Use Surveillance Project—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of the Injection Drug Use (IDU) Surveillance Project (IDU–SP) is to develop a surveillance system to monitor drug use risk and prevention behaviors and the infectious disease consequences of high-risk drug use in 6–30 select urban and non-urban areas of the U.S. that have been impacted by the opioid crisis. Such a surveillance system is needed to inform prevention efforts and policy. The specific objectives of the project are to assess the following among persons who use drugs (*i.e.,* via injecting and non-injecting routes of administration) who are recruited in syringe services programs (SSPs) and through peer-driven recruitment: (1) Drug use and sex risk behaviors, injection risk networks, receipt of prevention services, and barriers to prevention and care; and (2) the prevalence of HIV and Hepatitis C (HCV) infections.

The project will involve a two-stage sampling approach. First, 6–30 SSPs will be selected to ensure geographic diversity and representation of key program characteristics, such as syringe distribution model (needs-based vs all other) and length in operation (<5 years, 5 years or longer). Second, SSP clients and their drug using peers will be recruited through a combination of random recruitment at SSP and social network strategy to partake in a survey and HCV and HIV testing. Clients of SSPs and their peers who meet eligibility criteria will complete a survey using the Research Electronic Data Capture (REDCap) system, a secure web-based application for administering online surveys. The survey will include questions on drug use and sex risk behaviors, risk networks, transitions from non-injection drug use to drug injection, drug treatment history, history of drug use related adverse health outcomes, such as overdose, experiences with law enforcement, experiences with violence and access, HIV and HCV testing experience, and use of prevention and health care services. Lastly, participants will be offered anonymous HIV and HCV testing in conjunction with the survey, which they may refuse with no effect on participation in the survey.

Approximately 10,500 individuals will complete the eligibility screening form. Our target population is 300 participants per site or 9,000 for up to 30 sites. We anticipate that, on average, 16.66% or 1,499 persons (for up to 30 SSPs) will not be interested in completing a survey, yielding a maximum of 10,499 eligible participants. The total annualized burden is 6,125 hours. There are no other costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Persons Screened	Eligibility Screening Form	10,499	1	5/60
Persons who give permission	Model Project Permission Form	9,000	1	5/60
Eligible Participants	IDU Survey	9,000	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15654 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH), Safety and Occupational Health Study Section (SOHSS); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Safety and Occupational Health Study Section, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through June 30, 2022.

FOR FURTHER INFORMATION CONTACT: Joanne Fairbanks, Designated Federal Officer, Safety and Occupational Health Study Section, Department of Health and Human Services, 1600 Clifton Road NE, Mailstop E74, Atlanta, Georgia 30329–4027, telephone (304) 285–6143 or fax (304) 285–6147.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–15617 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-20–0109; Docket No. CDC–2020–0080]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Respiratory Protective Devices—42 CFR part 84—Regulation. The purpose of the data collection is to enable 42 CFR part 84 respirator approval certification activities.

DATES: CDC must receive written comments on or before September 18, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0080 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Respiratory Protective Devices—42 CFR part 84—Regulation (OMB Control No. 0920–0109, Exp. 10/31/20)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 *et seq.,* and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have, as their basis, the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters.

Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators. These regulations also establish methods for respirator manufacturers to submit respirators for testing under the regulation and have them certified as NIOSH-approved if they meet the criteria given in the above regulation. This data collection was formerly named Respiratory Protective Devices 30 CFR part 11 but in 1995, the respirator standard was moved to 42 CFR part 84.

NIOSH, in accordance with 42 CFR part 84: (1) Issues certificates of approval for respirators which have met specified construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged applicants for testing and certification, and (5) establishes approval labeling requirements. Information is collected from those who request services under 42 CFR part 84 in order to properly establish the scope and intent of request.

Information collected from requests for respirator approval functions includes contact information and information about factors likely to affect respirator performance and use. Such information includes, but is not necessarily limited to, respirator design, manufacturing methods and materials, quality assurance plans and procedures, and user instruction and draft labels, as specified in the regulation.

The main instrument for data collection for respirator approval functions is the Standard Application Form for the Approval of Respirators (SAF), currently Version 9. Respirator manufacturers are the respondents (estimated to average 140 each year over the years 2020–2023) and upon

completion of the SAF, their requests for approval are evaluated. A total of 375 applications were submitted in CY2019. To date, 300 applications have been submitted in CY2020. The increased submission rate is due to the publication of a new respirator class, PAPR100, as well certification requests due to COVID–19. No survey was conducted to more thoroughly analyze the reasons for the change in number of respondents. The applications are submitted at will, and taking into account both historical conditions, as well as the current situation, our prediction of the number of respondents each year between CY2020 and CY2022 is 140. A $200 fee is required for each application. Respondents requesting respirator approval or certain extensions of approval are required to submit additional fees for necessary testing and evaluation as specified in 42 CFR parts 84.20–22, 84.66, 84.258 and 84.1102.

Applicants are required to provide test data that shows the manufacturer is capable of ensuring the respirator is capable of meeting the specified requirements in 42 CFR part 84. The requirement for submitted test data is likely to be satisfied by standard testing performed by the manufacturer, and is not required to follow the relevant NIOSH Standard Test Procedures. As additional testing is not required, providing proof that an adequate test has been performed is limited to providing existing paperwork.

42 CFR part 84 approvals offer corroboration that approved respirators are produced to certain quality standards. Although 42 CFR part 84 Subpart E prescribes certain quality standards, it is not expected that requiring approved quality standards will impose an additional cost burden over similarly effective quality standards that are not approved under 42 CFR part 84.

Manufacturers with current approvals are subject to site audits by the Institute or its agents. Audits may occur periodically, typically every second year, or as a result of a reported issue. Sixty-four site audits from 90 respirator approval holders were scheduled for the 2020 fiscal year. There is an average fee of $12,656 for each audit to align with fee collection provisions of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), and OMB Circular A–25 Revised. It is estimated that the average over the next three years (FY21–FY23) will be 70.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Business or other for-profit	Standard Application Form for the Approval of Respirators.	140	4	229	128,240
Business or other for-profit	Audit	70	1	24	1,680
Total					129,920

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15658 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Breast Cancer in Young Women (ACBCYW); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Advisory Committee on Breast Cancer in Young Women (ACBCYW), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through June 17, 2022.

FOR FURTHER INFORMATION CONTACT: Jeremy McCallister, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE, Mailstop S107–4, Atlanta, Georgia 30341, Telephone (404) 639–7989, Fax (770) 488–4760; Email: *acbcyw@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–15616 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0083]

Advisory Committee on Immunization Practices (ACIP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC, announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public comment. The meeting will be webcast live via the World Wide Web.

DATES: The meeting will be held on August 26, 2020 from 10:00 a.m. to 4:00 p.m., EDT (times subject to change).

Written comments must be received on or before August 27, 2020.

ADDRESSES: For more information on ACIP please visit the ACIP website:

http://www.cdc.gov/vaccines/acip/index.html.

You may submit comments, identified by Docket No. CDC–2020–0083, by either of the following methods below. CDC does not accept comment by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket No. CDC–2020–0083, c/o Attn: August ACIP Meeting, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24–8, Atlanta, GA 30329–4027.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MS–H24–8, Atlanta, GA 30329–4027; Telephone: 404–639–8367; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the Director of the Centers for Disease Control and Prevention and appear on CDC immunization schedules must be covered by applicable health plans.

Matters to be Considered: The agenda will include discussions on COVID–19 vaccines. No recommendation votes are scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit *https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html.*

Meeting Information: The meeting will be webcast live via the World Wide Web; for more information on ACIP please visit the ACIP website: *http://www.cdc.gov/vaccines/acip/index.html.*

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Comments received are part of the public record and are subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket. CDC does not accept comment by email.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the August ACIP meeting must submit a request at *http://www.cdc.gov/vaccines/acip/meetings/* no later than 11:59 p.m., EDT, August 19, 2020 according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by August 20, 2020. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

Written Public Comment: Written comments must be received on or before August 27, 2020. Written public comments submitted by 72 hours prior to the ACIP meeting will be provided to ACIP members before the meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–15614 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20QD; Docket No. CDC–2020–0076]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Reducing Fatigue Among Taxi Drivers'' with the goal of evaluating two interventions, a training and a wrist-device that provides personalized daily fatigue scores, designed to enable taxi drivers to reduce their fatigue levels. This research study involves two parts: Development of a fatigue management eLearning training tool designed for drivers-for-hire (*e.g.,* taxi drivers; ride sourcing drivers); and an evaluation of the effectiveness of this training alone and paired with the wrist-device that provides personalized daily fatigue scores.

DATES: CDC must receive written comments on or before September 18, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0076 by any of the following methods:

• *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Reducing Fatigue Among Taxi Drivers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Taxi drivers routinely work long hours and late night or early morning shifts. Shift work and long work hours are linked to many health and safety risks due to disturbances to sleep and circadian rhythms. Fatigue is a significant contributor to transportation-related injuries, most notably among shift workers. Such work schedules and inadequate sleep likely contribute to health issues and injuries among taxi drivers who experience a roadway fatality rate of 3.5 times higher than all civilian workers and had the highest rate of nonfatal work-related motor vehicle injuries treated in emergency departments.

The urban and interurban transportation industry ranks the third highest in costs per employee for motor vehicle crashes. Tired drivers endanger others on the road (*e.g.,* other drivers, passengers, bicyclists, pedestrians) in addition to themselves and their passengers. An important approach to reducing fatigue-related risks is to inform employers and taxi drivers about the risks and strategies to reduce their risks.

The purpose of this project is to develop and evaluate a training program to inform taxi drivers and other drivers for hire who transport passengers of the risks linked to shift work and long work hours and evaluate strategies for taxi drivers to reduce these risks. The proposed study site will be the Flywheel Taxi Company in San Francisco, CA with approximately 500 drivers, who have agreed to share data collected on the study participants. The recruitment of 180 study participants and data collection onsite will be performed by a NIOSH contractor trained by the NIOSH project personnel. This research study involves two parts: Development of a fatigue management eLearning training tool designed for drivers-for-hire (*e.g.,* taxi drivers; ride sourcing drivers); and an evaluation of the use of this tool as an intervention. The training tool will educate drivers about fatigue as a risk factor for motor vehicle crashes, the negative health and safety effects of fatigue, and how to reduce fatigue by improving sleep, health, nutrition and work schedules. There will be pre- and post-module knowledge tests to evaluate the training. The training will be offered online, free of charge, and will be viewable on multiple platforms (*e.g.,* smartphone, tablet, laptop). All participants will also wear a wristband actigraph used to measure sleep/wake cycles, which will serve as a second intervention. The actigraph data will provide a personalized daily measure of fatigue each participant can use as an external prompt to assess individual fatigue levels and trigger self-reflection on fitness to drive and act accordingly. A randomized pre-post with control group longitudinal study design will evaluate the training and the driver's response to feedback from the actigraph. Specifically, there are two intervention groups: (1) Training plus actigraph fatigue level feedback and (2) training only with wearing actigraph but no fatigue level feedback. The control group will receive neither training nor feedback on fatigue levels from their actigraph. Participants will complete a baseline and follow-up Work and Health survey, sleep and activities diaries, and sleep health knowledge questions during each of five observation periods. The Work and Health survey administered in the first observation period will be more comprehensive and the abbreviated follow up Work and Health surveys administered for the remaining observation periods will serve to capture only responses to questions that can change from one observation period to the next. Only participants randomly selected to take the training will complete a training evaluation survey used to strengthen the training's effectiveness. Data will also be collected from company installed in-vehicle monitoring systems on safety critical events (*e.g.,* hard braking, speeding) already collected on all drivers as a direct measurement of fatigue-related driving performance events used to validate self-report data. As part of their daily sleep and health diaries drivers will be asked to complete three minute psychomotor vigilance tests (PVTs) five times throughout the day to directly measure alertness using an app installed on an electronic device. At the end of the data collection period the training will be offered to the remaining study participants who will be provided an opportunity, but no remuneration, to complete the training and training survey.

Study staff will use the findings from this evaluation to improve the training program, including content and

delivery, as well as compare fatigue between intervention groups. Potential impacts of this project include improvements in work behaviors for coping with shift work and long work hours and an objective reduction in fatigue compared to the control groups. This project is poised to have considerable impact in the contribution of an evidence base for effective interventions that could be used by other taxi companies and drivers for ride sourcing companies to promote strategies in road safety.

The burden table lists 120 of the 180 taxi drivers in the study will complete the online training and evaluation (approximately three hours). All drivers (180) will complete the Work and Health survey, and the knowledge survey each week of the study (five times each per participant). Each participant will complete the sleep and activity diary five times a day, each day for 35 days (175 times total) which will require approximately two minutes for each response. There will also be three meetings for recruitment and enrollment (once), fitting the actigraph (weekly), and a final meeting. The total estimated annualized burden hours is 2,700. There are no costs to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Taxi Drivers	Online Training & Evaluation	120	1	3	360
	Sleep & Activities Diary	180	175	2/60	1,050
	Work & Health Survey	180	5	45/60	675
	Knowledge survey	180	5	15/60	225
	Recruitment & Informed Consent	180	1	30/60	90
	Initial Meeting (Fit Actigraph)	180	5	10/60	150
	10-minute meeting (turn in devices, turn in diary, receive remuneration).	180	5	10/60	150
Total					2,700

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15656 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0576]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Possession, Use, and Transfer of Select Agents and Toxins to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 3, 2020 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Possession, Use, and Transfer of Select Agents and Toxins (OMB Control No. 0920–0576, Exp. 10/31/2020)—Revision—Center for Preparedness and Response (CPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Subtitle A of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (42 U.S.C. 262a), requires the United States Department of Health and Human Services (HHS) to regulate the possession, use, and transfer of biological agents or toxins that have the potential to pose a severe threat to public health and safety (select agents and toxins). Subtitle B of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (which may be cited as the Agricultural Bioterrorism Protection Act of 2002), (7 U.S.C. 8401), requires the United States Department of Agriculture (USDA) to regulate the possession, use, and

transfer of biological agents or toxins that have the potential to pose a severe threat to animal or plant health, or animal or plant products (select agents and toxins). Accordingly, HHS and USDA have promulgated regulations requiring individuals or entities that possess, use, or transfer select agents and toxins to register with the CDC or the Animal and Plant Health Inspection Service (APHIS). See 42 CFR part 73, 7 CFR part 331, and 9 CFR part 121 (the select agent regulations). The Federal Select Agent Program (FSAP) is the collaboration of the CDC, Division of Select Agents and Toxins (DSAT) and the APHIS Agriculture Select Agent Services (AgSAS) to administer the select agent regulations in a manner to minimize the administrative burden on persons subject to the select agent regulations. The FSAP administers the select agents regulations in close coordination with the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS). Accordingly, CDC and APHIS have adopted an identical system to collect information for the possession, use, and transfer of select agents and toxins.

CDC is requesting OMB approval to continue to collect information under the select agent regulations through the use of five forms: (1) Application for Registration for Possession. Use, and Transfer of Select Agents and Toxins (APHIS/CDC Form 1); (2) Request to Transfer Select Agents or Toxins (APHIS/CDC Form 2); (3) Incident Notification and Reporting (Theft, Loss, or Release) (APHIS/CDC Form 3); (4) Reporting the Identification of a Select Agent or Toxin (APHIS/CDC Form (4); and (5) Request for Exemption of Select Agents and Toxins for an Investigational Product (APHIS/CDC Form 5).

An entity may amend its registration (42 CFR 73.7(h)(1)) if any changes occur to the information previously submitted to CDC. When applying for an amendment to a certificate of registration, an entity would complete the relevant portion of the application package (APHIS/CDC Form 1).

Besides the forms listed above, there is no standard form for the following information:

1. An individual or entity may request an exclusion from the requirements of the select agent regulations of an attenuated strain of a select agent or a select toxin modified to be less potent or toxic. (42 CFR 73.3(e) and 73.4(e)).

2. Annual inspections that are conducted by the entity must be documented. (42 CFR 73.9(a)(6)).

3. An individual's security risk assessment may be expedited upon written request by a Responsible Official and a showing of good cause. (42 CFR 73.10(f)).

4. An individual or entity may request approval to perform a ''restricted experiment'' (42 CFR 73.13).

5. An individual or entity must develop and implement a written security plan, biosafety plan, and incident response plan (42 CFR 73.11(a), 42 CFR 73.12(a), and 42 CFR 73.14(a)).

6. The Responsible Official at the entity must ensure a record of the training for each individual with access to select agents and toxins and each escorted individual is maintained (42 CFR 73.15(d)).

7. An individual or entity may appeal a denial, revocation, or suspension of registration. (42 CFR 73.20(a)).

8. An individual may appeal a denial, limitation, or revocation of access approval. (42 CFR 73.20(b)).

The total estimated annualized burden for all data collection was calculated using the 2018 Annual Report of the Federal Select Agent Program available at *https://www.selectagents.gov/annualreport2018.html* or FSAP IT system and is estimated as 4467 hours. Information will be collected through FSAP IT system, fax, email and hard copy mail from respondents. Upon OMB approval, CDC will begin use of the revised forms in October 2020 through October 2023. There is no cost to the respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Section	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Sections 3 & 4	Request for Exclusions	1	1	1
Sections 5 & 6	Report of Identification of a Select Agent or Toxin	1,181	1	1
Sections 5 & 6	Request of Exemption	1	1	1
Section 7	Application for Registration	3	1	5
Section 7	Amendment to a Certificate of Registration	253	5	1
Section 9	Documentation of self-inspection	253	1	1
Section 10	Request for Expedited Review	1	1	0.5
Section 11	Security Plan	253	1	1
Section 12	Biosafety Plan	253	1	1
Section 13	Request Regarding a Restricted Experiment	1	1	2
Section 14	Incident Response Plan	253	1	1
Section 15	Training	253	1	1
Section 16	Request to Transfer Select Agents and Toxins	253	1	1.5
Section 17	Records	253	1	0.5
Section 19	Notification of Theft, Loss, or Release	201	1	1
Section 20	Administrative Review	28	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15655 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business

Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463.

Name of Committee: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Date: October 20–21, 2020.

Time: 11:00 a.m.–5:00 p.m., EDT.

Place: Teleconference.

Agenda: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

FOR FURTHER INFORMATION CONTACT: Michael Goldcamp, Ph.D., Scientific Review Officer, NIOSH, 1095 Willowdale Road, Morgantown, WV 26506, (304) 285–5951; *MGoldcamp@cdc.gov*.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–15615 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20IP]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Occupational Driver Safety at Intersections'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 25, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Occupational Driver Safety at Intersections—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Nearly 40% of all traffic crashes occur at intersections. Erroneous decision-making while crossing a signalized intersection is a significant risk factor for drivers. Such decision-making is even more challenging for occupational drivers (*e.g.,* police and fire truck drivers) due to their job demands, special vehicle characteristics, and frequency of crash risk exposure. NIOSH has initiated a laboratory simulation study on effects of occupation, vehicle type, vehicle approach speed, signal light logic, and emergency response status on emergency vehicle driver decision-making at intersections to advance the safety of approximately 900,000 law enforcement officers and 1,134,400 career and volunteer firefighters.

Study results will be used to develop science-based safety recognition training materials for emergency vehicle drivers and their employers to enhance driver safety at intersections. The information also will be used to (1) determine the optimal time/distance to activate a traffic signal preemption system for emergency vehicles to obtain the right-of-way at intersections, and (2) conceptualize an advanced driver assistant system (ADAS) that provides signal light status and issues a preemptive warning when an emergency vehicle approaches an intersection at an unsafe speed limit based on the vehicle and environmental conditions. The system will assist occupational drivers in decision making while crossing a signalized intersection.

Thirty-two fire truck drivers, 32 law enforcement officers (LEOs), and 32 general passenger vehicle drivers will be recruited for the experiment. The driving task for fire truck drivers and LEOs will consist of responding to an emergency call and returning to the base station. The general passenger vehicle drivers serve as the baseline reference; they will drive a sedan, simulating normal daily driving conditions. LEOs will perform an additional driving task (off-duty condition) using a sedan (same weight and size as the LEO cruiser) on a separate visit for the experiment. The drivers' performance (*e.g.,* perception and response time, stopping accuracy, and stress level) and safety outcomes (*e.g.,* deceleration at intersection, clearance to intersection, red light running time, and red light running frequency) will be analyzed, based on vehicle locations, vehicle speeds, and drivers' heart rates.

A follow-up study will evaluate the effectiveness of a driver assistant tool (derived from the first experiment) on the drivers' decision-making and overall safety outcomes. The driver assistant tool would be (1) either an algorithm to activate a traffic signal preemption system at optimal time/distance for

emergency vehicles to obtain the right-of-way at intersections or, (2) an advanced driver assistant system that provides signal light status and issues a preemptive warning when an emergency vehicle approaches an intersection at an unsafe speed limit. Half of the participants from the first experiment (*i.e.,* 16 truck drivers, 16 LEOs, and 16 general passenger vehicle drivers) and 48 new participants (16 from each of the three groups) will be recruited. The design of this experiment in terms of nature of tasks and outcome measures will be the same as those for the first Experiment.

The two experiments will utilize 192 research participants. An additional six participants may be recruited to replace dropouts during the study due to simulator sickness. The data collection for the two experiments will take three years in total. Informed consent and the data collection are expected to take three to 3.5 hours (total) to complete for Experiment 1 and four to 4.5 hours for Experiment 2 for each participant. The total estimated annualized burden hours are 341. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
Experiment 1: Law Enforcement Officers	Pre-Enrollment Confirmation Email (A)	11	1	1/60
Experiment 1: Law Enforcement Officers	Participation Data Collection Form (B)	11	1	1/60
Experiment 1: Law Enforcement Officers	Informed Consent form—including participant orientation (C).	11	1	20/60
Experiment 1: Law Enforcement Officers	Motion Sickness Screen Form (D)	11	1	2/60
Experiment 1: Law Enforcement Officers	Pre and post drive simulator sickness assessment (E)x5 scenarios x3 conditions.	11	1	1
Experiment 1: Law Enforcement Officers	Sharpened Romberg Postural Stability Test (F)x2 states x3 conditions.	11	1	30/60
Experiment 1: Law Enforcement Officers	Practice Roadmap—Driving practice in simulator (G)x3 conditions.	11	1	48/60
Experiment 1: Law Enforcement Officers	Actual test—120 minutes (H)x3 conditions	11	1	6
Experiment 1: Firefighter	Pre-Enrollment Confirmation Email (A)	11	1	1/60
Experiment 1: Firefighter	Participation Data Collection Form (B)	11	1	1/60
Experiment 1: Firefighter	Informed Consent form—including participant orientation (C).	11	1	20/60
Experiment 1: Firefighter	Motion Sickness Screen Form (D)	11	1	2/60
Experiment 1: Firefighter	Pre and post drive simulator sickness assessment (E)x5 scenarios x2 conditions.	11	1	40/60
Experiment 1: Firefighter	Sharpened Romberg Postural Stability Test (F)x2 states x2 conditions.	11	1	20/60
Experiment 1: Firefighter	Practice Roadmap—Driving practice in simulator (G)x2 conditions.	11	1	36/60
Experiment 1: Firefighter	Actual test—120 minutes (H)x2 conditions	11	1	4
Experiment 1: General civilian	Pre-Enrollment Confirmation Email (A)	11	1	1/60
Experiment 1: General civilian	Participation Data Collection Form (B)	11	1	1/60
Experiment 1: General civilian	Informed Consent form—including participant orientation (C).	11	1	20/60
Experiment 1: General civilian	Motion Sickness Screen Form (D)	11	1	2/60
Experiment 1: General civilian	Pre and post drive simulator sickness assessment (E)x5 scenarios x1 condition.	11	1	20/60
Experiment 1: General civilian	Sharpened Romberg Postural Stability Test (F)x2 states x1 condition.	11	1	10/60
Experiment 1: General civilian	Practice Roadmap—Driving practice in simulator (G)x1 condition.	11	1	16/60
Experiment 1: General civilian	Actual test—120 minutes (H)x1 condition	11	1	2
Experiment 2: Law Enforcement Officers	Pre-Enrollment Confirmation Email (A)	11	1	1/60
Experiment 2: Law Enforcement Officers	Participation Data Collection Form (B)	11	1	1/60
Experiment 2: Law Enforcement Officers	Informed Consent form—including participant orientation (C).	11	1	20/60
Experiment 2: Law Enforcement Officers	Motion Sickness Screen Form (D)	11	1	2/60
Experiment 2: Law Enforcement Officers	Pre and post drive simulator sickness assessment (E)x5 scenarios x1 condition.	11	1	20/60
Experiment 2: Law Enforcement Officers	Sharpened Romberg Postural Stability Test (F)x2 states x1 condition.	11	1	10/60
Experiment 2: Law Enforcement Officers	Acceptance of Advanced Driver Assistance System (I)x1 condition.	11	1	40/60
Experiment 2: Law Enforcement Officers	Practice Roadmap—Driving practice in simulator (G)x1 condition.	11	1	16/60
Experiment 2: Law Enforcement Officers	Actual test—120 minutes (H)x1 condition	11	1	2
Experiment 2: Firefighter	Pre-Enrollment Confirmation Email (A)	11	1	1/60
Experiment 2: Firefighter	Participation Data Collection Form (B)	11	1	1/60
Experiment 2: Firefighter	Informed Consent form—including participant orientation (C).	11	1	20/60
Experiment 2: Firefighter	Motion Sickness Screen Form (D)	11	1	2/60
Experiment 2: Firefighter	Pre and post drive simulator sickness assessment (E)x5 scenarios x1 condition.	11	1	20/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
Experiment 2: Firefighter	Sharpened Romberg Postural Stability Test (F)x2 states x1 condition.	11	1	10/60
Experiment 2: Firefighter	Acceptance of Advanced Driver Assistance System (I)x1 condition.	11	1	40/60
Experiment 2: Firefighter	Practice Roadmap—Driving practice in simulator (G)x1 condition.	11	1	16/60
Experiment 2: Firefighter	Actual test—120 minutes (H)x1 condition	11	1	2
Experiment 2: General civilian	Pre-Enrollment Confirmation Email (A)	11	1	1/60
Experiment 2: General civilian	Participation Data Collection Form (B)	11	1	1/60
Experiment 2: General civilian	Informed Consent form—including participant orientation (C).	11	1	20/60
Experiment 2: General civilian	Motion Sickness Screen Form (D)	11	1	2/60
Experiment 2: General civilian	Pre and post drive simulator sickness assessment (E)x5 scenarios x1 condition.	11	1	20/60
Experiment 2: General civilian	Sharpened Romberg Postural Stability Test (F)x2 states x1 condition.	11	1	10/60
Experiment 2: General civilian	Acceptance of Advanced Driver Assistance System (I)x1 condition.	11	1	40/60
Experiment 2: General civilian	Practice Roadmap—Driving practice in simulator (G)x1 condition.	11	1	16/60
Experiment 2: General civilian	Actual test—120 minutes (H)x1 condition	11	1	2

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15652 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–0950; Docket No. CDC–2020–0078]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Health and Nutrition Examination Survey (NHANES). NHANES programs produce descriptive statistics, which measure the health and nutrition status of the general population.

DATES: CDC must receive written comments on or before September 18, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0078 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all Federal comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Ph.D., Lead, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES), (OMB No. 0920–0950, Exp. 11/30/2021)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States. The National Health and Nutrition Examination Surveys (NHANES) have been conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC.

NHANES programs produce descriptive statistics, which measure the health and nutrition status of the general population. With physical examinations, laboratory tests, and interviews, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States.

NHANES monitors the prevalence of chronic conditions and risk factors and are used to produce national reference data on height, weight, and nutrient levels in the blood. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time.

In 2021–22, the program is not considering any substantial changes to NHANES content or procedures. The proposed changes being requested are small additions and modifications to laboratory content, introductions to and wording of existing questions, and the addition of a conditional $40 incentive for the household interview. As in previous years, the base sample will remain at approximately 5,000 interviewed and examined individuals annually. It is possible that the survey may have to adapt its plans in response to Novel Coronavirus Disease (COVID–19) or related concerns.

NCHS collects personally identifiable information (PII). Participant level data items will include basic demographic information, name, address, social security number, Medicare number and participant health information to allow for linkages to other data sources such as the National Death Index and data from the Centers for Medicare and Medicaid Services (CMS).

A variety of agencies sponsors data collection components on NHANES. To keep burden down and respond to changing public health research needs, NCHS cycles in and out various components. The 2021–22 NHANES physical examination includes the following components: Anthropometry (all ages), 24-hour dietary recall (all ages), physician's examination (all ages, blood pressure is collected here), oral health examination (ages one and older), dual X-ray absorptiometry (DXA) (ages 50+ bone density; ages 8–69 total body scan) and audiometry (ages 6–19 and 70+).

While at the examination center, additional interview questions are asked (six and older) and a second 24-hour dietary recall (all ages) is scheduled to be conducted by phone 3–10 days later.

The 2021–22 survey will be similar to what was fielded in 2019–20. It is possible that content will be deleted, if collaborator focus changes or resources are not available. NHANES plans to conduct developmental projects during NHANES 2021–22, with a focus on planning for NHANES 2023 and beyond. These may include activities such as tests of new equipment, crossover studies between current and proposed methods, tests of different study modes, settings or technology, outreach materials, incentive strategies, sample storage and processing or sample designs.

The biospecimens collected for laboratory tests include urine, blood, and vaginal and penile swabs. Serum, plasma and urine specimens are stored for future testing, including genetic research, if the participant consents. Consent to store DNA is continuing in NHANES.

In 2021 we plan to add the following laboratory tests: Acetylcholinesterase Enzyme Activity in whole blood; an Environmental Toxicant in Washed Red Blood Cells (Hemoglobin Adducts); Environmental Toxicants in serum (seven terpenes); Environmental Toxicants in urine (seven volatile organic compound (VOC) metabolites); Infectious Disease Markers in serum (Enterovirus 68 (EV–D68) and Human Papilloma Virus (HPV) in serum); Nutritional Biomarkers in plasma (Four trans-fatty acids (TFA)); and two Nutritional Biomarkers in serum.

In 2021, the following Laboratory Tests will be modified: Steroid hormones in serum (11 steroid hormones).

Cycling out of NHANES in 2021–22 is the Blood Pressure Methodology Study and laboratory tests of Adducts of Hemoglobin (Acrylamide, Glycidamide) and Urine flow rate.

Most sections of the NHANES interviews provide self-reported information to be used in combination with specific examination or laboratory content, as independent prevalence estimates, or as covariates in statistical analysis (*e.g.,* socio-demographic characteristics). Some examples include alcohol, drug, and tobacco use, sexual behavior, prescription and aspirin use, and indicators of oral, bone, reproductive, and mental health. Several interview components support the nutrition-monitoring objective of NHANES, including questions about food security and nutrition program participation, dietary supplement use, and weight history/self-image/related behavior.

In 2021–2022, we plan to continue or expand upon existing multi-mode screening and electronic consent procedures in NHANES. Our yearly goal for interview, exam and post exam components is 5,000 participants. To achieve this goal, we may need to screen up to 15,000 individuals annually.

Burden for individuals will vary based on their level of participation. For example, infants and children tend to have shorter interviews and exams than adults. This is because young people may have fewer health conditions or medications to report so their interviews take less time or because certain exams are only conducted on individuals 18 and older, etc. In addition, adults often serve as proxy respondents for young people in their families.

Participation in NHANES is voluntary and confidential. There is no cost to respondents other than their time. We are requesting a three-year approval, with 68,417 annualized hours of burden.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average Burden per Response (in hours)	Total burden (in hours)
Individuals in households	Screener	15,000	1	5/60	1,250
Individuals in households	Household Interview	5,000	1	1.5	7,500
Individuals in households	MEC Interview & Examination	5,000	1	4	20,000
Individuals in households	Telephone Dietary Recall & Dietary Supplements.	5,000	1	30/60	2,500
Individuals in households	Flexible Consumer Behavior Survey Phone Follow-Up.	5,000	1	20/60	1,667
Individuals in households	Developmental Projects & Special Studies	3,500	1	3	10,500
Individuals in households	24-hour wearable device projects	1,000	1	25	25,000
Total					68,417

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15659 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20JC]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Delta Impact Cooperative Agreement Evaluation data collection Instruments'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on 02/28/2020 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

DELTA Impact Cooperative Agreement Evaluation Data Collection Instruments—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) seeks OMB approval for three years for a new information collection request to collect information from all 10 recipients (State Domestic Violence Coalitions) and all 17 subrecipients (Coordinated Community Response teams) funded through CDC's Domestic Violence Prevention Enhancements and Leadership Through Alliances (DELTA) Impact Program cooperative agreement (NOFO CDC–RFA–CE18–1801). CDC will collect information from DELTA Impact recipients as part of its program evaluation to assess the implementation and impact of the NOFO and further understand the facilitators, barriers, and critical factors to implement specific violence prevention strategies and conduct program evaluation activities.

CDC's DELTA Impact Program is an initiative focused on decreasing IPV risk factors and increasing IPV protective factors by increasing strategic data-driven planning and sustainable use of community and societal level primary prevention activities that address the social determinants of health (SDOH). Strategies described in the NOFO are based on the best available evidence and are included in CDC's technical package on IPV prevention. In addition, the program helps to further develop the evidence-base for community and societal level programs and policy efforts to prevent IPV by increasing the use of program evaluation and existing surveillance data at the state and local level. The goal of this information collection is to support CDC's program evaluation of the implementation and impact of the DELTA Impact NOFO and further understand the facilitators, barriers, and critical factors to implement specific violence prevention strategies and conduct related program evaluation activities. CDC will use information collected to inform its technical assistance, program improvement, and capacity building. It will also use the information to assess progress on NOFO goals and inform the

development of future funding opportunities.

Data collection is designed to address the following key program evaluation questions:

1. To what extent have funded Coalitions accomplished the short term and intermediate outcomes in the NOFO Logic Model?

2. To what extent do recipients effectively implement community and societal level primary prevention programs and policy efforts during the project period?

3. To what extent was there an increase in statewide capacity to implement, evaluate and sustain community and societal primary prevention of IPV?

4. What factors are critical to implementing and sustaining community and societal level primary prevention approach to prevent IPV?

CDC will use the information collected across all three years to understand each recipient's experiences and progress toward NOFO outcomes as well as to identify facilitators and barriers to program implementation. In addition, data collected in Project Year 3 and 4 will inform adjustments in the type and level of technical assistance provided to recipients, as needed, to support attainment of the goals of the NOFO. Program evaluation activities allow CDC to identify and disseminate information about successful prevention strategies implemented by recipients. These functions are central to the NCIPC's broad mission of protecting Americans from violence and injury threats. The information collection will allow CDC to monitor the impact of the strategies implemented by the recipients on outcomes related to intimate partner violence prevention. It is also expected to reduce duplication of effort, enhance program impact and maximize the use of federal funds.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
DELTA Impact Program Recipients State Domestic Violence Coalitions.	Key Informant Interview—Project Lead	10	1	1
	Key Informant Interview—Evaluator	10	1	45/60
	Subrecipient Survey	17	1	30/60
	Prevention Infrastructure Assessment	10	2	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15653 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20QJ; Docket No. CDC–2020–0079]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Survey of Community-Based Survey of Supports for Healthy Eating and Active Living. This data collection effort is a national survey to assess local governments' policies and practices that support healthy eating and active living among their residents.

DATES: CDC must receive written comments on or before September 18, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0079 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Ph.D., Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

National Survey of Community-Based Survey of Supports for Healthy Eating and Active Living (CBS HEAL)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Currently, little is known about the environmental and policy supports for healthful diets and regular physical activity within a community across the U.S., and how these supports are changing across time. As a result, CDC plans to conduct a survey to address this gap in knowledge. The survey will be administered to a nationally representative sample of 4,417 communities. Respondents will be city planners/managers in these communities. Information will be collected about the following topics: Communitywide planning efforts for healthy eating and active living, the built environment and policies that support physical activity, zoning that supports healthy eating and active living, public transportation policies that support healthy eating and active living, other policies and practices that support access to healthy food and healthy eating, and policies that support employee breastfeeding. Data will be collected using a secure, web-based survey data collection system, with telephone and mail follow-up for non-response.

The proposed survey content and data collection procedures incorporate lessons learned during an initial pilot study (OMB No. 0920–0934, ''Pilot Study of Community-Based Surveillance and Supports for Healthy Eating/Active Living'', expiration 5/31/2013), as well as the 2014 baseline study (OMB control number 0920–1007, ''National Survey of Community Based Policy and Environmental Supports for Healthy Eating and Active Living'', expiration 1/1/2015).

Assessment of policy and environmental supports for healthful eating and physical activity will serve multiple uses. First, the collected data will describe the characteristics of communities that have specific policy and practice supports favorable for healthy diets and regular physical activity and progress since 2014. Second, the collected data will help identify the extent to which communities implement strategies consistent with current national recommendations. Third, local agencies may use the data collected to consider how they compare nationally or with other municipalities of a similar geography, population size, or urban status. Finally, this information can help guide communities and researchers in local efforts to implement and evaluate policies and practices that support healthy behaviors and choices.

CDC requests OMB approval for an estimated 1,693 burden hours annually. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
City or Town Planner or Manager.	National Survey of Community-Based Policy and Environmental Supports for Healthy Eating and Active Living.	2,650	1	30/60	1,325
	Telephone Non-response Follow-up Contact Script.	4,417	1	5/60	368
Total					1,693

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–15657 Filed 7–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0832]

Phibro Animal Health Corp.; Carbadox in Medicated Swine Feed; Withdrawal of Notice of Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of opportunity for hearing; withdrawal.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the withdrawal of a notice of opportunity for a hearing (NOOH), which proposed to withdraw the approved uses of carbadox, a carcinogenic animal drug intended for use in feeds for swine. FDA is publishing a proposed order that, if finalized, will revoke the current approved method for carbadox because it does not satisfy the statutory requirement that there be a method to ensure that no residue of carcinogenic concern remains in the edible tissues of treated swine. If that order is finalized, we intend to publish in the **Federal Register** an NOOH proposing to withdraw approval of all new animal drug applications for use of carbadox.

DATES: The NOOH is withdrawn as of July 15, 2020.

ADDRESSES: For access to the docket to read background documents or 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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Diane Heinz, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5692, *diane.heinz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In an NOOH published in the **Federal Register** of April 12, 2016 (81 FR 21559; correction 81 FR 23499), we proposed to

withdraw approval of the new animal drug applications (NADAs) for carbadox. That proposed action was based on two grounds. First, new evidence demonstrates that the Delaney Clause in section 512(d)(1)(I) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(d)(1)(I)), which requires that no residue of a carcinogenic drug can be found in any edible portion of the animal after slaughter, applies because the Diethylstilbestrol (DES) Proviso exception is no longer met. The DES Proviso exception allows such an animal drug to be approved if, among other things, no residue of such drug will be found by methods of examination prescribed or approved by the Secretary of Health and Human Services by regulations, in any edible portion of such animal after slaughter or in any food yielded by or derived from the living animals. Second, new evidence demonstrates that carbadox is not shown to be safe under the General Safety Clause (section 512(e)(1)(B) of the FD&C Act). FDA has reviewed information submitted by the drug sponsor, including some studies submitted in response to the April 2016 NOOH, and determined that the current approved method for detecting residues of carcinogenic concern does not meet the requirements of part 500, subpart E (21 CFR part 500, subpart E), to demonstrate that there is ''no residue'' of carbadox in any food derived by treated animals as required by section 512(d)(1)(I) of the FD&C Act.

FDA is withdrawing the April 2016 NOOH, which proposed to withdraw the approved uses of carbadox. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed order that, if finalized, will revoke the current approved method for carbadox that measures quinoxaline-2-carboxylic acid as the marker residue for carbadox. The proposed order is based on the inadequacy of the current approved method to monitor residue of carcinogenic concern in compliance with FDA's operational definition of ''no residue'' in part 500, subpart E, and the requirements in section 512(d)(1)(I) of the FD&C Act. If the proposed order to revoke the current approved method is finalized and the approved analytical method is revoked, we intend to publish in the **Federal Register** an NOOH proposing to withdraw all new animal drug applications for use of carbadox based on the lack of an approved method to demonstrate compliance with part 500, subpart E, and section 512(d)(1)(I) of the FD&C Act.

Dated: July 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15245 Filed 7–17–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0832]

Phibro Animal Health Corp.; Carbadox in Medicated Swine Feed; Revocation of Approved Method

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is proposing an order to revoke the approved method for detecting residues of carbadox, a carcinogenic new animal drug used in swine feed. An approved method is required by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as implemented by regulation, to show that no residue of carcinogenic concern from a new animal drug persists in any edible tissue or in any food derived from treated animals. The currently approved method measures quinoxaline-2-carboxylic acid (QCA) as a marker residue to detect the presence of any residue of carcinogenic concern. CVM is proposing to revoke the approved method for carbadox based on our determination that it is inadequate to monitor residue of carcinogenic concern in compliance with FDA's operational definition of no residue because there is no established relationship between QCA measured by the approved method and the residue of carcinogenic concern.

DATES: Submit either electronic or written comments on the proposed order by September 18, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 18, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 18, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–0832 for ''Phibro Animal Health Corp.; Carbadox in Medicated Swine Feed; Revocation of Approved Method.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- 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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Diane Heinz, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5692, *diane.heinz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

CVM is proposing to revoke the current approved method [1] used to determine whether residues of carcinogenic concern of carbadox are present. That method measures QCA as the marker residue for the residue of carcinogenic concern. CVM is proposing to revoke the method because it does not adequately monitor the residue of carcinogenic concern in compliance with FDA's operational definition of no residue. See § 500.84(c)(3) (21 CFR 500.84(c)(3)).

The Delaney Clause of the FD&C Act generally prohibits the approval of carcinogenic animal drugs unless an exception applies. See section 512(d)(1)(I) of the FD&C Act (21 U.S.C. 360b(d)(1)(I)). Under the ''Diethylstilbestrol (DES) Proviso'' exception, a carcinogenic new animal drug may be approved if, among other things, no residue of such drug will be found by methods of examination prescribed or approved by the Secretary of Health and Human Services (HHS) by regulations in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals. FDA's sensitivity of the method regulations (''SOM regulations'') establish the requirements for satisfying the DES Proviso (part 500, subpart E (21 CFR part 500, subpart E)). The regulations require, among other things, approval of a ''regulatory method'' to ensure that no residue of a carcinogenic drug will be found in edible portions of animals (§ 500.88 (21 CFR 500.88)).

When CVM approved the current regulatory method for carbadox in 1998, our understanding of carbadox metabolism, based on the data available at the time, led us to conclude that the safety of carbadox residues could be assured by tracking the non-carcinogenic residue QCA alone. As a result, CVM did not direct the sponsor to submit a proposed regulatory method that complied with § 500.88. Instead, CVM set a ''tolerance'' for QCA based on our conclusion that carcinogenic residues, including desoxycarbadox (DCBX), a known carcinogenic metabolite of carbadox, depleted quickly (within 72 hours) while QCA residues depleted more slowly. However, CVM has reevaluated the current approved method because we have concluded, based on subsequent studies, that carcinogenic residues persist longer than previously known. In its reevaluation of the current approved method, CVM has determined that the current approved method cannot adequately monitor residue of carcinogenic concern because there is no established relationship between QCA and the residue of carcinogenic concern. That means that determining the concentration of QCA in animal tissue does not allow CVM to conclusively determine whether the residue of carcinogenic concern remains in the tissue. Thus, the current approved method does not comply with part 500, subpart E, and therefore does not satisfy the statutory requirement of section 512(d)(1)(I) of the FD&C Act. The importance of addressing the inadequacies of the current approved method is underscored by the new data that suggest that residues of carcinogenic concern of carbadox do not deplete in animal tissue as quickly as previously believed. As a result, we are proposing to revoke the currently approved method.

If this proposed order to revoke the current approved method is finalized and this method is revoked, we intend to publish in the **Federal Register** a notice of opportunity for hearing (NOOH) proposing to withdraw approval of all new animal drug applications for use of carbadox based on the lack of an approved method for measuring residues as required by part 500, subpart E. See section 512(d)(1)(I) of the FD&C Act. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing the April 12, 2016, NOOH [2] (81 FR 21559) for its proposal to withdraw approval of all new animal drug applications for use of carbadox in medicated swine feed. (A correction to the April 12, 2016, NOOH was published in the **Federal Register** on April 21, 2016 (81 FR 23499).)

II. Background

A. Regulation of Carcinogenic New Animal Drugs

Under the Delaney Clause of the FD&C Act, FDA generally cannot approve a new animal drug application (NADA) if the drug that is the subject of that application induces cancer in humans or animals (section 512(d)(1)(I) of the FD&C Act). An exception to this general rule is commonly known as the ''DES Proviso,'' [3] which allows for the approval of a carcinogenic new animal drug where CVM finds that under the approved conditions of use: (1) The drug will not adversely affect the animals treated with the drug and (2) no residues of the drug will be found by an approved regulatory method in any edible tissues of, or in any foods yielded by, the animal (section 512(d)(1)(I) of the FD&C Act).

As part of an NADA, CVM requires that the sponsor include a description of practicable methods for determining the quantity, if any, of the new animal drug in or on food and any substance formed in or on food because of its use, and the proposed tolerance or withdrawal period or other use restrictions to ensure that the proposed use of this drug will be safe (§ 514.1(b)(7) (21 CFR

[1] The current approved method, ''Determination of Carbadox as Quinoxaline-2-carboxylic Residues in Swine Liver and Muscle Tissues after Drug Withdrawal,'' is available at *https://www.fda.gov/media/136267/download.*

[2] See *https://www.federalregister.gov/documents/2016/04/12/2016-08327/phibro-animal-health-corp-carbadox-in-medicated-swine-feed-opportunity-for-hearing.*

[3] The ''DES Proviso'' refers to Diethylstilbestrol, a carcinogenic hormone widely used in beef-cattle feed at the time the Delaney Clause was enacted.

514.1(b)(7))). Carcinogenic drugs, such as carbadox, must also meet the requirements in part 500, subpart E (§ 514.1(b)(7)(ii)). These SOM regulations set out the requirements for demonstrating that no residues of the drug will be found by an approved regulatory method in any edible tissues of or in any foods obtained from the animal, as required to comply with the DES Proviso.

Specifically, the SOM regulations require CVM to determine if any animal drug or any of its metabolites is a carcinogen (§ 500.84(a)). For the drug and each metabolite that FDA decides should be regulated as a carcinogen,[4] CVM calculates, based on submitted assays, the concentration of the test compound in the total diet of the test animal that corresponds to a maximum lifetime risk of cancer in the test animal of 1 in 1 million (§ 500.84(c)(1)). CVM designates the lowest concentration (*i.e.,* the concentration of the most potent carcinogen) thus calculated as the S_o (§ 500.84(c)(1)). The S_o corresponds to a concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people (§ 500.82(b) (21 CFR 500.82(b))). The residue of carcinogenic concern includes all compounds in the total residue of a demonstrated carcinogen excluding any compounds determined by CVM not to present a carcinogenic risk (§ 500.82(b)). CVM treats unidentified residues of a carcinogenic drug as carcinogenic (§ 500.82(b) (definition of ''Residue of carcinogenic concern'')). Because FDA relies on the S_o from the most potent carcinogen, this approach ensures that use of the drug does not present a significant increase in the risk of cancer when considering all residues in edible tissues.

Because the total human diet is not derived only from food-producing animals, the SOM regulations make adjustments for human food intake of edible tissues and determine the concentration of residue of carcinogenic concern in a specific edible tissue (such as muscle, liver, kidney, milk, or eggs) that corresponds to no significant increase in the risk of cancer to the human consumer. CVM assumes for purposes of these regulations that this value will correspond to the concentration of residues in a specific edible tissue that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million. This value is designated as the S_m (§§ 500.82(b) and 500.84(c)(1)). By limiting concentration of residue of carcinogenic concern to a value at or below the S_m, a consumer can eat a specific edible tissue every day for an entire lifetime without increasing his or her cancer risk by more than 1 in 1 million.

Based on data submitted by a sponsor, CVM selects a target tissue (the edible tissue selected to monitor for residues in the target animals) and a marker residue [5] and designates the concentration of the marker residue that the regulatory method must be able to detect in the target tissue (§ 500.86(a) through (c) (21 CFR 500.86(a) through (c))). This value, termed the R_m, is the concentration of a marker residue in the target tissue when the residue of carcinogenic concern is equal to S_m, that ensures that the residue of carcinogenic concern does not exceed S_m in each of the edible tissues when the marker residue is not detectable (§§ 500.82(b) and 500.86(c)). When the marker residue is at or below the R_m, the residue of carcinogenic concern in the human diet does not exceed S_o (§ 500.86(c)).

A sponsor must submit a regulatory method that is able to detect the marker residue at or below the R_m (§§ 500.88(b) and 500.84(c)(2) (the Limit of Detection (LOD) for the regulatory method must be less than or equal to R_m.)). Under the SOM regulations, a method must be able to confirm the identity of the marker residue in the target tissue at a minimum concentration corresponding to the R_m. FDA will determine the LOD from the submitted analytical method validation data (§ 500.88(b)).[6] If a method cannot be developed that can detect the marker residue at or below the R_m, the requirements of the SOM regulations are not satisfied, and FDA cannot approve the drug. See 21 U.S.C. 360b(d)(1)(I); § 500.88.

B. History of Carbadox Approvals

Currently, there are three approved NADAs for use of carbadox in medicated swine feed, either alone or in combination with other approved new animal drugs. Carbadox, a quinoxaline derivative, is a synthetic antimicrobial used to manufacture medicated feeds that are administered ad libitum to swine. Phibro Animal Health Corp. (Phibro), GlenPointe Centre East, 3d Floor, 300 Frank W Burr Blvd., Suite 21, Teaneck, NJ 07666, is currently the sponsor of all three approved NADAs.

1. NADA 041–061

NADA 041–061, originally approved in 1972 (37 FR 20683, October 3, 1972), provides for the use of MECADOX 10 (carbadox) Type A medicated article to manufacture single-ingredient Type C medicated swine feeds at the rate of 10 to 25 grams per ton (g/ton) of feed for increased rate of weight gain and improved feed efficiency; and at 50 g/ton of feed for control of swine dysentery (vibrionic dysentery, bloody scours, or hemorrhagic dysentery), control of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis*), and for increased rate of weight gain and improved feed efficiency. Currently, the withdrawal period for these uses of carbadox is 42 days (§ 558.115(d)(1)(ii) and (d)(2)(ii) (21 CFR 558.115(d)(1)(ii) and (d)(2)(ii))).

In January 1998, FDA approved a supplemental application to NADA 041–061. Based on the review of the data submitted in support of this supplemental application, CVM concluded: (1) The parent compound carbadox is rapidly metabolized and carcinogenic residues of the drug do not persist in any edible tissues beyond 72 hours postdosing; (2) unextracted residues of carbadox are noncarcinogenic residues related to the noncarcinogenic metabolite QCA; (3) extractable QCA is the only residue detectable in the edible tissues 72 hours postdosing; and (4) thus QCA is a reliable marker residue for carbadox and its metabolites.[7] Despite the requirement in § 500.86 that an R_m, instead of a tolerance, be established for a carcinogenic drug, CVM assigned a ''tolerance of 30 ppb [parts per billion] for QCA in swine liver'' as a means of

[4] See § 500.82(b) (defining ''residue of carcinogenic concern'' as all compounds in the total residue of a demonstrated carcinogen excluding any compounds judged by FDA not to present a carcinogenic risk).

[5] The marker residue is the residue whose concentration is in a known relationship to the concentration of the residue of carcinogenic concern in the last tissue to deplete to the S_m (§ 500.82(b)).

[6] As discussed above, the Delaney Clause prohibits the use of carcinogenic animal drugs unless an exception, such as the DES Proviso, applies. See section 512(d)(1)(I) of the FD&C Act. The DES Proviso requires that, among other things, no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary of HHS by regulations) in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals. FDA's SOM regulations establish the process by which a carcinogenic new animal drug may satisfy the DES Proviso. The SOM regulations were revised in 2002 to delete the operational definition of the term ''no residue'' and to make conforming amendments to other parts of the regulations. The LOD of the method replaced the R_m as the ''no residue'' determinant.

[7] FDA, Freedom of Information (FOI) Summary, NADA 041–061, MECADOX 10 (carbadox) Type A medicated article, supplemental approval January 30, 1998. Available at *https://animaldrugsatfda.fda.gov/adafda/app/search/public/document/downloadFoi/308.*

''assur[ing] that all residues of carcinogenic concern are well below their respective S_o in all edible tissues'' [8] because, based on the conclusions listed above, CVM believed, at the time of the 1998 supplemental approvals, that a tolerance would adequately protect public health. For a ''Regulatory Method,'' CVM approved a method that used a ''gas chromatographic assay with electron capture detection.'' [9] However, this method was not published in the **Federal Register** as provided in § 500.88, and the method that had been published for the 1972 approval was removed from the Code of Federal Regulations. Nevertheless, since the January 1998 approval of the supplemental NADA, CVM and the sponsor have treated the current approved method as the method of examination prescribed or approved by the Secretary of HHS by regulations for purposes of applying section 512(d)(1)(I) of the FD&C Act, the Delaney Clause, to carbadox.

In October 1998, FDA approved an additional supplemental NADA for NADA 041–061, changing the withdrawal period for carbadox medicated feeds from 70 days to 42 days. This supplemental NADA was approved based on the previous approval of a tolerance of 30 parts per ppb for QCA and a residue depletion study using the approved QCA analytical method that showed residues of QCA in liver depleted below 30 ppb by 42 days.[10]

2. NADA 092–955

NADA 092–955, originally approved in 1975 (40 FR 45164, October 1, 1975), provides for the use of MECADOX 10 (carbadox) Type A medicated article with BANMINTH (pyrantel tartrate) Type A medicated article to manufacture two-way, combination drug Type C medicated swine feeds at 50 g/ton of feed plus pyrantel tartrate at 96 g/ton of feed for control of swine dysentery (vibrionic dysentery, bloody scours, or hemorrhagic dysentery), control of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *S. choleraesuis*), as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, and as an aid in the prevention of establishment of nodular worm (*Oesophagostomum*) infections. The withdrawal period for the use of this drug combination is 70 days (§ 558.115(d)(3)(ii)).

3. NADA 141–211

NADA 141–211, originally approved in 2004 (69 FR 51173, August 18, 2004), provides for the use of MECADOX 10 (carbadox) Type A medicated article with TERRAMYCIN 50, TERRAMYCIN 100, or TERRAMYCIN 200 (oxytetracycline) Type A medicated articles to manufacture two-way, combination drug Type C medicated swine feeds at 10 to 25 g/ton of feed plus oxytetracycline at levels in feed to deliver 10 mg carbadox per pound of body weight for treatment of bacterial enteritis caused by *Escherichia coli* and *S. choleraesuis* susceptible to oxytetracycline, for treatment of bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline, and for increased rate of weight gain and improved feed efficiency. The withdrawal period for the use of this animal drug combination is 42 days (§ 558.115(d)(4)(ii)).

C. Post-Approval Information Regarding Carcinogenic Residues

After the 1998 supplemental approval, FDA has subsequently evaluated data regarding the persistence of carbadox residues in swine treated with carbadox, including residues of carbadox, DCBX, and QCA. Based on a review of this data, FDA has concluded that: (1) Carcinogenic residues persist in animal tissue more than 72 hours postdosing and (2) QCA is not the only residue detectable in animal tissue after 72 hours postdosing.

For the 2003 Joint Food and Agriculture Organization/World Health Organization Expert Committee on Food Additives (JECFA) meeting, the sponsor provided data in which it reported that DCBX is measurable quantitatively (in specific amounts) at 15 days postdosing (the last sampling timepoint in the study) (Ref. 1). Based on those studies, which showed the persistence of genotoxic, carcinogenic residues, JECFA could not determine an amount of residues of carbadox in human food that would have no adverse health effects in consumers. Following that meeting, the Codex Committee on Residues of Veterinary Drugs in Foods withdrew the maximum residue levels for carbadox, and carbadox has been removed from the market in many foreign jurisdictions, including the European Union (Ref. 2), Canada (Ref. 3), and Australia (Ref. 4).

Pursuant to section 512(*l*)(1) of the FD&C Act, FDA ordered Phibro to provide it with data related to the persistence of DCBX in edible tissues and the appropriateness of QCA as a marker residue. Phibro responded, among other submissions, with the same data provided to the 2003 JECFA. CVM reviewed the 2003 JECFA data and determined that the data show qualitatively (in non-specific amounts) that carbadox and DCBX are present in liver tissue samples at 48 hours and at 15 days withdrawal, respectively. CVM concluded that the mass spectrometry chromatograms and the reported DCBX concentration data provide qualitative confirmation of the presence of DCBX at 15 days withdrawal in the samples exposed to digestive enzymes.

CVM has also reviewed data submitted by the sponsor, including data from a 2008 study discussed in its Request for a Hearing in response to the 2016 NOOH and studies it submitted in July 2016. In general, proprietary data (such as the 2008 and 2016 studies conducted by Phibro) are considered confidential commercial information and therefore cannot be shared publicly in this proposed order. Based on its review of these data, CVM concluded that the known carcinogenic residues (carbadox and DCBX) persist beyond 72 hours and that QCA is not the only residue detectable after 72 hours. Furthermore, the sponsor has not provided data to establish a relationship between QCA and the residue of carcinogenic concern, which include carbadox and DCBX, nor have they provided data to establish the residue level of QCA at which the residue of carcinogenic concern in the diet of people represents no significant increase in the risk of cancer to people. Without these data, CVM cannot establish the R_m and the sponsor cannot demonstrate ''no residue'' of carcinogenic concern as required by the SOM regulations in part 500, subpart E, as implementing the FD&C Act at 21 U.S.C. 360b(d)(1)(I).

D. Statutory Authority To Propose Order

Under 5 U.S.C. 554(e) (section 5(d) of the Administrative Procedure Act (APA)), an agency, in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty. The APA defines ''order'' as the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing (5 U.S.C. 551(6)). The APA defines ''adjudication'' as agency process for the formulation of an order (5 U.S.C. 551(7)). FDA's regulations, consistent with the APA, define ''order'' to mean the final agency disposition, other than

[8] Id. at 13.

[9] Id.

[10] FDA, FOI Summary, NADA 041–061, MECADOX 10 (carbadox) Type A medicated article, supplemental approval October 5, 1998. Available at *https://animaldrugsatfda.fda.gov/adafda/app/search/public/document/downloadFoi/1673.*

the issuance of a regulation, in a proceeding concerning any matter (§ 10.3(a) (21 CFR 10.3(a)). Our regulations also define ''proceeding and administrative proceeding'' to mean any undertaking to issue, amend, or revoke a regulation or order, or to take or not to take any other form of administrative action, under the laws administered by FDA (§ 10.3(a)). Moreover, our regulations establish that the Commissioner of Food and Drugs may initiate an administrative proceeding to issue, amend, or revoke an order (21 CFR 10.25(b)).

On our own initiative, we are proposing to formulate a 5 U.S.C. 554(e) declaratory order to remove uncertainty regarding the approved method for carbadox that measures QCA as a marker residue. An order is the most appropriate method to revoke the approved method because there is no rule to amend. The current approved method is not currently published in the **Federal Register**, contrary to § 500.88, and the method that had been published for the 1972 approval was removed from the Code of Federal Regulations in 1998. The FD&C Act does not provide the procedure we must use to determine whether a method of examination that was never published in regulation satisfies the regulatory requirements of part 500, subpart E. Thus, we are choosing to issue a declaratory order to remove uncertainty.

III. Discussion

CVM proposes to revoke the approved method for carbadox that measures QCA as the marker residue. The currently approved method cannot adequately monitor residue of carcinogenic concern because there is no established relationship between QCA and the residue of carcinogenic concern. Thus, the current approved method does not comply with part 500, subpart E, and therefore does not satisfy the statutory requirement of section 512(d)(1)(I) of the FD&C Act.

When CVM approved a supplemental NADA for carbadox in 1998, it did not require the sponsor to provide data establishing a known relationship between the concentration of the marker residue (QCA) and the concentration of the residue of carcinogenic concern (§ 500.86(a) through (c)). At the time of the 1998 supplemental NADA approval, CVM did not believe that such information was necessary because of previous conclusions that it had made about the persistence of carcinogenic residue in the edible tissues of animals dosed with carbadox. Results from subsequent studies have led CVM to reexamine the conclusions made in 1998. CVM concludes, based on data from these studies, that it is necessary to establish a known relationship between the marker residue and the residue of carcinogenic concern, as required by regulation. Accordingly, CVM is proposing to revoke the current approved method because it is inadequate to monitor the residue of carcinogenic concern.

A. CVM's Conclusions in the January 1998 Approval

In reviewing residue chemistry information for the supplemental NADA for carbadox in January 1998, CVM relied on studies conducted by the sponsor[11] and academic researchers[12] to establish an S_o and an S_m for the most potent of the carcinogenic compounds. As part of the supplemental NADA, the sponsor submitted toxicology studies, including carcinogenicity bioassays with carbadox, DCBX, and hydrazine (another carcinogenic metabolite of carbadox).[13] These studies indicated that DCBX was the most potent of the three identified carcinogenic residues of carbadox.[14] Based on the carcinogenicity of DCBX, CVM calculated an S_o of 0.061 ppb for total residue of carcinogenic concern for carbadox in the total diet. CVM calculated an S_m value for the residue of carcinogenic concern in muscle at 0.305 ppb, in liver at 0.915 ppb, and in kidney and fat at 1.830 ppb.[15]

Based on information submitted as part of the supplemental NADA approved in January 1998, CVM made conclusions about how long carcinogenic residues persist in the edible tissues of swine after treatment with carbadox and about the appropriate marker residue to select to monitor carbadox use. As stated in the FOI summary for the January 1998 approval of the supplemental NADA,[16] CVM concluded the data:

Show that carbadox, desoxycarbadox and hydrazine do not persist in edible tissue as detectable residues beyond 72 hours. The agency's evaluation of these data, and the new information provided by the sponsor, demonstrate that following administration, parent carbadox is rapidly metabolized; that the metabolism of carbadox is similar among species; that the *in vivo* metabolism of the compounds of carcinogenic concern is also rapid and irreversible such that the resulting metabolic products cannot regenerate compounds of carcinogenic concern; that the unextractable residues are related to non-carcinogenic compounds, quinoxaline-2-carboxylic acid (QCA) and quinoxaline-2-carboxaldehyde; and that QCA is the only residue detectable in the edible tissues beyond 72 hours post dosing. Thus, the agency concludes that the unextractable bound residue is not of carcinogenic concern and that QCA is a reliable marker residue for carbadox.

CVM made the following conclusions during the review of the supplemental NADA for carbadox approved in January 1998:

1. Carcinogenic residues do not persist in animal tissue beyond 72 hours postdosing.
2. Extractable QCA is the only residue detectable in edible tissues 72 hours postdosing.
3. Unextractable residues are noncarcinogenic residues related to QCA.
4. QCA is a reliable marker residue for carbadox and its metabolites.
5. No residue of carcinogenic concern, even below the S_o, is detectable by any method after 72-hours postdosing.

Because of these conclusions, CVM did not require the sponsor to submit data to meet the requirements of the part 500, subpart E regulations despite the fact that carbadox is a carcinogen. These regulations require CVM to designate an R_m (the residue level at which the residue of carcinogenic concern in the diet of people represents no significant increase in the risk of cancer to people) based on a known relationship between the marker residue and the residue of carcinogenic concern. In addition, the sponsor must provide a regulatory method that can detect the marker residue at or below the R_m.[17] CVM

[11] Pfizer, Inc. was the sponsor for carbadox until 2001. The current sponsor is Phibro Animal Health.

[12] Summaries of these studies can be found in the FDA FOI Summary, NADA 041–061, MECADOX 10 (carbadox) Type A medicated article, supplemental approval January 30, 1998, available at *https://animaldrugsatfda.fda.gov/adafda/app/search/public/document/downloadFoi/308;* and, in the 1990 evaluation of carbadox by the Joint FAO/WHO Expert Committee on Food Additives, available at *http://www.fao.org/fileadmin/user_upload/vetdrug/docs/41-3-carbadox.pdf* (accessed on October 11, 2019).

[13] FDA, FOI Summary, NADA 041–061, MECADOX 10 (carbadox) Type A medicated article, supplemental approval January 30, 1998. Available at *https://animaldrugsatfda.fda.gov/adafda/app/search/public/document/downloadFoi/308.*

[14] Id.

[15] Id.

[16] Id.

[17] Under § 500.86, the necessary steps to meet the operational definition of ''no residue'' are: (1) Measure the depletion of the residue of carcinogenic concern until its concentration is at or below the S_m (0.915 ppb) in liver; (2) measure the depletion of the marker residue until the concentration of the residue of carcinogenic concern is at or below the S_m; (3) use the information in (1) and (2) to establish an R_m; and, (4) according to the regulations as they existed in 1998, develop a method that could detect the marker residue of the drug, as long as the marker residue would only be detected at or below the R_m under the proposed conditions of use. According to

Continued

instead established a tolerance of 30 ppb for QCA, and granted the supplemental approval for carbadox. Subsequent to the 1998 supplemental approval, CVM has evaluated additional information that undermines its previous conclusions that carcinogenic residues deplete within 72 hours and that QCA is the only residue detectable at 72 hours postdosing. These new data reinforce the inadequacy of the currently approved method and clarify the need for a method that satisfies the requirements of part 500. See, supra, Section II.C.

B. The Current Approved Method for Carbadox That Measures QCA as the Marker Residue for Carbadox Is Inadequate

Under section 512(d)(1)(I) of the FD&C Act, carcinogenic new animal drugs, such as carbadox, must have a method of detection, prescribed or approved by regulation, to ensure that no residue of carcinogenic concern persists in any edible tissue or other food derived from a treated animal. CVM has implemented this statutory requirement through its SOM regulations in part 500, subpart E, which require that each carcinogenic new animal drug have a marker residue with a known relationship to the residue of carcinogenic concern. This relationship is necessary to establish a concentration of the marker residue (the R_m) that ensures any residue of carcinogenic concern in a specific edible tissue is below the level corresponding to maximum lifetime risk of cancer in the test animal of 1 in 1 million (the S_m), based on calculations that consider the entire diet (the S_o). The approved method must have a limit of detection less than or equal to the R_m.

Although CVM approved the current method for carbadox as part of the supplemental NADA in January 1998 and designated the S_m and S_o, we did not require the sponsor to provide data showing the relationship between QCA and the residue of carcinogenic concern and therefore did not designate an R_m. Nor did we require the sponsor to identify a regulatory method with a limit of detection less than or equal to the R_m. Without an R_m and an appropriate regulatory method for detecting when the marker residue falls below the R_m, it is impossible to determine that the residue of carcinogenic concern falls below the S_m and S_o at the established withdrawal period. Accordingly, it is impossible, based on information currently available, to use the current approved method to ensure compliance with the operational definition of no residue.

Furthermore, based on studies conducted since 1998, CVM has reevaluated the conclusions that originally led us to determine that assignment of a tolerance of 30 ppb for QCA in swine liver would assure that the residue of carcinogenic concern would remain below their respective S_o in all edible tissues. CVM concludes, based on its review of the data, that carcinogenic residues persist longer than previously known. Because there is no regulatory method that detects when the residue of carcinogenic concern falls below the limit of detection for the R_m, the current approved method is inadequate for monitoring compliance with FDA's operational definition of no residue. See § 500.84(c)(3). Accordingly, the approved method for carbadox does not satisfy the statutory or regulatory requirements.

IV. Conclusion

In the January 1998 approval of the supplemental NADA for carbadox, CVM previously determined that carbadox and its metabolites, including DCBX, induce cancer in animals but that no such residues of the drug would be found in edible tissues after the preslaughter withdrawal period by the approved regulatory methods of examination. However, the failure to establish an R_m or a relationship between QCA residues and residue of carcinogenic concern in animal tissue during the 1998 process leads CVM to now conclude that the current approved method does not meet the requirements of the FD&C Act and the SOM regulations and is inadequate to monitor carbadox residues in compliance with FDA's operational definition of no residue. New information available to CVM since the approval of the January 1998 supplemental NADA reinforces the importance of having an approved regulatory method that complies with the SOM regulations. Therefore, we are proposing to revoke the current approved method.

V. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Suárez, A.F. and Arnold, D., Addendum to the carbadox monograph prepared by the 36th meeting of the Committee and published in the FAO Food and Nutrition Paper 41/3, Rome 1991. Available at: *http://www.fao.org/fileadmin/user_upload/vetdrug/docs/41-15-carbadox.pdf* (accessed on April 7, 2020).
2. Evaluations of the Joint FAO/WHO Expert Committee on Food Additives (JECFA). Carbadox. Available at: *https://apps.who.int/food-additives-contaminants-jecfa-database/chemical.aspx?chemID=2176* (accessed on April 7, 2020).
3. Internet Archive of Health Canada, Drug and Health Products (June 2008), *https://web.archive.org/web/20080609050022/http://www.hc-sc.gc.ca/dhp-mps/vet/faq/faq_mrl-lmr-eng.php* (accessed on April 7, 2020).
4. Australian Pesticides and Veterinary Medicines Authority, ''Substances not permitted for use on food-producing animals in Australia,'' *https://apvma.gov.au/node/11626* (accessed on April 7, 2020).

Dated: July 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

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BILLING CODE 4164–01–P

the current regulations, step (4) requires the development of a method that complies with the operational definition of no residue (the method's LOD is less than or equal to the R_m).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0278]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 19, 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.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting

comments or requesting information, please include the document identifier 0990–0278 and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Federal wide Assurance Form.

Type of Collection: Extension.

OMB No. 0990–0278—Office of the Assistant Secretary for Health, Office for Human Research Protections—Federal Wide Assurance Form

Abstract: Assistant Secretary for Health, Office for Human Research Protections is requesting a three year extension of the Federal wide Assurance (FWA) form. The FWA is designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and HHS Regulations for the protection of human subjects at 45 CFR 46.103.

Respondents are institutions engaged in human subject's research that is conducted or supported by HHS.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Federal wide Assurance (FWA)	14,000	2.0	0.50	14,000
Total				14,000

Terry Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–15585 Filed 7–17–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services.

ACTION: Notice of a New System of Records, and Rescindment of a System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is establishing a new department-wide system of records, 09–90–2001, Records Used for Surveillance and Study of Epidemics, Preventable Diseases and Problems. The new system of records replaces, and is broader than, a similar system of records maintained by HHS' Centers for Disease Control and Prevention (CDC), which HHS is rescinding in this notice, 09–20–0113 Epidemic Investigation Case Records.

DATES: The new department-wide system of records is applicable July 20, 2020, subject to a 30-day period in which to comment on the routine uses. The rescindment of the CDC system of records is applicable August 19, 2020. Submit any comments by August 19, 2020.

ADDRESSES: The public should address written comments by email to *beth.kramer@hhs.gov* or by mail to Beth Kramer, HHS Privacy Act Officer, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs, 200 Independence Ave. SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: General questions about the new system of records and the related rescindments may be submitted by email to *beth.kramer@hhs.gov* or by mail to Beth Kramer, HHS Privacy Act Officer, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs, 200 Independence Ave. SW, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: In the winter and spring of 2020, spread of the novel coronavirus, SARS–CoV–2, which causes the disease known as COVID–19, required HHS to expand its recordkeeping in order to respond to the pandemic. Prior to 2020, CDC maintained records about epidemiological studies and surveillance of disease problems. However, HHS' experience during the COVID–19 pandemic made clear that other components, not just CDC, must collect epidemiologic and public health surveillance records about individuals to support the Department's response. For example, the Office of the Assistant Secretary for Health (OASH) is managing records about tests for COVID–19 or its antibodies, some of which are subject to the Privacy Act.

Therefore, the Department has decided to expand the existing system of records of the CDC, 09–20–0113 Epidemic Investigation Case Records, and re-establish it under a new system number and name as a department-wide system of records covering all parts of the Department that may maintain epidemiological and surveillance records necessary to support the Department's response to the pandemic.

The new department-wide system of records includes the records covered in CDC system of records 09–20–0113, which HHS rescinds in this notice, but is broader in that it covers records used for surveillance and investigation of epidemics, preventable diseases and health problems maintained by *any* component of HHS, not just CDC. This department-wide system of records notice (SORN) differs from the CDC SORN it is replacing in these additional respects:

- It is formatted to comply with OMB Circular A–108.
- The System Manager section includes updated contacts for CDC records, and adds contacts for OASH records and ''records maintained by other HHS components.''
- The Authorities section includes one additional authority not included in the CDC SORN: 42 U.S.C. 247d–6d.
- The Purpose description is department-wide.
- The Categories of Individuals section uses different wording from, but identifies the same categories of individuals as, the CDC SORN.
- The Categories of Records section identifies the categories as ''medical records and related documents,'' including ''case reports, lab requisition

forms, patient consent forms, assurance statements, analytical testing data, questionnaires, and contact tracing reports.'' The CDC SORN lists only medical histories and case reports.

• The Record Source Categories section includes these additional categories not listed in the CDC SORN: Subject individuals' family members or other caregivers; Tribal health departments; health care providers and laboratories; and contractors (for example, call centers) engaged by HHS.

• The Routine Uses section establishes these routine uses, similar versions of which are in the CDC SORN:

○ Routine use 3 (authorizing disclosures to state, local, and Tribal health departments and authorities and to patients' private health care providers); routine use 5 (authorizing disclosures to a congressional office in responding to constituent inquiries); routine use 6 (authorizing disclosures to the Department of Justice in litigation); and routine uses 8 and 9 (authorizing disclosures to relevant agencies in order to respond to a privacy or security incident experienced by HHS or another federal agency).

• The Routine Uses section also establishes these routine uses which are not in the CDC SORN:

○ Routine use 1 (authorizing disclosures to HHS contractors and agents);

○ Routine use 2 (authorizing disclosures to student volunteers and other non-employees functioning akin to HHS employees);

○ Routine use 4 (authorizing disclosures to researchers for research purposes); and

○ Routine use 7 (authorizing disclosures to the National Archives and Records Administration (NARA) in records management inspections).

• The Storage section describes the storage media as ''hard copy files and electronic media.'' The CDC SORN includes some now outdated forms of electronic storage media.

• The Retrieval section identifies not only name but ''any assigned identification number'' as the personal identifiers used for retrieval.

• The Retention section identifies several CDC records disposition schedules approved by NARA and one General Records Schedule applicable to other records, and makes clear that the Department will retain unscheduled records indefinitely until NARA approves schedules for the records. The CDC SORN describes one retention period (''maintained in agency for four years [and] destroyed. . .when 20 years old, unless needed for further study'').

• The Safeguards section describes department-wide procedures.

• The procedures for making an access request, amendment request, or notification request state that the request must be made in writing to the applicable System Manager, and list these additional identifying particulars to include in a request: Address; date of birth; and any assigned identification number (if known).

Because HHS is replacing CDC system of records 09–20–0113 with new HHS system of records 09–90–2001, HHS is rescinding CDC system of records 09–20–0113 as duplicative of 09–90–2001. The CDC records described in CDC SORN 09–20–0113 that are still maintained will, upon rescindment of that SORN, be maintained under new system of records 09–90–2001.

HHS provided advance notice of the new system of records and the related rescindment to the Office of Management and Budget and Congress as required by 5 U.S.C. 552a(r) and OMB Circular A–108.

Beth Kramer,

HHS Privacy Act Officer, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs.

SYSTEM NAME AND NUMBER:

Records Used for Surveillance and Study of Epidemics, Preventable Diseases and Problems, 09–90–2001.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The addresses of the HHS components responsible for this system of records are as shown in the System Manager(s) section, below.

SYSTEM MANAGER(S):

The System Managers are:

• *For records maintained by the Centers for Disease Control and Prevention (CDC):*

○ Information Systems Security Officer (ISSO), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Mailstop H16–5, 1600 Clifton Rd. NE, Atlanta, GA 30333, (800) 232–4636 (800–CDC–INFO).

○ Information Systems Security Officer (ISSO), Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), Mailstop V24–6, 2400 Century Pkwy., Atlanta, GA 30345, (800) 232–4636 (800–CDC–INFO).

• *For records maintained by the Office of the Assistant Secretary for Health (OASH):*

○ Deputy Chief Information Officer, Office of the Assistant Secretary for Health (OASH), 200 Independence Ave. SW, Washington, DC 20201, (202) 821–5116, *donald.burgess@hhs.gov.*

• *For records maintained by other HHS components:*

○ HHS Privacy Act Officer, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs (ASPA), 200 Independence Ave. SW, Washington, DC 20201, (202) 690–7453, *FOIARequest@hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sec. 301, Research and Investigation (42 U.S.C. 241); secs. 304, 306, and 308(d), which discuss authority to grant assurances of confidentiality for health research and related activities (42 U.S.C. 242b, 242k, and 242m(d)); sec. 361, Quarantine and Inspection, Control of Communicable Diseases (42 U.S.C. 264); and sec. 361F–3, Public Readiness and Emergency Preparedness Act (42 U.S.C. 247d-6d).

PURPOSE(S) OF THE SYSTEM:

The system of records enables HHS to understand disease patterns in the United States, develop programs for prevention and control of health problems, and communicate new knowledge to the health community.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about these categories of individuals:

• Individuals who have been diagnosed with, are suspected of having, or are at risk of having a disease or preventable condition of public health significance, their contacts, and others with possible exposure.

• Individuals who are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records are medical records and related documents, including: Case reports, lab requisition forms, patient consent forms, assurance statements, analytical testing data, questionnaires, and contact tracing reports.

RECORD SOURCE CATEGORIES:

The records or information in the records is obtained directly from the subject individuals or their family members or other caregivers, or is obtained from state, local, and Tribal health departments; physicians, laboratories, and other health care providers; or contractors (for example, call centers) engaged by HHS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures authorized directly in the Privacy Act at

5 U.S.C. 552a(b)(1) and (2) and (b)(4) through (11), HHS may disclose records about an individual from this system of records to parties outside HHS as described in these routine uses, without the subject individual's prior written consent.

Routine uses 3 through 9 do not apply to records maintained under an assurance of confidentiality provided under section 308(d) of the Public Health Service Act (42 U.S.C. 242m(d)); such disclosures would be made of such records only if expressly authorized in the individual's consent form or stipulated in the Assurance Statement.

1. Records may be disclosed to HHS contractors, consultants, agents, or others (including other federal agencies) engaged by HHS to assist with accomplishment of an HHS function relating to the purposes of this system of records and who need to have access to the records in order to assist HHS.

2. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for HHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

3. Records may be disclosed to federal, state, local, and Tribal health departments, other cooperating medical authorities, or other appropriate entities or organizations assisting or coordinating with HHS, including patients' private health care providers, in order for them to take measures to control, prevent, or treat disease; to conduct follow-up activities with patients and others contacted, or tested during investigations; and to carry out program activities or collaborative efforts to deal more effectively with diseases and conditions of public health significance.

4. A record may be disclosed for a research purpose to a federal, state or Tribal agency or grantee organization, or a research entity (*e.g.,* university, hospital, clinic, research foundation, national association or coordinating center), when HHS:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained.

(B) Has determined that the research purpose:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) warrants the risk to the privacy of the individual that additional exposure of the record might bring.

(C) Has required the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record,

(2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and

(3) make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual,

(b) for use in another research project, under these same conditions, and with written authorization of HHS,

(c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) when required by law; and

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

5. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

6. Information may be disclosed to the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings when:

a. HHS or any of its components, or

b. any employee of HHS acting in the employee's official capacity, or

c. any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or

d. the United States Government, is a party to the proceeding or has an interest in the proceeding and, by careful review, HHS determines that the records are both relevant and necessary to the proceeding.

7. Records may be disclosed to representatives of the National Archives and Records Administration during records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

8. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (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 HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Records may be disclosed to another federal agency or federal entity, when HHS 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in hard copy files and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual record subject's name or assigned identification number, if any.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with applicable disposition schedules. Any unscheduled records will be retained indefinitely, until they have been scheduled with the National Archives and Records Administration and have become eligible for disposition under those schedules.

Disposition schedule applicable to certain short-term OASH records:

- *Transitory Records, General Records Schedule 5.2, item 010:* Destroyed when no longer needed for business use, or according to agency predetermined time period or business rule.

Disposition schedules applicable to CDC records:

- *Passenger Manifest Records, N1–442–08–001:* Maintained for one year after the records are retired or the investigation is no longer active, and destroyed in quarterly cycles.
- *Scientific and Research Project Records, N1–442–09–001:* Precedent-setting projects: Permanently retained. Significant and/or secondary projects:

Retained for at least 11 years and not longer than 30 years after retired or no longer needed on-site.

- *Survey Records, N1–442–88–001:* Destroyed after nine years, or earlier. Pre-test questionnaires are destroyed two years after pre-test or after any analysis is complete, whichever is earlier. Research supporting documents are destroyed when no longer needed, or after five years.
- *National Health and Nutrition Examination Survey (NHANES I) Epidemiological Follow Up Study Records (NHFES), N1–442–90–001:* Source documents are retained for 30 years.
- *Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Surveillance Database Records, N1–442–91–001:* Permanently retained.
- *Epidemiologic Databases, N1–442–91–002:* Permanently retained.
- *Specimen Handling for Testing Databases and Related Records, N1–442–91–005:* Records used in answering inquiries about test results are destroyed when no longer needed for administrative purposes.
- *Swine Flu Program Records, N1–442–91–006:* Retained permanently or for 20 years.
- *Poliomyelitis and Vaccine Files, N1–442–91–008:* Destroyed when no longer needed for research or administrative purposes.
- *Center for Infectious Diseases Electronic Systems and Related Records, N1–442–91–012:* Depending on the nature of the record, records are permanently retained, or are destroyed when 10 years old, when 20 years old, or when no longer needed for administrative purposes.
- *Acquired Immune Deficiency Syndrome (AIDS) Epidemic Charts, N1–442–94–001:* Permanently retained.
- *National Immunization Program Records, N1–442–97–001:* Depending on the nature of the record, records are permanently retained or are destroyed when no longer needed for administrative, scientific, and legal purposes or when 30 years old.
- *Smallpox Eradication Program Records, N1–442–99–001:* Permanently retained.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the HHS Information Security and Privacy Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.* HHS safeguards these records in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook; the E-Government Act of 2002, which includes the Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3541–3549, as amended by the Federal Information Security Modernization act of 2014, 44 U.S.C. 3551–3558; pertinent National Institutes of Standards and Technology (NIST) publications; and OMB Circular A–130, Managing Information as a Strategic Resource. HHS protects the records from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras; securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours; controlling access to physical locations where records are maintained and used by means of combination locks and identification badges issued only to authorized users; limiting access to electronic databases to authorized users based on roles and either two-factor authentication or password protection; using a secured operating system protected by encryption, firewalls, and intrusion detection systems; requiring encryption for records stored on removable media; and training personnel in Privacy Act and information security requirements. Records that are eligible for destruction are disposed of using secure destruction methods prescribed by NIST SP 800–88.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about that individual in this system of records must submit a written access request to the applicable System Manager identified in the ''System Manager'' section of this SORN. The request must contain the requester's full name, address, and signature, and should also include helpful identifying particulars, such as: The requester's date of birth, any assigned identification number (if known), and the approximate date, place, and nature of the questionnaire, test, study, or other activity in which the requester participated. So that HHS may verify the requester's identity, the requester's signature must be notarized or the request must include the requester's written certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about that individual in this system of records must submit an amendment request to the applicable System Manager identified in the ''System Manager'' section of this SORN, containing the same information required for an access request. The request must include verification of the requester's identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about that individual should submit a notification request to the applicable System Manager identified in the ''System Manager'' section of this SORN. The request must contain the same information required for an access request, and must include verification of the requester's identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

NOTICE OF RESCINDMENT:

For the reasons explained at the end of the Supplementary Information section, HHS rescinds the following system of records as duplicative of new system of records 09–90–2001:

SYSTEM NAME AND NUMBER:

Epidemic Investigation Case Records, 09–20–0113.

HISTORY:

51 FR 42449 (Nov. 24, 1986); updated in part at 54 FR 47904 (Nov. 17, 1989), 56 FR 66733 (Dec. 24, 1991), 57 FR 62811 (Dec. 31, 1992), 58 FR 69048 (Dec. 29, 1993), 76 FR 4452 (Jan. 25, 2011), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2020–15564 Filed 7–17–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuropsychiatric Disorders.

Date: August 7, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jenny Raye Browning, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5207, Bethesda, MD 20892, (301) 402–8197, *jenny.browning@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: August 11, 2020.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 14, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15547 Filed 7–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2020–0002]

Notice of Request for Extension of a Currently Approved Information Collection for Chemical-Terrorism Vulnerability Information (CVI)

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: 30-Day notice and request for comments; extension of Information Collection Request: 1670–0015.

SUMMARY: The Infrastructure Security Division (ISD) within the Cybersecurity and Infrastructure Security Agency (CISA) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published a notice about this ICR, in the **Federal Register** on March 30, 2020, for a 60-day comment period. 85 FR 17953.[1] There were no comments received. In this notice, CISA solicits additional public comment concerning this ICR for 30-days in accordance with 5 CFR 1320.8.

DATES: Comments are due by August 19, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.* All submissions must include the words ''Department of Homeland Security'' and the OMB Control Number 1670–0015.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[2] Sensitive Security Information (SSI),[3] or Protected Critical Infrastructure Information (PCII)[4] should not be submitted to the public docket. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and packaged in accordance with applicable requirements and submitted by mail to the DHS/CISA/Infrastructure Security Division, CFATS Program Manager, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528–0610. The Department will forward all comments received by the submission deadline to the OMB Desk Officer.

FOR FURTHER INFORMATION CONTACT: Lona Saccomando, 703–235–5263, *CISARegulations@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CFATS Program identifies and regulates the security of high-risk chemical facilities using a risk-based approach. Congress initially authorized the CFATS Program under Section 550 of the Department of Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006) and reauthorized it under the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014[5] or ''CFATS Act of 2014''. The Department implemented the CFATS Program through rulemaking and issued an Interim Final Rule (IFR) on April 9, 2007 and a final rule on November 20, 2007. See 72 FR 17688 and 72 FR 65396.

Pursuant to 6 U.S.C. 623, the CFATS regulations establish the requirements under 6 CFR 27.400 that covered persons must follow to safeguard certain documents and other information developed under the regulations from unauthorized disclosure. This information is identified as CVI and, by law, receives protection from public disclosure and misuse. This collection will be used to manage the CVI program in support of CFATS. The current information collection for the CVI

[1] The 60-day notice may be viewed at *https://www.federalregister.gov/d/2020-06499.*

[2] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *www.dhs.gov/publication/safeguarding-cvi-manual.*

[3] For more information about SSI see 49 CFR part 1520 and the SSI Program web page at *www.tsa.gov/for-industry/sensitive-security-information.*

[4] For more information about PCII see 6 CFR part 29 and the PCII Program web page at*www.dhs.gov/pcii-program.*

[5] The Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (also known as the CFATS Act of 2014, Public Law 113–254) codified the CFATS program into the Homeland Security Act of 2002. See 6 U.S.C. 621 *et seq.,* as amended by Public Law 116–136, Sec. 16007 (2020).

program (IC 1670–0015) will expire on January 31, 2021.[6]

Analysis

CISA continues to rely on the analysis and resulting burden estimates provided in the 60-day notice for the Chemical-terrorism Vulnerability Information Authorization instrument.

Public Participation

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Analysis

Agency: Department of Homeland Security, Cybersecurity and Infrastructure Agency, Infrastructure Security Division, Infrastructure Security Compliance Division.

Title: CFATS Chemical-terrorism Vulnerability Information.

OMB Number: 1670–0015.

Instrument: Chemical-terrorism Vulnerability Information Authorization.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 20,000 respondents (rounded estimate).

Estimated Time per Respondent: 0.50 hours.

Total Burden Hours: 10,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost: $797,474.

Richard S. Libby,

Deputy Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2020–15570 Filed 7–17–20; 8:45 am]

BILLING CODE 4410–10–P

[6] The current information collection for CVI (*i.e.,* IC 1670–0015) may be viewed at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201704-1670-002.*

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2020–0007]

60-Day Notice and Request for Comments; Extension, 1670–0027: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; extension of Information Collection Request: 1670–0027.

SUMMARY: DHS CISA will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until September 18, 2020.

ADDRESSES: You may submit comments, identified by docket number CISA–2020–0007, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: nppd-prac@hq.dhs.gov.* Please include docket number CISA–2020–0007 in the subject line of the message.
- *Mail:* Written comments and questions about this Information Collection Request should be forwarded to DHS/CISA, ATTN: 1670–0027, 245 Murray Lane SW, Mail Stop 0608, Washington, DC 20598–0608.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number CISA–2020–0007. All comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Mia Bruce, 703–235–3519, *nppd-prac@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. CISA is planning to submit this collection to OMB for approval. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between CISA and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public.

If this information is not collected, vital feedback from customers and stakeholders on CISA's services will be unavailable. CISA will only submit a collection for approval under this generic clearance if it meets the following conditions:

1. The collections are voluntary;

2. The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both

the respondents and the Federal Government;

3. The collections are noncontroversial and do not raise issues of concern to other Federal agencies;

4. Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

5. Personally identifiable information is collected only to the extent necessary and is not retained;

6. Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the CISA (if released, CISA must indicate the qualitative nature of the information);

7. Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

8. Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing personal information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This is an extension of an existing information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: Department of Homeland Security, Cybersecurity and Infrastructure Agency, Infrastructure Security Division.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1670–0027.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector.

Number of Annualized Respondents: 49,080.

Estimated Time per Respondent: 0.05 hours.

Total Annualized Burden Hours: 11,130 hours.

Total Annualized Respondent Opportunity Cost: $408,007.89.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $200,000.

Richard S. Libby,

Deputy Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2020–15569 Filed 7–17–20; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[OMB Control Number 1653–0051]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on May 14, 2020, allowing for a 60-day comment period. ICE received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 19, 2020.

ADDRESSES: Written comments and recommendations should be sent within 30 days of publication of this notice via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2012–0003; The comments submitted via this method are visible to the Office of Management and Budget, and comply with the requirements of 5 CFR 1320.12(c).

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Patricia Reiser (610–587–9123), *patricia.reiser@ice.dhs.gov,* U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities.

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. DHS is setting standards for the prevention, detection, and response to sexual abuse in its confinement facilities. For DHS facilities and as incorporated in DHS contracts, these standards require covered facilities to retain and report to the agency certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, and investigations, as well as to collect, retain, and report to the agency certain specified information relating to allegations of sexual abuse within the covered facility.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,386,177 responses at 6 minutes (.1 hours) per response.

(5) *An estimate of the total public burden (in hours) associated with the collection:* 120,082 annual burden hours.

Dated: July 15, 2020.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2020–15643 Filed 7–17–20; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0124]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Consideration of Deferred Action for Childhood Arrivals

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 18, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0124 in the body of the letter, the agency name and Docket ID USCIS–2012–0012. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2012–0012. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2012–0012 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–821D; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individuals or households. The information collected on this form is used by USCIS to determine eligibility of certain individuals who were brought to the United States as children and meet the following guidelines to be considered for deferred action for childhood arrivals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–821D Initial Requests is 40,819 and the estimated hour burden per response is 3 hours; and the estimated total number of respondents for the information collection I–821D Renewal Requests is 418,775 and the estimated hour burden per response is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,378,782 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $50,553,340.

Dated: July 15, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–15634 Filed 7–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0153]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: E-Verify Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 18, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0153 in the body of the letter, the agency name and Docket ID USCIS–2007–0023. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0023. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0023 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* E-Verify Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No form number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. E-Verify allows employers to electronically confirm the employment eligibility of newly hired employees. USCIS has received, at the direction of the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB), a temporary second OMB Control Number 1615–0153. The original OMB Control Number, 1615–0092, remains valid while OIRA continues to evaluate a separate submission under that Control Number.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- 66,330 respondents averaging 2.26 hours (2 hours, 16 minutes) per response (enrollment time includes review and signing of the MOU, registration, new user training, and review of the user guides); plus
- 425,000, the number of already-enrolled respondents receiving training on new features and system updates averaging 1 hour per response; plus

• 425,000, the number of respondents submitting E-Verify cases averaging .121 hours (approximately 7 minutes) per case.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,887,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,038,394.

Dated: July 15, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–15638 Filed 7–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0121]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 19, 2020.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2014–0008. All submissions received must include the OMB Control Number 1615–0121 in the body of the letter, the agency name and Docket ID USCIS–2014–0008.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 1, 2020, at 85 FR 18254, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2014–0008 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Generic Clearance of Qualitative Feedback on Agency Service Delivery.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; businesses and organizations. This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection 1615–0121 is 56,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 28,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. Respondents to this collection of information are not required to provide documentation or take other actions that might incur a cost.

Dated: July 15, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–15632 Filed 7–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0111]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for CNMI-Only Nonimmigrant Transition Worker and Semiannual Report for CW–1 Employers

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 18, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0111 in the body of the letter, the agency name and Docket ID USCIS–2012–0011. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2012–0011. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2012–0011 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant Transition Worker and Semiannual Report for CW–1 Employers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129CW; I–129CWR; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on Form I–129CW to determine eligibility for the requested immigration benefits. An employer uses Form I–129CW to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CW–1 worker. An employer also uses Form I–129CW to request an extension of stay or change of status on behalf of the alien worker. The Form I–129CW serves the purpose of standardizing requests for these benefits and ensuring that the basic information required to determine eligibility is provided by the petitioners.

Form I–129CWR, Semiannual Report for CW–1 Employers, is used by employers to comply with the reporting requirements imposed by the Workforce Act. Form I–129CWR captures data USCIS requires to help verify the continuing employment and payment of the CW–1 worker. DHS may provide such semiannual reports to other federal partners, including the U.S. Department of Labor (DOL) for investigative or other use as DOL may deem appropriate. Congress expressly provided for these semiannual reports to be shared with DOL. 48 U.S.C. 1086(d)(3)(D)(ii).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129CW is 5,975 and the estimated hour burden per response is 4 hours; the estimated total number of respondents for the information collection Form I–129CWR is 5,975 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 38,838 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this

collection of information is $3,809,062.50.

Dated: July 15, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–15637 Filed 7–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0012]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for Alien Relative

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 19, 2020.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0037. All submissions received must include the OMB Control Number 1615–0012 in the body of the letter, the agency name and Docket ID USCIS–2007–0037.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 1, 2020, at 85 FR 18255, allowing for a 60-day public comment period. USCIS did receive 2 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0037 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–130; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–130 allows U.S. citizens or lawful permanent residents of the United States to petition on behalf of certain alien relatives who wish to immigrate to the United States. Form I–130A allows for the collection of additional information for spouses of the petitioners necessary to facilitate a decision.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–130 is 437,500 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection I–130A is 40,775 and the estimated hour burden per response is 0.833 hours. The estimated total number of respondents for the information collection I–130 e-file is 437,500 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,565,216 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $350,000,000.

Dated: July 15, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–15633 Filed 7–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0049]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for Verification of Naturalization

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 18, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0049 in the body of the letter, the agency name and Docket ID USCIS–2005–0036. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2005–0036. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0036 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form N–25; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or Tribal Government. This form will allow U.S. Citizenship and Immigration Services (USCIS) to obtain verification from the courts that a person claiming to be a naturalized citizen has, in fact, been naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–25 is 1,000 and the estimated hour burden per response is 0.25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 250 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $500 for 1st class mail postage.

Dated: July 15, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–15636 Filed 7–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS00000–L12200000.DF0000–20X.HAG 20–0071]

Notice of Public Meetings, Western Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Oregon Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Western Oregon RAC has scheduled its meetings for September 23 and 24, 2020, and December 8 and 9, 2020. The September 23 meeting will begin at 9 a.m. and adjourn at approximately 4 p.m. The September 24 meeting will begin at 9 a.m. and adjourn at approximately 2 p.m. The December 8 meeting will begin at 9 a.m. and adjourn at approximately 4 p.m. The December 9 meeting will begin at 9 a.m. and adjourn at approximately 2 p.m.

The meetings will be held virtually if public health restrictions remain in place.

ADDRESSES: The September 23 and 24, 2020 meeting will be held in Springfield at the Springfield Interagency Office, 3106 Pierce Parkway, Springfield, OR 97477 and the December 8 and 9, 2020 meeting will be held in Roseburg at the BLM Roseburg District Office, 777 NW Garden Valley Boulevard, Roseburg, OR 97471.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, Medford District, 3040 Biddle Road, Medford, OR 97504. Phone: 541–618–2340. Email: *ksullivan@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Western Oregon RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues across public lands in western Oregon, including the Coos Bay, Medford, Northwest Oregon, and Roseburg Districts and part of the Lakeview District. Topics of discussion for these meetings include Secure Rural Schools (SRS) Title II funding, recreation, recreation fee proposals, fire management, land use planning, invasive species management, timber management, travel management, wilderness, cultural resource management, and other issues as appropriate.

The September agenda includes member introductions, election of a chair, overview of the newly established RAC's role and governing legislation, including an overview of the SRS Title II funding process.

The December meeting will focus on the review and recommendation of project proposals for funding under the SRS Title II legislation.

The meetings are open to the public, and a public comment period will be held at each meeting. Depending on the number of persons wishing to comment and the time available, time allotted for individual oral comments may be limited. A virtual public meeting may be offered. Written comments submitted 5 business days prior to the meeting will be provided to the members for consideration during the meeting.

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.

Minutes for the RAC meetings will be maintained in the Medford District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Previous minutes, membership information, and upcoming agendas are available at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington.*

Authority: 5 U.S.C. Appendix 2.

Kathryn J. Stangl,

Acting Associate State Director, Oregon/Washington.

[FR Doc. 2020–15567 Filed 7–17–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030424; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Indiana University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Indiana University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Indiana University at the address in this notice by August 19, 2020.

ADDRESSES: Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, Student Building 318, 701 E. Kirkwood Avenue, Bloomington, IN 47405, telephone (509) 731–5372, email *thomajay@indiana.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Indiana University, Bloomington, IN. The human remains and associated funerary objects were removed from Angel Mounds, Vanderburgh County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Indiana University professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); Omaha Tribe of Nebraska; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and

Indiana; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Quapaw Nation (previously listed as The Quapaw Tribe of Indians); Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation, Oklahoma; Saginaw Chippewa Indian Tribe of Michigan; Seneca-Cayuga Nation (previously listed as Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; The Osage Nation (previously listed as Osage Tribe); and the Wyandotte Nation.

The Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Omaha Tribe of Nebraska; Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Tribe of the Mississippi in Iowa; Sault St. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as Seneca Nation of New York); Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as Tonawanda Band of Seneca Indians of New York); and the Turtle Mountain Band of Chippewa Indians of North Dakota were invited to consult but did not participate.

Hereafter listed as ''The Consulted and Invited Tribes.''

History and Description of the Remains

Between 1939 and 2012, human remains representing, at minimum, 725 individuals were removed from Angel Mounds in Vanderburgh County, IN. These human remains are represented both by individual burials and single elements. No known individuals were identified. The 91 associated funerary objects are one lot of projectile points, one lot of chert flakes, one lot of chert blanks, one lot of abraiding stones, one lot of cannel coal fragments, one lot of anvils, one lot of pecking stones, one lot of celts, one lot of galena fragments, one lot of sandstone fragments, one lot of limestone fragments, one lot of fire cracked rocks, one lot of stones, one lot of granite fragments, one lot of slate fragments, one lot of concretions, one lot of fossilized stones, one lot of hammerstones, one lot of ceramic vessels, one lot of ceramic sherds, one lot of ceramic pipes, one lot of ceramic discs, one lot of ceramic beads, one lot of china fragments, one lot of daub fragments, one lot of clay balls, one lot of ceramic objects, one lot of ceramic earplugs, one lot of clay fragments, one lot of effigy heads, one lot of perforated discs, one lot of ceramic pellets, one lot of ceramic trowels, one lot of burned clay fragments, one lot of polished bone fragments, one lot of bone pins, one lot of fishhooks, one lot of turtle shell fragments, one lot of charred wood, one lot of faunal bones, one lot of bone awls, one lot of wolf incisors, one lot of animal tooth fragments, one lot of antlers, one lot of shell fragments, one lot of shell earpins, one lot of charcoal fragments, one lot of wood fragments, one lot of charred nuts, one lot of burned corn, one lot of vegetable materials, one lot of charred seeds, one lot of corn kernels, one lot of bean seeds, one lot of black organic materials, one lot of bark fragments, one lot of soil samples, one lot of metal fragments, one lot of copper fragments, one lot of tinklers, one lot of felt with brass tinklers, one lot of fabric with brass tinklers, one lot of beaded fabric fragments, one lot of black glass beads, one lot of blue glass beads, one lot of brass bells, one lot of brass bracelets, one lot of brass crosses, one lot of copper hair beads, one lot of brass spiral rings, one lot of brass strips, one lot of brass tacks, one lot of brass triangles, one lot of cord, one lot of felt fragments, one lot of glass bottle fragments, one lot of iron fragments, one lot of lead fragments, one lot of silver buckles, one lot of silver rings, one lot of silver triangles, one lot of steel scissors, one lot of tin triangles, one lot of vermillion, one lot of white glass garment beads, one lot of white glass necklace beads, one lot of wooden combs, one lot of fabric fragments, one lot of white buttons, one lot of brown buttons, and one lot of black rings.

Angel Mounds is a Mississippian mound complex on the Ohio River in southern Indiana. Three mortuary distinctions are identified, based on mortuary practice, site location, superposition, and associated objects or furnishings. Interments span nearly 1000 years. The first mortuary distinction has been culturally affiliated with the Quapaw Nation (previously listed as The Quapaw Tribe of Indians). Folklore and oral traditions indicate that the Quapaw originated in the Lower Ohio River Valley, and eventually moved downstream to reside on both sides of the Mississippi River. Numerous historical accounts discuss the Quapaw as having territory and villages established along the Ohio River. The Quapaw language is considered a Dhegian language, which is a group of Sioux languages. The tribes speaking Dhegian languages are historically known to have had aboriginal territory in the Ohio River Valley. Artifacts are consistent with several aspects of later Quapaw material culture.

The second mortuary distinction is characterized by stone-lined interments constructed with sandstone slabs, slate, and cannel coal. In some instances, these burials are intrusive. Cultural continuity between Late Mississippian period individuals and modern-day Shawnee Tribes is demonstrated by archeological, historical, geographical, and linguistic evidence. Historical accounts and oral traditions place the Shawnee in southern Indiana and along the Ohio River during the late Mississippian period, elsewhere known as the Fort Ancient period. As early as the 1820s, historical and ethnographic documents attributed stone-box grave internments in the Cumberland and Ohio River valleys to the Shawnee.

The third mortuary distinction is represented at Angel Mounds by a single burial, likely 1750–1825 A.D. During this time period, southern Indiana is known to have been occupied by the people of the Miami, Peoria, and the Delaware Tribes before their removal to Oklahoma in the mid-18th century. Based on geographical, historical, and oral traditional information, a relationship of shared group identity can be reasonably traced between the Historic Period Native American group to which these human remains belong and the Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Delaware Nation, Oklahoma and the Delaware Tribe of Indians.

Determinations Made by Indiana University

Officials of Indiana University have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 725 individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 91 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Quapaw Nation (previously listed as The Quapaw Tribe of Indians); and the Shawnee Tribe (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (509) 731–5372, email *thomajay@indiana.edu,* by August 19, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Indiana University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: June 4, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–15581 Filed 7–17–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030423; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Tennessee, Department of Anthropology, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The University of Tennessee, Department of Anthropology (UTK), has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on December 21, 2018. This notice corrects the number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UTK. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UTK at the address in this notice by August 19, 2020.

ADDRESSES: Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the University of Tennessee, Department of Anthropology, Knoxville, TN. The human remains and associated funerary objects were removed from Bedford County, Lincoln County, and Stewart County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (83 FR 65722–65724, December 21, 2018). Additional associated funerary objects were discovered after publication of the notice. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (83 FR 65723, December 21, 2018), column 1, 9th sentence from the top, is corrected to read as follows:

The 4,809 associated funerary objects include: 2,120 chert waste flakes, 27 bifacially worked tools or tool fragments, one core fragment, two gravers, one projectile point base, one piece of ochre, 130 pieces of burned clay, one ceramic sherd, 2,000 faunal bones, teeth and claws (of which 53 show evidence of polishing), 523 fragments of gastropod and mussel shell, two pieces of charcoal, and one bag of sediment.

In the **Federal Register** (83 FR 65723, December 21, 2018), column 1, 1st full paragraph, sentence 5 is corrected to read as follows:

The 98 associated funerary objects include: two pieces of charcoal, three ceramic sherds, two chert waste flakes, and 91 small fragments of faunal bone.

In the **Federal Register** (83 FR 65724, December 21, 2018), column 1, paragraph 1, sentence 3, under the heading ''Determinations Made by the University of Tennessee, Department of Anthropology,'' is corrected to read as follows:

Pursuant to 25 U.S.C. 3001(3)(A), the 6,329 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu,* by August 19, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The University of Tennessee, Department of Anthropology is

responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: June 4, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–15582 Filed 7–17–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030488; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Princeton University, Princeton, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Princeton University has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Princeton University. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Princeton University at the address in this notice by August 19, 2020.

ADDRESSES: Bryan R. Just, Princeton University Art Museum, Princeton, NJ 08544, telephone (609) 258–8805, email *bjust@princeton.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Princeton University. The human remains were removed from a field on the Princeton University campus in Princeton, Mercer County, NJ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Princeton University professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin (hereafter referred to as ''The Tribes'').

History and Description of the Remain

In the early 1900s, human remains representing, at minimum, four individuals, were removed from a field on the Princeton University campus in Princeton, Mercer County, NJ. George H. Shull, Professor of Botany at Princeton, removed the human remains from a field between Guyot Hall and Carnegie Lake that was plowed each Spring for him to conduct botanical experiments. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Princeton University

Officials of Princeton University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry based on their context and the museum's records.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Bryan R. Just, Princeton University Art Museum, Princeton, NJ 08544, telephone (609) 258–8805, email *bjust@princeton.edu,* by August 19, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Princeton University is responsible for notifying The Tribes that this notice has been published.

Dated: June 18, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–15580 Filed 7–17–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2019–0004]

Notice of Availability of the Proposed Notice of Sale for Gulf of Mexico Outer Continental Shelf Oil and Gas Region-Wide Lease Sale 256

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the Proposed Notice of Sale (NOS) for the proposed Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Oil and Gas Region-wide Lease Sale 256 (GOM Region-wide Sale 256). BOEM is publishing this Notice pursuant to its regulatory authority. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to Section 19 of the Outer Continental Shelf Lands Act, provides governors of affected states the opportunity to review and comment on the Proposed NOS. The Proposed NOS describes the proposed size, timing, and location of the sale, including lease stipulations, terms and conditions, minimum bids, royalty rates, and rental rates.

DATES: Governors of affected states may comment on the size, timing, and location of proposed GOM Region-wide Sale 256 within 60 days following their receipt of the Proposed NOS. BOEM will publish the Final NOS in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for November 18, 2020.

ADDRESSES: The Proposed NOS for GOM Region-wide Sale 256 and Proposed NOS Package containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394; telephone: (504) 736–2519. The Proposed NOS and Proposed NOS Package also are

available for downloading or viewing on BOEM's website at *http://www.boem.gov/Sale-256/.*

FOR FURTHER INFORMATION CONTACT: Bernadette Thomas, Regional Supervisor, Office of Leasing and Plans, 504–736–2596, *Bernadette.Thomas@boem.gov* or Wright Jay Frank, Chief, Leasing Policy and Management Division, 703–787–1325, *Wright.Frank@boem.gov.*

Authority: 43 U.S.C. 1345 and 30 CFR 556.304(c).

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2020–15692 Filed 7–17–20; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 06–20]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Thursday, July 30, 2020, at 10:00 a.m.

PLACE: This meeting will be held by teleconference. There will be no physical meeting place.

STATUS: Open. Members of the public who wish to observe the meeting via teleconference should contact Patricia M. Hall, Foreign Claims Settlement Commission, Tele: (202) 616–6975, two business days in advance of the meeting. Individuals will be given call-in information upon notice of attendance to the Commission.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, advance notices of intention to observe an open meeting, and requests for teleconference dial-in information may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St. NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2020–15747 Filed 7–16–20; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Partial Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Partial Consent Decree in *United States, et al.* v. *Richard M. Osborne, Sr., et al.,* No. 1:11–cv–1029, was lodged with the United States District Court for the Northern District of Ohio on July 13, 2020.

This proposed Partial Consent Decree concerns a complaint filed by the United States and Co-Plaintiff State of Ohio against Defendants Richard M. Osborne, Sr., individually and as Trustee of the Richard M. Osborne Trust, Madison/Route 20 LLC, Midway Industrial Campus Company, LTD, Naylor Family Partnership, J.T.O., Inc., and the City of Willoughby. The federal claims, pursuant to Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, seek to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Partial Consent Decree resolves these allegations against the City of Willoughby and J.T.O., Inc. by requiring these Defendants to perform restoration and mitigation.

The Department of Justice will accept written comments relating to this proposed Partial Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Daniel R. Dertke, Senior Attorney, United States Department of Justice, Post Office Box 7611, Washington, DC 20044–7611, and refer to *United States* v. *Richard M. Osborne, Sr., et al.,* DJ #90–5–1–1–17817.

The proposed Partial Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, 801 West Superior Avenue, Cleveland, OH 44113. In addition, the proposed Partial Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2020–15574 Filed 7–17–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On July 14, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Massachusetts, in the lawsuit entitled *United States* v. *280 Salem Street, LLC et al.,* Civil Action No. 1:20–cv–11321.

The United States filed this lawsuit under Sections 106, 107, and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607, and 9613. In its complaint, the United States seeks (a) recovery, under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), of response costs it incurred in conducting response activities in connection with the release or threatened release of hazardous substances into the environment at or from Operable Unit 4 (''OU4''), also known as the ''Southwest Properties,'' of the Wells G&H Superfund Site, located in Woburn, Massachusetts (the ''Site''); (b) a declaratory judgment, under Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), holding that all defendants will be liable for any further response costs the United States may incur as a result of a release or threatened release of hazardous substances into the environment at or from OU4; and (c) injunctive relief under Section 106 of CERCLA, 42 U.S.C. 9606, requiring that Defendants take action to abate conditions at or near OU4 that may present an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at or from OU4.

Under the proposed consent decree, three defendants (the ''Performing Settling Defendants''), which allegedly owned or operated facilities in OU4, will perform a remedial action estimated to cost approximately $19.1 million and pay 80 percent of EPA's future response costs, including costs of overseeing this cleanup work. The

thirteen other defendants (the ''Cashout Settling Defendants''), which allegedly arranged for the disposal of hazardous substances at OU4, will pay approximately $3.9 million into a trust fund for use by the Performing Settling Defendants to help finance the remedial work. As part of the settlement, EPA will make available $4.8 million from a special site account (from monies obtained in prior settlements related to the Site) to partially fund the remedial action. The Performing Settling Defendants are 280 Salem Street, LLC; ConAgra Grocery Products Company, LLC; and Murphy's Waste Oil Service, Inc. The Cashout Settling Defendants are Atos IT Solutions and Services, Inc.; BASF Corporation; Cognis USA LLC; Goulston Technologies, Inc.; NSTAR Electric Company d/b/a Eversource Energy; Organix, LLC; OSRAM SYLVANIA, Inc., Pharmacia, LLC, by its Attorney-in-Fact, Monsanto Company; Stepan Company; The Gillette Company; The Sherwin Williams Company; Varian Medical Systems, Inc.; and W.R. Grace & Co.—Conn.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *280 Salem Street, et al.,* D.J. Ref. No. 90–11–3–194/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* Paper copies of the consent decree are available upon written request and payment of reproduction costs. Such requests and payments should be addressed to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

With each such request, please enclose a check or money order for $31.75 (25 cents per page reproduction cost) per paper copy, payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–15587 Filed 7–17–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The U.S. Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''ETA Form 9089, Application for Permanent Employment Certification.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 18, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Brian Pasternak by telephone at 202–513–7350 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *ETA.OFLC.Forms@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Avenue NW, Box PPII 12–200, Washington, DC 20210; by email: *ETA.OFLC.Forms@dol.gov*; or by fax: 202–513–7395.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak by telephone at 202–513–7350 (this is not a toll-free number) or by email at *ETA.OFLC.Forms@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

In accordance with the PRA, ETA is providing the public notice and opportunity to comment on proposed revisions to the ETA Form-9089, *Application for Permanent Employment Certification;* Appendix A: *Foreign Worker Information;* Appendix B: *Additional Worksite Information;* Appendix C: *Supplemental Information;* Appendix D: *Special Recruitment for College and University Teachers;* and the general instructions to these forms. ETA is also seeking public comment on a proposal to eliminate the issuance of paper-based labor certification decisions through the creation of a two-page Form ETA–9089, *Final Determination: Permanent Employment Certification Approval,* which will be issued electronically to employers granted permanent labor certifications by DOL.

ETA is also seeking public comment on a proposal to revise the form to allow employers seeking to employ professional athletes or coaches, as well as those claiming National Interest Waivers (NIW), to use the proposed form and discontinue the collection of this information on the Forms ETA–750A, *Application for Alien Employment Certification—Offer of Employment,* and/or ETA–750B, *Application for Alien Employment Certification—Statement of Qualifications of Alien* (OMB Control Number 1205–0515).

Under the Immigration and Nationality Act (INA), sections 203(b)(2) and (b)(3) and 212(a)(5)(A), and 8 U.S.C. 1153(b)(2) and (b)(3) and 1182(a)(5)(A), DOL and the U.S. Department of Homeland Security (DHS) have promulgated regulations to implement provisions of the INA at 20 CFR part 656 and 8 CFR 204.5. Consequently, the Secretary of Labor must certify that any foreign worker seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, qualified, and available to perform such skilled or unskilled labor. In addition, before an employer may employ any skilled or unskilled foreign labor, it must submit a request for certification to

the Secretary of Labor containing the elements prescribed by the INA and the regulations or, in limited circumstances, where a foreign national without an employer sponsor may apply for a NIW with DHS.

DOL is proposing to use the proposed Form ETA–9089, *Application for Permanent Employment Certification* (OMB Control Number 1205–0451), and its appendices to adjudicate permanent (PERM) employment certification applications for foreign workers filed by employers seeking to employ individuals on a permanent basis. An employer seeking a PERM employment certification to employ a foreign worker must submit the proposed form to DOL, including all required appendices. Once submitted, DOL will determine whether the employer adequately sought available and willing U.S. workers qualified for the opportunity as required under the regulations and whether U.S. workers who applied were rejected for lawful, job-related reasons. 20 CFR 656.24. If the DOL Certifying Officer's Final Determination denies certification of the application, the regulations provide the employer with the ability to request reconsideration of the decision or appeal the denial. 20 CFR 656.24 and 656.26. DOL will also use the information collected through the proposed form and Appendix A to adjudicate PERM applications for professional athletes and coaches that currently apply using Forms ETA–750A and ETA–750B under OMB Control Number 1205–0515, Workforce Innovation Funds Grants Reporting and Recordkeeping Requirements.

DHS will also use Form ETA–9089 for the Job Offer Requirement of the NIW process, which exempts foreign workers from the job offer requirement if their expertise is in the national interest of the U.S. In addition, under 20 CFR 656.15, employers of foreign workers who are in occupations that meet DOL regulatory requirements for being designated as ''Schedule A—Shortage Occupations'' must apply for an employment certification using Form ETA–9089 and submit an uncertified form directly to DHS. Similarly, under 20 CFR 656.16, employers of foreign workers who are sheepherders must apply for an employment certification using Form ETA–9089 and submit an uncertified form directly to DHS. When Form ETA–9089 is submitted to DHS directly, DHS will use the form to analyze the foreign worker's background and experience for NIWs, Schedule A occupations, and sheepherders.

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 OMB, under the PRA, approves it and the collection tool 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.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0451.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision of a Currently Approved Information Collection.

Title of Collection: Form ETA–9089, Application for Permanent Employment Certification.

Forms: ETA–9089, Application for Permanent Employment Certification; ETA–9089—Final Determination: Permanent Employment Certification Approval; ETA–9089—Appendix A; ETA–9089—Appendix B; ETA–9089—Appendix C; ETA–9089—Appendix D.

OMB Control Number: 1205–0451.

Affected Public: Individuals or Households; Private Sector (businesses or other for profits); Not-for-profit Institutions; Government, State, Local and Tribal Governments.

Number of Respondents: 80,495.6.

Frequency: Varies by form.

Estimated Number of Annual Responses: 675,122.5.

Estimated Average Time per Response: Varies by form.

Estimated Total Annual Burden Hours: 234,231.93.

Total Estimated Annual Other Costs Burden: $132,150.

(Authority: 44 U.S.C. 3506(c)(2)(A))

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–15592 Filed 7–17–20; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Report on Current Employment Statistics.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before September 18, 2020.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Current Employment Statistics (CES) program provides current monthly statistics on employment, hours, and earnings, by industry and geography. CES estimates are among the most visible and widely-used Principal Federal Economic Indicators (PFEIs). CES data are also among the timeliest of the PFEIs, with their release each month by the BLS in the *Employment Situation,* typically on the first Friday of each month. The statistics are fundamental inputs in economic decision processes at all levels of government, private enterprise, and organized labor.

The CES monthly estimates of employment, hours, and earnings are based on a sample of U.S. nonagricultural establishments. Information is derived from approximately 295,000 reports (from a sample of 150,000 employers with State Unemployment Insurance (UI) accounts comprised of 697,000 individual worksites), as of April 2020. Each month, firms report their employment, payroll, and hours on forms identified as the BLS–790. The sample is collected under a probability-based design. Puerto Rico and the Virgin Islands collect an additional 8,500 reports.

A list of all form types currently used appears in the table below. Respondents receive variations of the basic collection forms, depending on their industry.

The CES program is a voluntary program under Federal statute. Reporting to the State agencies is voluntary in all but three States (New Mexico, Oregon, and South Carolina), Puerto Rico, and the Virgin Islands. To our knowledge, the States that do have mandatory reporting rarely exercise their authority. The collection form's confidentiality statement cites the Confidential Information Protection and Statistical Efficiency Act and mentions the State mandatory reporting authority.

II. Current Action

Office of Management and Budget clearance is being sought for the Report on Current Employment Statistics.

Automated data collection methods are now used for most of the CES sample. Approximately 150,000 reports are received through Electronic Data Interchange. Web data collection accounts for 65,000 reports. Computer Assisted Telephone Interviewing is used to collect 65,000. Touchtone Data Entry is used for 6,000 reports.

The balance of the sample is collected through other methods including submission of transcripts, emails, fax, and other special arrangements.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Report on Current Employment Statistics.

OMB Number: 1220–0011.

Type of Review: Revision of a currently approved collection.

Affected Public: State or local governments; Businesses or other for profit; Non-profit institutions.

Industry	Reports	Minutes per report	Frequency of response	Annual responses	Annual burden hours
A—Mining and Logging	1,091	10	12	13,092	2,182
B—Construction	10,963	10	12	131,556	21,926
C—Manufacturing	9,580	10	12	114,960	19,160
E—Service Providing Industries	189,875	10	12	2,278,500	379,750
G—Public Administration	65,168	6	12	782,016	78,202
S—Education & Health Services	18,771	6	12	225,252	22,525
Total	295,448			3,545,376	523,745

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on July 13, 2020.

Eric P. Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2020–15594 Filed 7–17–20; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–054)]

Notice of Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive patent license in the United States to practice the inventions described and claimed in U.S. Patent Nos. 7,790,787 and 9,777,126 entitled ''Aerogel/Polymer Composite Materials,'' NASA Case Numbers KSC–12890 and KSC–12890–2–DIV respectively, to AeroPolymer Holding Group, LLC, having its principal place of business in Gulfport, Florida. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective exclusive license may be granted unless NASA receives written objections, including

evidence and argument no later than August 4, 2020 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than August 4, 2020 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Mark Homer, Patent Counsel, Office of the Chief Counsel, NASA Kennedy Space Center, Mail Code CC, Kennedy Space Center, FL 32899. Email: *ksc-patent-counsel@mail.ksc.nasa.gov.* Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Jonathan Leahy, Patent Attorney, Office of the Chief Counsel, NASA John F. Kennedy Space Center, Mail Code CC, Kennedy Space Center, FL 32899. Telephone: 321–867–6553; Facsimile: 321–867–1817.

SUPPLEMENTARY INFORMATION: This notice of intent to grant an exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive patent license will comply with the requirements of 35 U.S.C. 209 and 37 CFR. 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2020–15641 Filed 7–17–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 20–055]

Notice of Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive patent license in the United States to practice the invention described and claimed in U.S. Patent No. 9,617,069 entitled ''Thermal Insulation System for Non-Vacuum Applications Including a Multilayer Composite,'' NASA Case Number KSC–13777, to Cryotek, LLC, having its principal place of business in Titusville, Florida. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective exclusive license may be granted unless NASA receives written objections, including evidence and argument no later than August 4, 2020 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than August 4, 2020 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Mark Homer, Patent Counsel, Office of the Chief Counsel, NASA Kennedy Space Center, Mail Code CC, Kennedy Space Center, FL 32899. Email: *ksc-patent-counsel@mail.ksc.nasa.gov.* Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Jonathan Leahy, Patent Attorney, Office of the Chief Counsel, NASA John F. Kennedy Space Center, Mail Code CC, Kennedy Space Center, FL 32899. Telephone: 321–867–6553; Facsimile: 321–867–1817.

SUPPLEMENTARY INFORMATION: This notice of intent to grant an exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive patent license will comply with the requirements of 35 U.S.C. 209 and 37 CFR. 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Helen Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2020–15640 Filed 7–17–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–053]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We are planning to request that the Office of Management and Budget (OMB) renew its approval for us to engage in the following generic information collection request (generic ICR), and we invite you to comment on it: ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, we developed this generic ICR to cover all of our requests for feedback on our services.

DATES: We must receive comments in writing on or before September 18, 2020.

ADDRESSES: Send comments by email to *tamee.fechhelm@nara.gov.* Because our buildings are temporarily closed during the COVID–19 restrictions, we are not able to receive comments by mail during this time.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gov* or by telephone at 301.837.1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for NARA to properly perform its functions; (b) our estimates of the burden of the proposed information collections and their accuracy; (c) ways we could

enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether these collections affect small businesses.

We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

In this notice, we solicit comments concerning the following information collection:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3095–0070.

Abstract: This information collection activity provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights into customers' or stakeholders' perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. Qualitative feedback provides insights into perceptions, experiences, and expectations, provides an early warning of issues with service, or focuses attention on areas where communication, training or changes in operations might improve delivery of products or services. Collecting this information allows for ongoing, collaborative, and actionable communications between NARA and its customers and stakeholders. It also allows us to contribute feedback directly to improving program management.

We collect feedback in areas of service delivery such as timeliness, appropriateness, accuracy of information, plain language, courtesy, efficiency, and resolution of issues with service delivery. We use customer feedback to plan efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on NARA's services will be unavailable.

We will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- It is targeted to solicit opinions from respondents who have experience with the program or may have experience with the program in the near future;
- It collects personally identifiable information (PII) only to the extent necessary and we will not retain it;
- We will use the information gathered only internally, for general service improvement and program management purposes, and do not intend to release it outside of the agency;
- We will not use the information gathered for substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results, but do not fall under the current generic collection.

As a general matter, information collections under this generic collection request will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: OGIS FOIA Program Compliance Review, NPRC Survey of Customer Satisfaction, and Training and Event Evaluations.

Type of Review: Regular.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 25,000.

Below, we provide projected average estimates for the next three years:

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2020–15566 Filed 7–17–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 13 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Literary Arts (review of applications): This meeting will be closed.

Date and time: August 4, 2020; 1:00 p.m. to 3:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: August 4, 2020; 2:00 p.m. to 4:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: August 5, 2020; 1:00 p.m. to 3:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: August 5, 2020; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: August 6, 2020; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: August 7, 2020; 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: August 10, 2020; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: August 11, 2020; 1:00 p.m. to 3:00 p.m.

Artist Communities (review of applications): This meeting will be closed.

Date and time: August 12, 2020; 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: August 13, 2020; 1:00 p.m. to 3:00 p.m.

Artist Communities (review of applications): This meeting will be closed.

Date and time: August 14, 2020; 2:00 p.m. to 4:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: August 25, 2020; 1:00 p.m. to 3:00 p.m.

Literature Fellowships (review of applications): This meeting will be closed.

Date and time: September 16, 2020; 1:00 p.m. to 3:00 p.m.

Dated: July 15, 2020.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2020–15618 Filed 7–17–20; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–483; 50–275; 50–323; 50–321; 50–366; 50–348; 50–364; 50–247; 50–286; 50–333; 50–369; 50–370; 50–245; 50–336; 50–423; 50–338; 50–339; 50–266; 50–301; 50–244; 50–335; 50–389; 50–443; 50–400; 50–498; 50–499; 50–289; 50–250; 50–251; NRC–2020–0110]

Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued 21 exemptions in response to requests from 13 licensees. The exemptions allow these licensees temporary relief from certain requirements under NRC regulations. The exemptions are in response to the COVID–19 public health emergency (PHE). The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: The 21 exemptions were issued between June 2, 2020, and June 30, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 when contacting the NRC about the availability of information regarding this document. 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–2020–0110. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

FOR FURTHER INFORMATION CONTACT: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC issued 21 exemptions to 13 licensees in response to requests dated between April 29, 2020, and June 19, 2020. These exemptions temporarily allow the licensees to deviate from certain requirements (as cited below) of various parts of chapter I of title 10 of the *Code of Federal Regulations* (10 CFR).

The exemption from certain requirements of 10 CFR 50.71(e)(4) for Pacific Gas and Electric Company (for the Diablo Canyon Nuclear Power Plant, Units 1 and 2) allows the licensee to submit revisions of the Updated Final Safety Analysis Report (UFSAR) and Technical Specification (TS) Bases later than it would otherwise be required to by the regulations. The exemption from the requirements of 10 CFR 50.71(e)(4) results in benefit to the public health and safety by not conflicting with practices recommended by the Centers for Disease Control and Prevention (CDC) to limit the spread of COVID–19 and does not result in any decrease in safety. The exemption provides only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

The exemptions from certain requirements of 10 CFR 50.48(b) and 10 CFR part 50, appendix R, section III.I, for Southern Nuclear Operating Company (for Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, and Joseph M. Farley Nuclear Plant, Units 1 and 2), allow the licensee temporary exemption from the quarterly fire brigade drills requirement and the annual live firefighting training requirement in 10 CFR 50.48(b) and 10 CFR part 50, appendix R, section III.I. These exemptions allow the licensee to temporarily defer implementation of requirements that would otherwise cause the licensee to take actions that could conflict with practices recommended by the CDC to limit the spread of COVID–19. This licensee has committed to implement a station-specific process to manage affected personnel while ensuring the safety of its workers in maintaining performance capability.

The exemptions from certain requirements of 10 CFR part 73 for Union Electric Company (for Callaway Plant, Unit No. 1); Pacific Gas and Electric Company (for the Diablo Canyon Nuclear Power Plant, Units 1

and 2); Southern Nuclear Operating Company (for the Edwin I. Hatch Nuclear Power Plant, Unit Nos. 1 and 2, and the Joseph M. Farley Nuclear Power Plant, Units 1 and 2); Entergy Nuclear Operations, Inc. (for the Indian Point Nuclear Generating Unit Nos. 2 and 3); Exelon Generation Company, LLC (for the James A. FitzPatrick Nuclear Power Plant, R. E. Ginna Nuclear Power Plant, and the Three Mile Island Nuclear Station, Unit 1); Duke Energy Carolinas, LLC (for the McGuire Nuclear Station, Units 1 and 2); Dominion Energy Nuclear Connecticut, Inc. (for the Millstone Power Station, Units Nos. 1, 2, and 3); Virginia Electric and Power Company (for the North Anna Power Station, Unit Nos. 1 and 2); NextEra Energy Point Beach, LLC (for the Point Beach Nuclear Plant, Units 1 and 2); Florida Power & Light Company (for the St. Lucie Plant, Units Nos. 1 and 2, and Turkey Point Nuclear Generating Unit Nos. 3 and 4); NextEra Energy Seabrook, LLC (for the Seabrook Station, Unit No. 1); Duke Energy Progress, LLC (for the Shearon Harris Nuclear Power Plant, Unit 1); STP Nuclear Operating Company (for the South Texas Project, Units 1 and 2), allow these licensees temporary exemptions from certain requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI. The exemptions will help to ensure that these regulatory requirements do not unduly limit licensee flexibility in using personnel resources in a manner that most effectively manages the impacts of the COVID–19 PHE on maintaining the safe and secure operation of these facilities and the implementation of a licensee's NRC-approved security plans, protective strategy, and implementing procedures. These licensees have committed to certain security measures to ensure response readiness and for their security personnel to maintain performance capability.

The NRC is providing compiled tables of exemptions using a single **Federal Register** notice for COVID–19-related exemptions instead of issuing individual **Federal Register** notices for each exemption. The compiled tables below provide transparency regarding the number of exemptions the NRC is issuing. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The tables below provide the facility name, docket number, document title, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed on the tables below. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

Document title	ADAMS accession No.
Callaway Plant, Unit No. 1—Docket No. 50–483	
Callaway Plant, Unit 1—Security Training Exemption Request due to COVID–19, dated June 4, 2020	ML20156A191 (non-public, withheld under 10 CFR 2.390).
Callaway, Unit 1—Supplement to Security Training Exemption Request Due to COVID–19, dated June 17, 2020	ML20169A542.
Callaway Plant, Unit 1—Exemption Request from Certain Requirement of 10 CFR PART 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0097 [COVID–19]), dated June 23, 2020.	ML20169A446.
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Docket Nos. 50–275 and 50–323	
Diablo Canyon Units 1 and 2—Request for One-Time Exemption from 10 CFR 50.71(e)(4) UFSAR and TS Bases Update Requirements, dated May 14, 2020.	ML20135H021.
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Approval of Exemption from the Requirements of 10 CFR 50.71(e)(4) (EPID L–2020–LLE–0059 [COVID–19]), dated June 2, 2020.	ML20140A356.
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Docket Nos. 50–275 and 50–323	
Diablo Canyon Power Plant, Units 1 and 2—Request for Exemption from Specific Requirements of 10 CFR 73, Force-on-Force Requirements, dated June 17, 2020.	ML20169A354 (non-public, withheld under 10 CFR 2.390).
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0101 [COVID–19]), dated June 24, 2020.	ML20170A319.
Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, and Joseph M. Farley Nuclear Plant, Units 1 and 2—Docket Nos. 50–321, 50–366, 50–348, and 50–364	
SNC Requests a Temporary Exemption from the Quarterly Fire Brigade Drills and Annual Live Fire Fighting Training Requirements of the Regulation, dated May 22, 2020.	ML20143A253.
SNC Requests a Temporary Exemption from the Quarterly Fire Brigade Drills and Annual Live Fire Fighting Training Requirements of the Regulation, dated May 27, 2020.	ML20149K302.
Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2—Exemption Request from Requirements of 10 CFR 50.48(b), Section III.I. of Appendix R Related to Quarterly Fire Brigade Drills (EPID L–2020–LLE–0070), dated June 2, 2020.	ML20147A147.
Edwin I. Hatch Nuclear Plant, Units 1 and 2—Approval of Exemption Request from Requirements of 10 CFR 50.48(b), Section III.I of Appendix R Related to Annual Live Fire Fighting Training (EPID L–2020–LLE–0071), dated June 2, 2020.	ML20147A133.
Joseph M. Farley Nuclear Plant, Units 1 and 2—Approval of Exemption from Requirements of 10 CFR 50.48 Related to Quarterly Fire Brigade Drills (EPID L–2020–LLE–0074 [COVID–19]), dated June 2, 2020.	ML20147A171.
Joseph M. Farley Nuclear Plant, Units 1 and 2—Approval of Exemption from Requirements of 10 CFR 50.48 Related to Annual Live Fire Fighting Training (EPID L–2020–LLE–0075 [COVID–19]), dated June 2, 2020.	ML20147A465.

Document title	ADAMS accession No.
Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, and Joseph M. Farley Nuclear Plant, Units 1 and 2—Docket Nos. 50–321, 50–366, 50–348, and 50–364	
Edwin I. Hatch Nuclear Plant, Units 1 and 2 (HNP) and Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP) Request Temporary Exemptions from the identified Security Training Requalification Requirement, dated June 19, 2020.	ML20171A485 (non-public, withheld under 10 CFR 2.390).
Joseph M. Farley Nuclear Plant, Units 1 and 2, and Edwin I. Hatch Nuclear Plant, Units 1 and 2—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI, dated June 29, 2020.	ML20175A121.
Indian Point Nuclear Generating Unit Nos. 2 and 3—Docket Nos. 50–247 and 50–286	
Indian Point Nuclear Generating Unit Nos. 2 and 3—(04/29/2020) Email from R. Gaston to R. Guzman, Exemption Request from Requirements of 10 CFR Part 73, Appendix B, Section VI, Subsection C.3.(l)(1), dated April 29, 2020.	ML20125A327.
Indian Point; Exemption from Annual Force-on-Force (FoF) Exercise, dated May 27, 2020	ML20148M389.
Indian Point Nuclear Generating Unit Nos. 2 and 3—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0050 [COVID–19]), dated June 12, 2020.	ML20156A057.
James A. FitzPatrick Nuclear Power Plant—Docket No. 50–333	
James A. FitzPatrick Nuclear Power Plant—Request for Exemption from Certain 10 CFR Part 73 Training Requirements Due to Coronavirus 2019 Public Health Emergency, dated May 29, 2020.	ML20153A381 (non-public, withheld under 10 CFR 2.390).
James A. FitzPatrick Nuclear Power Plant, Supplemental Information to Request for Exemption from Certain 10 CFR Part 73 Training Requirements Due to Coronavirus 2019 Public Health Emergency, dated June 4, 2020.	ML20156A152 (non-public, withheld under 10 CFR 2.390).
James A. FitzPatrick Nuclear Power Plant—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel'' (EPID L–2020–LLE–0094 [COVID–19]), dated June 29, 2020.	ML20164A210.
McGuire Nuclear Station, Units 1 and 2—Docket Nos. 50–369 and 50–370	
McGuire Nuclear Station, Unit Nos. 1 and 2—Request a Temporary Exemption from the Identified Security Training Requalification, dated June 4, 2020.	ML20156A411 (non-public, withheld under 10 CFR 2.390).
McGuire Nuclear Station, Unit 1 and 2—Temporary Exemption from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0095 [COVID 19]), dated June 23, 2020.	ML20159A002.
Millstone Power Station, Unit Nos. 1, 2, and 3—Docket Nos. 50–245, 50–336, and 50–423	
Millstone Power Station Units 1, 2, and 3—Request for Exemption from Select Requirements of 10 CFR Part 73, Appendix B, Section VI, dated May 28, 2020.	ML20149K676 (non-public, withheld under 10 CFR 2.390).
Millstone Power Station, Unit Nos. 1, 2, and 3—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0092 [COVID–19]), dated June 12, 2020.	ML20161A409.
North Anna Power Station, Unit Nos. 1 and 2—Docket Nos. 50–338 and 50–339	
North Anna Power Station Units 1 and 2, Request for Exemption from Select Requirements of 10 CFR Part 73, Appendix B, Section VI, dated May 28, 2020.	ML20149K650 (non-public, withheld under 10 CFR 2.390).
North Anna Power Station, Unit Nos. 1 and 2—Temporary Exemption from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0090 [COVID–19], dated June 12, 2020.	ML20150A292.
Point Beach Nuclear Plant, Units 1 and 2—Docket Nos. 50–266 and 50–301	
Point Beach Nuclear Plant, Units 1 and 2—Exemption Request for Security Training Requirements due to COVID–19 Pandemic, dated May 21, 2020.	ML20142A368 (non-public, withheld under 10 CFR 2.390).
Point Beach Nuclear Plant, Units 1 and 2—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0081 to L–2020–LLE–0088 [COVID–19]), dated June 15, 2020.	ML20153A011.
R. E. Ginna Nuclear Power Plant—Docket No. 50–244	
R. E. Ginna Nuclear Power Plant—Request for Exemption from Certain 10 CFR Part 73 Training Requirements Due to Coronavirus 2019 Public Health Emergency, dated June 8, 2020.	ML20161A147 (non-public, withheld under 10 CFR 2.390).

Document title	ADAMS accession No.
R. E. Ginna Nuclear Power Plant—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel'' (EPID L–2020–LLE–0099 [COVID–19]), dated June 24, 2020.	ML20156A151.
St. Lucie Plant, Unit Nos. 1 and 2—Docket No. 50–335 and 50–389	
St. Lucie Nuclear Plant, Units 1 and 2—Exemption Request for Security Training Requirements due to COVID–19 Pandemic, dated May 21, 2020.	ML20142A479 (non-public, withheld under 10 CFR 2.390).
St. Lucie Nuclear Plant, Units 1 and 2—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0077 [COVID–19]), dated June 9, 2020.	ML20155K712.
Seabrook Station, Unit No. 1—Docket No. 50–443	
Seabrook Station—Exemption Request for Security Training Requirements due to COVID–19 Pandemic, dated May 21, 2020.	ML20142A374 (non-public, withheld under 10 CFR 2.390).
Seabrook Station—Supplement to SBK–L–20066, Exemption Request for Security Training Requirements due to COVID–19 Pandemic, dated May 22, 2020.	ML20143A093 (non-public, withheld under 10 CFR 2.390).
Seabrook Station, Unit No. 1—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0069 [COVID–19]), dated June 8, 2020.	ML20143A273.
Shearon Harris Nuclear Power Plant, Unit 1—Docket No. 50–400	
Shearon Harris Nuclear Power Plant, Unit 1—Security Training Requalification Exemption Request, dated May 20, 2020.	ML20141L635 (non-public, withheld under 10 CFR 2.390).
Shearon Harris Nuclear Power Plant, Unit 1—Temporary Exemption from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0064 [COVID–19]), dated June 9, 2020.	ML20142A185.
South Texas Project, Units 1 and 2—Docket Nos. 50–498 and 50–499	
South Texas Project, Units 1 and 2—Exemption Request due to COVID–19 Pandemic, dated May 21, 2020	ML20142A520.
South Texas Project, Units 1 and 2—Temporary Exemption from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0076 [COVID–19]), dated June 18, 2020.	ML20155K679.
Three Mile Island Nuclear Station, Unit 1—Docket No. 50–289	
Three Mile Island Nuclear Station, Unit 1, Request for Temporary Exemption from Certain 10 CFR Part 73 Training Requirements Due to Coronavirus 2019 Public Health Emergency, dated June 5, 2020.	ML20157A209 (non-public, withheld under 10 CFR 2.390).
Three Mile Island Nuclear Station, Unit 1—Exemption Request from Certain Requirements of 10 CFR Part 73, Appendix B, ''General Criteria for Security Personnel'' (EPID L–2020–LLE–0096 [COVID–19]), dated June 30, 2020.	ML20161A391.
Turkey Point Nuclear Generating Unit Nos. 3 and 4—Docket Nos. 50–250 and 50–251	
Turkey Point Nuclear Plant, Units 3 and 4—Exemption Request for Security Training Requirements due to COVID–19 Pandemic, dated May 21, 2020.	ML20142A273 (non-public, withheld under 10 CFR 2.390).
Turkey Point Nuclear Point, Units 3 and 4—Issuance of Temporary Exemption Concerning Security Training Requirements (EPID L–2020–LLA–0067), dated June 15, 2020.	ML20149K606.

The NRC may post additional materials to the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2020–0110. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2020–0110); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated: July 15, 2020.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–15619 Filed 7–17–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meetings: U.S. Nuclear Waste Technical Review Board

The U.S. Nuclear Waste Technical Review Board will hold an online virtual public meeting to review information on DOE research and development activities related to disposal in a geologic repository of commercial spent nuclear fuel in dual-purpose canisters.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board will hold an online virtual public meeting on Monday, July 27, 2020, and Tuesday, July 28, 2020, to review information on U.S. Department of Energy (DOE) research and development (R&D) activities related to disposal in a geologic repository of commercial spent nuclear fuel (SNF) in dual-purpose canisters (DPCs), which are designed for storage and transportation but not for disposal.

The Board meeting replaces the April 29, 2020, Spring Meeting, which the Board postponed due to the Covid-19 pandemic. Details for viewing and participating in the virtual meeting will be available on the Board's website (*www.nwtrb.gov*) not later than one week before the meeting.

The meeting will begin on both days at 12:30 p.m. Eastern Daylight Time (EDT) and is scheduled to adjourn at 5:00 p.m. EDT on July 27 and at 4:30 p.m. EDT on July 28. Speakers representing the DOE Office of Nuclear Energy and the national laboratories will report on R&D projects related to the feasibility of disposing in a geologic repository the SNF stored in DPCs without repackaging the SNF into other canisters. Speakers will review past studies on the technical feasibility of disposal of SNF in DPCs, including the technical bases for the engineering feasibility and thermal management of DPC disposal. The Board will hear presentations on DOE's ongoing R&D activities. Speakers will address analysis of DPC reactivity, which is used in criticality calculations, criticality consequence analyses for the period after the repository closes, and the testing and analysis of using filler materials to fill the void spaces inside a DPC prior to disposal. A detailed meeting agenda will be available on the Board's website approximately one week before the meeting.

The meeting will be open to the public, and opportunities for public comment will be provided. Details on how to comment publicly during the meeting will be provided on the Board's website along with the details for viewing the meeting. A limit may be set on the time allowed for the presentation of individual remarks. However, written comments of any length may be submitted to the Board staff by mail or electronic mail. All comments received in writing will be included in the meeting record, which will be posted on the Board's website after the meeting. An archived recording of the meeting will be available on the Board's website following the meeting. The transcript of the meeting will be available on the Board's website by September 28, 2020.

The Board was established in the Nuclear Waste Policy Amendments Act of 1987 as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to the management and disposal of SNF and high-level radioactive waste, and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the meeting agenda, contact Roberto Pabalan: *pabalan@nwtrb.gov* or Bret Leslie: *leslie@nwtrb.gov*. For information on logistics, or to request copies of the workshop agenda or transcript, contact Davonya Barnes: *barnes@nwtrb.gov*. All three may be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: July 15, 2020.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2020–15610 Filed 7–17–20; 8:45 am]

BILLING CODE 6820–AM–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB.

DATES: Submit comments on or before August 19, 2020.

ADDRESSES: Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

Title: The Paul D. Coverdell Fellow program.

OMB Control Number: 0420–* * * *.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 223.

b. *Frequency of response:* 1 time.

c. *Completion time:* 15 minutes.

d. *Annual burden hours:* 55.75.

General Description of Collection: The Paul D. Coverdell Fellows program is a graduate school benefit for returned Peace Corps Volunteers (RPCVs). The program, managed by the Peace Corps' Office of University Programs, is made in formal partnership with graduate degree granting educational institutions across the United States. The partnering institutions are required to offer financial support to RPCVs who, in turn, complete substantive internships related to their program of study in underserved communities in the United States. The Office of University Programs requires each Coverdell Fellow partner university to submit an annual Census Report to ensure it is meeting the requirements agreed upon in its signed standard Memorandum of Agreement between the Peace Corps and the institution. Collection of this information allows the Peace Corps Office of University Programs to ensure the university is providing all the necessary benefits and support to the Fellows (returned Peace Corps Volunteer graduate school students) enrolled in the program. Although this collection is called a ''Census Report'' no statistical methods are employed.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when

appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on July 14, 2020.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2020–15561 Filed 7–17–20; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89312; File No. SR–CboeEDGX–2020–031]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Rules Regarding Off-Floor Transactions and Transfers

July 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2020, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to adopt rules regarding off-floor transactions and transfers. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new rules regarding off-floor transactions and transfers.

Prohibition on Off-Floor Transactions

Rules 19c–1 and 19c–3 under the Securities Exchange Act of 1934 (the ''Act') describe rule provisions that each national securities change must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange's rules, stated policies, and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include these provisions. Therefore, the proposed rule change adopts these provisions in new Rule 20.9 in accordance with Rules 19c–1 and 19c–3 under the Act.[5]

Off-Floor Position Transfers

Today, the Exchange does not permit off-floor transfers of options positions and has no rule that specifically addresses off-floor transfers. The Exchange proposes to adopt Rule 20.10 to specify the limited circumstances under which a Member (''Member'') may effect transfers of their options positions without first exposing the order.[6] This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the Exchange. This Rule would permit transfers upon the occurrence of significant, non-recurring events. This Rule states that a Member must be on at least one side of the transfer.

Specifically, proposed Rule 20.10(a) states:

> Notwithstanding Rule 20.9, existing positions in options listed on the Exchange of a Member or of a Non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange (an ''off-floor transfer'') if the off-floor transfer involves one or more of the following events:
>
> (1) An adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
>
> (2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same person (as defined in Rule 1.5)), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
>
> (3) the consolidation of accounts where no change in ownership is involved;
>
> (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a person;
>
> (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;
>
> (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
>
> (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;
>
> (8) the donation of positions to a not-for-profit corporation;
>
> (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
>
> (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[7]

The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.[8] 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.[9] 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,

[5] *See* CFR 240.19c–1 and 240.19c–3; *see also* Cboe Options, Inc. (''Cboe Options'') Rule 5.12(d) and (e).

[6] *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); *see also* Cboe Options Rule 6.7.

[7] *See* proposed Rule 20.10(a); *see also* Cboe Options Rule 6.7(a).

[8] *See* proposed Rule 20.10(a)(5) and (7).

[9] *See* proposed Rule 20.10(h).

and proposed paragraph (h) makes this clear in the rule.

Proposed Rule 20.10(b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[10] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.[11]

However, netting is permitted for transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market-Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at the Clearing Corporation. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market-Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market-Maker may have a nominee with an appointment in class XYZ on Cboe Options, and have another nominee with an appointment in class XYZ on the Exchange, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Cboe Options transactions and another for Exchange 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.

Proposed Rule 20.10(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading 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;[12] or (4) the then-current market price of the positions at the time the transfer is effected.[13]

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.

Proposed Rule 20.10(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).[14] 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.[15] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Rule 20.10. Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Rule 20.10 will be subject to appropriate disciplinary action in accordance with the Rules.

Similarly, proposed Rule 20.10(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.[16]

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer,

[10] 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). *See also* Cboe Options Rule 6.7(b).

[11] *See* Cboe Options Rule 6.7(b).

[12] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[13] *See* Cboe Options Rule 6.7(c).

[14] This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

[15] *See* Cboe Options Rule 6.7(d).

[16] *See* Cboe Options Rule 6.7(e).

the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[17]

The Exchange proposes within Rule 20.10(g) that the transfer procedure set forth in Rule 20.10 is intended to facilitate non-routine, nonrecurring movements of positions.[18] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

The Exchange proposes within Rule 20.10(h) notes that the transfer procedure set forth in Rule 20.10 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.[19]

Off-Floor RWA Transfers

The Exchange proposes to adopt Rule 20.11 to facilitate the reduction of risk-weighted assets (''RWA'') attributable to open options positions.[20] SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[21] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[22]

Subject to certain exceptions, Clearing Members are subject to the Net Capital Rules.[23] However, a subset of Clearing Members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[24] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[25] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[26] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market-Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. The Exchange currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Member or non-Member (including an affiliate of a Member) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below);[27] and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[28]

These transfers will not result in a change in ownership, as they must occur between accounts of the same person.

''Person'' is defined in Rule 1.5(p) a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government. In other words, RWA transfers may only occur between the same individual or legal entity. RWA transfers are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at

[17] *See* Cboe Options Rule 6.7(f).

[18] *See* Cboe Options Rule 6.7(g).

[19] *See* Cboe Options Rule 6.7(h).

[20] *See* Cboe Options Rule 6.8; *see also* Securities Exchange Act Release No. 87107 (September 25, 2019), 84 FR 52149 (October 1, 2019) (SR–CBOE–2019–044).

[21] 17 CFR 240.15c3–1.

[22] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.,* vertical spreads).

[23] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[24] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[25] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[26] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

[27] This transfer would establish a net reduction of RWA attributable to the transferring person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[28] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market-Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market-Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market-Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market-Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market-Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market-Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market-Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Member must give up a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the transaction will clear.[29] A Member may change the give up for a transaction within a specified period of time.[30] Additionally, a Member may also change the Clearing Member [31] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[32] In the above example, if Market-Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Rule 6.30 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Member restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. 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 there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different exchanges, but only if the Market-Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at OCC. 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.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market-Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market-Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market-Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market-Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market-Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market-Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market-Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market-Maker A cleared the September transaction directly into its account with Clearing Member Y or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

[29] *See* Rule 6.30.

[30] *See* Rule 6.31.

[31] The Clearing Member Trade Assignment (''CMTA'') process at OCC facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[32] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

RWA Transfers may not result in preferential margin or haircut treatment.[33] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[34]

In-Kind Exchange of Options Positions and Fund Shares and UIT Interests

The Exchange proposes to adopt Rule 20.12 regarding in-kind exchanges of options positions and exchange-traded fund (''Fund'') shares and unit investment trust (''UIT'') interests.[35] As discussed further below, the ability to effect ''in kind'' transfers is a key component of the operational structure of a Fund and a UIT. Currently, in general, Funds and UITs can effect in-kind transfers with respect to equity securities and fixed-income securities. The in-kind process is a major benefit to Fund shareholders and UIT unit holders, in general, the means by which assets may be added to or removed from Funds and UITs. In-kind transfers protect Fund shareholders and UIT unit holders from the undesirable tax effects of frequent ''creations and redemptions'' (described below) and improve the overall tax efficiency of the products. However, currently, the Rules do not provide for Funds and UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for Funds and UITs that hold them. As a result, the use of options by Funds and UITs is substantially limited.

Proposed Rule 20.12 would add a circumstance under which off-Exchange transfers of options positions would be permitted to occur, in addition to the circumstances in proposed Rules 20.10 and 20.11. Specifically, under proposed Rule 20.12, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Member in connection with transactions (a) to purchase or redeem ''creation units'' of Fund Shares between an ''authorized participant'' [36] and the issuer [37] of such Fund Shares [38] or (b) to create or redeem units of a UIT between a broker-dealer and the issuer [39] of such UIT units, which transfers would occur at the price used to calculate the net asset value (''NAV'') of such Fund Shares or UIT units, respectively. This proposed new exception, although limited in scope, would have a significant impact in that it would help protect Fund Shareholders and UIT holders from undesirable tax consequences and facilitate tax-efficient operations. The frequency with which Funds and authorized participants, and UITs and sponsors, would rely on the proposed exception would depend upon such factors as the number of Funds and UITs, respectively, holding options positions traded on the Exchange, the market demand for the shares of such Funds and units of such UITs, the redemption activity of authorized participants and sponsors, respectively, and the investment strategies employed by such Funds and UITs.

While the Exchange recognizes that, in general, the execution of options transactions on exchanges provides certain benefits, such as price discovery and transparency, based on the circumstances under which proposed Rule 20.12 would apply, the Exchange does not believe that such benefits would be compromised. In this regard, as discussed more fully below, the Exchange notes that in conjunction with the creation and redemption process, positions would be transferred at a price(s) used to calculate the NAV of such Fund Shares and UIT units. In addition, although options positions would be transferred off of the Exchange, they would not be closed or ''traded.'' Rather, they would reside in a different clearing account until closed in a trade on the Exchange or until they expire. Further, as discussed below, proposed Rule 20.12 would be clearly delineated and limited in scope, given that the proposed exception would only apply to transfers of options effected in connection with the creation and redemption process.

Funds

As described in further detail below, while Funds do not sell and redeem individual shares to and from investors, they do sell large blocks of their shares to, and redeem them from, authorized participants in conjunction with what is known as the Fund creation and redemption process. Under the proposed exception, Funds that hold options listed on the Exchange would be permitted to effect creation and redemption transactions with authorized participants on an ''in-kind'' basis, which is the process that may generally be utilized by Funds for other asset types. This ability would allow such Funds to function as more tax-efficient investment vehicles to be benefit of investors that hold Fund Shares. In addition, it may also result in transaction cost savings for the Funds, which may be passed along to investors.

Due to their ability to effect in-kind transfers with authorized participants in conjunction with the creation and redemption process described below, Funds have the potential to be significantly more tax-efficient than other pooled investment products, such as mutual funds.[40] Funds issue shares that may be purchased or sold during the day in the secondary market at market-determined prices. Similar to other types of investment companies, Funds invest their assets in accordance with their investment objectives and investment strategies, and Fund Shares represent interests in a Fund's underlying assets. Funds are, in certain respects, similar to mutual funds in that they continuously offer their shares for sale. In contrast to mutual funds,

[33] *See* proposed paragraph (a)(4).

[34] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. All RWA transfers will be subject to all applicable recordkeeping requirements applicable to Members and Clearing Members under the Act, such as Rules 17a–3 and 17a–4.

[35] *See* Cboe Options Rule 6.9; *see also* Securities Exchange Act Release Nos. 87340 (October 17, 2019) (SR–CBOE–2019–048) (Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)); and 88786 (April 30, 2020), 85 FR 26998 (May 6, 2020) (SR–CBOE–2020–042) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.9 To Permit In-Kind Transfers of Positions Off of the Exchange in Connection With Unit Investment Trusts (''UITs'')).

[36] The Exchange is proposing that, for purposes of proposed Rule 20.12, the term ''authorized participant'' would be defined as an entity that has a written agreement with the issuer of Fund Shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.,* specified numbers of Fund Shares). While an authorized participant may be a Member and directly effect transactions in options on the Exchange, an authorized participant that is not a Member may effect transactions in options on the Exchange through a Member on its behalf.

[37] The Exchange proposes that, for purposes of proposed Rule 20.12, any issuer of Fund Shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the ''1940 Act'').

[38] A Fund Share is a share or other security principally traded on a national securities exchange and defined as an NMS stock, which includes interest in open-end management investment companies. *See* Rule 19.3(i).

[39] The Exchange proposes that, for purposes of proposed Rule 20.12, any issuer of UIT units would be a trust registered with the Commission as a unit investment trust under the 1940 Act.

[40] This summary of the Fund creation and redemption process is based largely on portions of the discussion set forth in Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the ''Proposed ETF Rule Release'') in which the Commission proposed a new rule under the 1940 Act that would permit Funds registered as open-end management investment companies that satisfy certain conditions to operate without the need to obtain an exemptive order. The proposed rule was adopted on September 25, 2019. *See* Investment Company Act Release No. 33646 (September 25, 2019).

however, Funds do not sell or redeem individual shares. Rather, through the creation and redemption process referenced above, authorized participants have contractual arrangements with a Fund and/or its service provider (*e.g.,* its distributor) purchase and redeem shares directly from that Fund in large aggregations known as ''creation units.'' In general terms, to purchase a creation unit of Fund Shares from a Fund, in return for depositing a ''basket'' of securities and/or other assets identified by the Fund on a particular day, the authorized participant will receive a creation unit of Fund Shares. The basket deposited by the authorized participant is generally expected to be representative of the Fund's portfolio [41] and, when combined with a cash balancing amount (*i.e.,* generally an amount of cash intended to account for any difference between the value of the basket and the NAV of a creation unit), if any, will be equal in value to the aggregate NAV of the shares of the Fund comprising the creation unit. The NAV for Fund Shares is represented by the traded price for Funds holding options positions on days of creation or redemption, and an options pricing model on days in which creations and redemptions do not occur. After purchasing a creation unit, an authorized participant may then hold individual shares of the Fund and/or sell them in the secondary market. In connection with effecting redemptions, the creation process described above is reversed. More specifically, the authorized participant will redeem a creation unit of Fund Shares to the Fund in return for a basket of securities and/or other assets (along with any cash balancing account).

The Fund creation and redemption process, coupled with the secondary market trading of Fund Shares, facilitates arbitrage opportunities that are intended to help keep the market price of Fund Shares at or close to the NAV per share of the Fund. Authorized participants play an important role because of their ability, in general terms, to add Fund Shares to, or remove them from, the market. In this regard, if shares of a Fund are trading at a discount (*i.e.,* below NAV per share), an authorized participant may purchase Fund Shares in the secondary market, accumulate enough shares for a creation unit and then redeem them from the Fund in exchange for the Fund's more valuable redemption basket. Accordingly, the authorized participant will profit because it paid less for the Fund Shares than it received for the underlying assets. The reduction in the supply of Fund Shares available on the secondary market, together with the sale of the Fund's basket assets, may cause the price of Fund Shares to increase, the price of the basket assets to decrease, or both, thereby causing the market price of the Fund Shares and the value of the Fund's holdings to move closer together. In contrast, if the Fund Shares are trading at a premium (*i.e.,* above NAV per share), the transactions are reversed (and the authorized participant would deliver the creation basket in exchange for Fund Shares), resulting in an increase in the supply of Fund Shares which may also help to keep the price of the shares of a Fund close to the value of its holdings.

In comparison to other pooled investment vehicles, one of the significant benefits associated with a Fund's in-kind redemption feature is tax efficiency. In this regard, by effecting redemptions on an in-kind basis (*i.e.,* delivering certain assets from the Fund's portfolio instead of cash), there is no need for the Fund to sell assets and potentially realize capital gains that would be distributed to shareholders. As indicated above, however, because the Rules currently do not allow Funds to effect in-kind transfers of options off of the Exchange, Funds that invest in options traded on the Exchange are generally required to substitute cash in lieu of such options when effecting redemption transactions with authorized participants. Because they must sell the options to obtain the requisite cash, such Funds (and therefore, investors that hold shares of those Funds) are not able to benefit from the tax efficiencies afforded by in-kind transactions.

An additional benefit associated with the in-kind feature is the potential for transaction cost savings. In this regard, by transacting on an in-kind basis, Funds may avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets. Again, however, this benefit is not available today to Funds with respect to their options holdings.

UITs

Although UITs operate differently than Funds in certain respects, as described below, the anticipated potential benefits to UIT investors (*i.e.,* greater tax efficiencies and transaction cost savings) from the proposed exemption would be similar as discussed below. Specifically, under the 1940 Act,[42] a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.[43] A UIT's investment portfolio is relatively fixed, and, unlike a Fund, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including Funds), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like Funds, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations known as ''units.'' A broker-dealer purchases a unit of UIT shares from the UIT's trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by ''in-kind'' transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to the aggregate NAV of the shares of the UIT comprising a unit.[44] The UIT then issues units that are publicly offered and sold. Unlike Funds, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (*i.e.,* the primary period, which may range from a single day to a few months). Similar to the process for Funds, UITs allow investor-owners of units to redeem their units

[41] Under certain circumstances, however, and subject to the provisions of its exemptive relief from various provisions of the 1940 Act obtained from the Commission, a Fund may substitute cash and/or other instruments in lieu of some or all of the Fund's portfolio holdings. For example, today, positions in options traded on the Exchange would be generally substituted with cash.

[42] 15 U.S.C. 80a–4(2).

[43] The Exchange also notes that, though a majority of Funds are structured as open-ended funds, some Funds are structured as UITs, and currently represent a significant amount of assets within the Fund industry. These include, for example, SPDR S&P 500 ETF Trust (''SPY'') and PowerShares QQQ Trust, Series 1 (''QQQ'').

[44] The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. *See* § 270.2a–4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of § 270.2a–4(a), which provides for other events that would trigger computation of a UIT's NAV.

back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of Funds, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Proposed Rule

The Exchange believes that it is appropriate to permit off-Exchange transfers of options positions in connection with the creation and redemption process and recognizes that the prevalence and popularity of Funds have increased greatly. Currently, Funds serve both as popular investment vehicles and trading tools [45] and, as discussed above, the creation and redemption process, along with the arbitrage opportunities that accompany it, are key Fund features. Although Funds and UITs operate differently in certain respects, the ability to effect in-kind transfers is also significant for UITs. As described above, UITs and Funds are situated in substantially the same manner; the key differences being a UIT's fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implication and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, the Exchange believes that providing for an additional, narrow circumstance to make it possible for Funds and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified.

The Exchange submits that its proposal is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off of the Exchange. In this regard, the proposed circumstance would be available solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of Fund Shares between Funds and authorized participants,[46] and units of UITs between UITs and sponsors. As a result of this process, such transfers would occur at the price(s) used to calculate the NAV of such Fund Shares and UIT units (as discussed above), which removes the need for price discovery on an Exchange for pricing these transfers. Moreover, as described above, Funds and authorized participants, and UITs and sponsors, are not seeking to effect the opening or closing of new options positions in connection with the creation and redemption process. Rather, the options positions would reside in a different clearing account until closed in a trade on the Exchange or until they expire.

The proposed transfers, while occurring between two different parties, will occur off the Exchange and will not be considered transactions (as is the case for current off-Exchange transfers permitted by proposed Rule 20.10(a)). While the prices of options transactions effected on the Exchange are disseminated to OPRA, back-office transfers of options positions in clearing accounts held at OCC (in accordance with OCC Rules) [47] are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions.[48] The Exchange believes that price transparency is important in the options markets. However, the Exchange expects any transfers pursuant to the proposed rule will constitute a minimal percentage of the total average daily volume of options. Today, the trading of Funds and UITs that invest in options is substantially limited on the Exchange, primarily because the current rules do not permit Funds or UITs to effect in-kind transfers of options off the Exchange. The Exchange continues to expect that any impact this proposal could have on price transparency in the options market is minimal because proposed Rule 20.12 is limited in scope and is intended to provide market participants with an efficient and effective means to transfer options positions under clearly delineated, specified circumstances. Additionally, as noted above, the NAV for Fund and UIT transfers will generally be based on the disseminated closing price for an options series on the day of a creation or redemption, and thus the price (although not the time or quantity of the transfer) at which these transfers will generally be effected will be publicly available.[49] Further, the Exchange generally expects creations or redemptions to include corresponding transactions by the authorized participant that will occur on an exchange and be reported to OPRA.[50] Therefore, the Exchange expects that any impact the proposed rule change could have on price transparency in the options market would be de minimis.

Other than the transfers covered by the proposed rule, transactions involving options, whether held by a Fund or an authorized participant, or a UIT or a sponsor would be fully subject to all applicable trading Rules.[51] Accordingly, the Exchange does not believe that the proposed new exception would compromise price discovery or transparency.

Further, the Exchange believes that providing an additional exception to make it possible for Funds and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified because, while the proposed exception would be limited in scope, the benefits that may flow to Funds that hold options and their investors may be significant. Specifically, the Exchange

[45] As noted in the Proposed ETF Rule Release, during the first quarter of 2018, trading in U.S.-listed Funds comprised approximately 18.75% of U.S. equity trading by share volume and 28.2% of U.S. equity trading by dollar volume (based on trade and quote data from the New York Stock Exchange and Trade Reporting Facility data from the Financial Industry Regulatory Authority, Inc. (FINRA)). *See* Proposed ETF Rule Release at 83 FR 37334.

[46] *See supra* note 37. The term ''authorized participant'' is specific and narrowly defined. As noted in the Proposed ETF Rule Release, the requirement that only authorized participants of a Fund may purchase creation units from (or sell creation units to) a Fund ''is designed to preserve an orderly creation unit issuance and redemption process between [Funds] and authorized participants.'' Furthermore, an ''orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism.'' *See* Proposed ETF Rule Release at 83 FR 37348.

[47] OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers. All transfers pursuant to proposed Rule 20.12 would be required to comply with OCC rules.

[48] For example, any transfers that would be effected pursuant to proposed Rule 20.10(a) are not disseminated to OPRA.

[49] If there is no disseminated closing price, the Fund or UIT would price according to a pricing model or procedure as described in the fund's prospectus.

[50] The Exchange notes that for in-kind creations, an authorized participant will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA. For in-kind redemptions, the Exchange generally expects that an authorized participant will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position would likely be acquired in an on-exchange transaction that would be reported to OPRA. Such transactions are generally identical to the way that creations and redemptions work for equities and fixed income transactions—while the transfer between the authorized participant and the fund is not necessarily reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

[51] As indicated above, the operation of the arbitrage mechanism accompanying the creation and redemption process generally contemplates ongoing interactions between authorized participants and the market in transactions involving both Fund Shares and the assets comprising a Fund's creation/redemption basket.

expects such Funds and UITs and their investors would benefit from increased tax efficiencies and potential transaction cost savings. By making such Funds and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other Funds and UITs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[52] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[53] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[54] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes proposed Rule 20.9 is consistent with the Act, because it adopts provisions in the Rules specifically required by Rules 19c–1 and 19c–3 under the Act. The Exchange's rules, stated policies, and procedures currently comply with these provisions of the Rules under the Act, and the proposed rule will change will add transparency to the Rules, which will benefit investors.

The Exchange believes proposed Rule 20.10 regarding off-floor position transfers is consistent with the Section 6(b)(5)[55] requirements that the rules of an exchange be 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)[56] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Rule 20.10 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed Rule 20.10(f) that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will enable the Exchange 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 Options 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 Rule 20.10(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 Rule 20.10(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 Rule 20.10(f) which are intended to protect investors and the general public. While Cboe Options grants an exemption to the President (or senior-level designee),[57] 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.

The Exchange believes proposed Rule 20.11 regarding RWA Transfers will remove impediments to and perfect the mechanism of a free and open market

[52] 15 U.S.C. 78f(b).

[53] 15 U.S.C. 78f(b)(5).

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *See* Cboe Options Rule 6.7(f).

and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

Proposed Rule 20.11 does not unfairly discriminate against market participants, as all Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Members.

The Exchange believes proposed Rule 20.12 to permit off-Exchange transfers in connection with the in-kind Fund and UIT creation and redemption process will promote just and equitable principles of trade and help remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit Funds and UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for Funds and UITs that invest in equities and fixed-income securities. This process represents a significant feature of the Fund and UIT structure generally, with advantages that distinguish Funds and UITs from other types of pooled investment vehicles. In light of the associated tax efficiencies and potential transaction cost savings, the Exchange believes the ability to utilize an in-kind process would make such Funds and UITs more attractive to both current and prospective investors and enable them to compete more effectively with other Funds and UITs that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. In addition, the Exchange believes that because it would permit Funds and UITs that invest in options traded on the Exchange to benefit from tax efficiencies and potential transaction cost savings afforded by the in-kind creation and redemption process, which benefits the Exchange expects would generally be passed along to investors that hold Fund Shares and UIT units, the proposed rule change would protect investors and the public interest.

Moreover, the Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off the Exchange. Other than the transfers covered by the proposed exception, transactions involving options, whether held by a Fund or an authorized participant, or a UIT or a sponsor, would be fully subject to the applicable trading Rules. Additionally, the transfers covered by the proposed exception would occur at a price(s) used to calculate the NAV of the applicable Fund Shares or UIT units, which removes the need for price discovery on the Exchange. Accordingly, the Exchange does not believe that the proposed rule change would compromise price discovery or transparency.

When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'' [58] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[59] This consistent

[58] *See* H.R. Rep. 94–229, at 92 (1975) (Conf. Rep.).

[59] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities

Continued

and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition among exchanges. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the lifeblood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public.

Currently, the Exchange Rules do not allow Funds or UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for Funds and UITs that hold them. As a result, the use of options by Funds and UITs is substantially limited. While the proposed exception would be limited in scope, the Exchange believes the benefits that may flow to Funds and UITs that hold options and their investors may be significant. Specifically, the Exchange expects that such Funds and UITs and their investors could benefit from increased tax efficiencies and potential transaction cost savings. By making such Funds and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other Funds and UITs, and other investment vehicles, that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction. This may lead to further development of Funds and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to be a competitive trading tool.

The Exchange does not believe the proposed rule change regarding off-floor position transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will enable the Exchange to be aware of transfers and monitor and review the transfers for compliance with the proposed rule.

Adopting an exemption, similar to Cboe Options Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to proposed Rule 20.9 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 regarding off-floor position transfers will impose an undue burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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 Rule 20.10(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Rule 20.10(g) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Options 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.

The Exchange does not believe the proposed rule change regarding off-floor RWA Transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, as use of the proposed process is voluntary. All Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

The Exchange does not believe the proposed rule change regarding off-floor in-kind transfers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed exception would be voluntary. As an alternative to the normal auction process, proposed Rule

for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

20.12 would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for Funds and UITs under specified circumstances. The proposed exception would enable all Funds and UITs that hold options to enjoy the benefits of in-kind creations and redemptions already available to other Funds and UITs (and to pass these benefits along to investors). The proposed rule change would apply in the same manner to all authorized participants and sponsor broker-dealers that choose to use the proposed process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, it is intended to provide an additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Further, the Exchange believes the proposed rule change will eliminate a significant competitive disadvantage for Funds and UITs that invest in options. Furthermore, as indicated above, in light of the significant benefits provided (*e.g.,* tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of Funds and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that the proposed rule change is based on Cboe Rule 6.9. As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for Funds that hold options to utilize the in-kind transfers proposed herein.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[60] and Rule 19b–4(f)(6) thereunder.[61]

A proposed rule change filed under Rule 19b–4(f)(6)[62] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[63] 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 to so that it may adopt the proposed position transfer rules as soon as possible which, according to the Exchange, would provide for fair competition among options exchanges. The proposed rule change does not present any unique or novel regulatory issues and is substantively similar to the rules of Cboe Options. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[64]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2020–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2020–031. 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–CboeEDGX–2020–031 and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15554 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

[60] 15 U.S.C. 78s(b)(3)(A).

[61] 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.

[62] 17 CFR 240.19b–4(f)(6).

[63] 17 CFR 240.19b–4(f)(6)(iii).

[64] 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).

[65] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89316; File No. SR–PEARL–2020–09]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

July 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to increase the number of additional Limited Service MIAX Express Order Interface (''MEO'') Ports available to Market Makers.[3] The Exchange does not propose to amend the fees for additional Limited Service MEO Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, 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 the Fee Schedule to offer two (2) additional Limited Service MEO Ports to Market Makers. The Exchange does not propose to amend the fees charged for the additional Limited Service MEO Ports.

The Exchange currently offers different options of MEO Ports depending on the services required by an Exchange Member,[4] including a Full Service MEO Port-Bulk,[5] a Full Service MEO Port-Single,[6] and a Limited Service MEO Port.[7] Currently, a Member may be allocated two (2) Full-Service MEO Ports of either type, Bulk and/or Single, per Matching Engine, and up to eight (8) Limited Service MEO Ports, per Matching Engine. The two (2) Full-Service MEO Ports that may be allocated per Matching Engine to a Member currently may consist of: (a) Two (2) Full Service MEO Ports—Bulk; or (b) two (2) Full Service MEO Ports—Single. The Exchange also has a third option, option (c), which permits a Member to have one (1) Full Service MEO Port—Bulk, and one (1) Full Service MEO Port—Single.

The Exchange currently provides Market Makers the first two (2) requested Limited Service MEO Ports free of charge and charges $200 per month for Limited Service MEO Ports three (3) and four (4), $300 per month for Limited Service MEO Ports five (5) and six (6), and $400 per month for Limited Service MEO Ports seven (7) and eight (8). These fees have been unchanged since they were adopted in 2018.[8]

The Exchange originally added the Limited Service MEO Ports to enhance the MEO Port connectivity made available to Market Makers. Limited Service MEO Ports have been well received by Market Makers since their addition. The Exchange now proposes to offer to Market Makers the ability to purchase an additional two (2) Limited Service MEO Ports per matching engine over and above the current six (6) additional Limited Service MEO Ports per matching engine that are available for purchase by Market Makers. The Exchange proposes making a corresponding change to the text in the Port Fee table and to the text below the Port Fee table in Section 5)d) of the Fee Schedule to specify that Market Makers will now be limited to purchasing eight (8) additional Limited Service MEO Ports per matching engine, for a total of ten (10) per matching engine. All fees related to MEO Ports shall remain unchanged and Market Makers that voluntarily purchase the additional ninth or tenth Limited Service MEO Ports will be subject to the existing $400 monthly fee per port that is charged to Market Makers that request a seventh or eighth Limited Service MEO Port.

The Exchange is increasing the number of additional Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX Options and MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to the MIAX PEARL System to all Members. Absent the proposed increase in available MEO Ports, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange's Rules. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[6] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[7] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[8] *See* Securities Exchange Act Release No. 83867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act [11] because the proposed additional Limited Service MEO Ports will be available to all Market Makers and the current fees for the additional Limited Service MEO Ports apply equally to all Market Makers regardless of type, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange is proposing to increase the number of available Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient and equal access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX Options and MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX PEARL Systems for all Members. Absent the proposed increase in available MEO Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs. Further, the Exchange notes that decision of whether to purchase two additional Limited Service MEO Ports is completely optional and it is a business decision for each Market Maker to determine whether the additional Limited Service MEO Ports are necessary to meet their business requirements.

The Exchange further believes that the availability of the additional Limited Service MEO Ports is equitable and not unfairly discriminatory because it will enable Market Makers to maintain uninterrupted access to the MIAX PEARL System and consequently enhance the marketplace by helping Market Makers to better manage risk, thus preserving the integrity of the MIAX markets, all to the benefit of and protection of investors and the public as a whole.

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that voluntarily purchase the two additional Limited Service MEO Ports will be charged the existing $400 monthly fee per port applicable to ports seven (7) and eight (8), which has been unchanged since adopted 2018.[12] The Exchange does not propose to amend the fees applicable to additional Limited Service MEO Ports which have been previously filed with the Commission and become effective after notice and public comment.[13] As stated above, the Exchange proposes to expand its network by making available two additional Limit Service MEO Ports due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the additional Limited Service MEO Ports will generate. Specifically, the Exchange estimates it will cost approximately $350,000 in capital expenditures on hardware, software, and other items to expand the network to make available the two additional Limited Service MEO Ports. This estimated cost also includes providing the necessary engineering and support personnel to transition those Market Makers who wish to acquire the two additional Limited Service MEO Ports.

The Exchange projects that approximately six or seven Market Makers will elect to purchase the additional Limited Service MEO Ports, which will be subject to the existing monthly fee of $400 per port applicable to ports seven (7) and eight (8). Accordingly, the Exchange projects that the annualized revenue from the two additional Limited Service MEO Ports will be approximately $67,200 (assuming that seven Market Makers purchase the two additional Limited Service MEO Ports). Therefore, the Exchange's cost in expanding its network to provide its Members with the two additional Limited Service MEO Ports—approximately $350,000—is clearly greater than the anticipated annualized revenue the Exchange expects to bring in from the two additional Limited Service MEO Ports—approximately $67,200. Thus, the Exchange is not generating a supra-competitive profit from the provision of these two additional Limited Service MEO Ports.

Subjecting the two additional Limited Service MEO Ports to the existing $400 monthly fee per port applicable to ports seven (7) and eight (8) is also designed to encourage Market Makers to be efficient with their port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing the two additional ports. There is no requirement that any Market Maker maintain a specific number of Limited Service MEO Ports and a Market Maker may choose to maintain as many or as few of such ports as each Market Maker deems appropriate.

Finally, subjecting the two additional Limited Service MEO Ports to the existing $400 monthly fee applicable to ports seven (7) and eight (8) will help to encourage Limited Service MEO Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg. SCI'').[14] Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[15] By encouraging Members to be efficient with their usage of Limited MEO Ports, the current fee that will continue to apply to the proposed two (2) additional Limited Service MEO Ports will support the Exchange's Reg.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 7.

[13] *Id.*

[14] 17 CFR 242.1000–1007.

[15] 17 CFR 242.1001(a).

SCI obligations in this regard by ensuring that unused ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not impose a burden on competition but will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposed increase in the number of additional Limited Service MEO Ports available per Market Maker is intended to allow the Exchange to increase its inventory of MEO Ports to meet increased Member demand. The Exchange is increasing the number of available additional Limited Service MEO Ports in response to Market Maker demand for increased connectivity to the MIAX PEARL System. The Exchange's current inventory may soon be insufficient to meet those needs. Again, the Exchange is not proposing to amend the fees for MEO Ports, just to increase the number of MEO Ports available per Market Maker. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because the two additional Limited Service MEO Ports will be available to all Market Makers on an equal basis. It is a business decision of each Market Maker whether to pay for the additional Limited Service MEO Ports.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[16] and Rule 19b–4(f)(2)[17] 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 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–PEARL–2020–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2020–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2020–09 and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15557 Filed 7–17–20; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89309; File No. SR–NASDAQ–2020–002]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the Procedures Governing the Introduction of Legal Arguments and Material Information by Companies in a Proceeding Before a Hearings Panel

July 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the procedures governing the introduction of legal arguments and material information by companies in a proceeding before a Hearings Panel.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

A company may, within seven calendar days of the date of a staff delisting determination notification, public reprimand letter, or written denial of a listing application, request a written or oral hearing before a Hearings Panel to review the staff delisting determination, public reprimand letter, or written denial of a listing application.[3] The Hearings Department will then schedule a hearing to take place before a Hearings Panel, generally within 45 days of the request for a hearing.[4] The Hearings Department will send written acknowledgment of the company's hearing request and inform the company of the date, time, and location of the hearing, and the deadlines for written submissions to the Hearings Panel.[5] A company may waive its right to an oral hearing and instead seek a decision by the Hearings Panel based solely on its written submissions. To improve the hearings process, the Exchange is proposing to revise the procedures governing the introduction of legal arguments and material information by companies in a written or oral hearing before a Hearings Panel.

Specifically, the Exchange is proposing to revise, as discussed below, Listing Rule 5815(a)(5), which currently provides that a company may submit to the Hearings Department a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, or may set forth specific grounds for the company's contention that the issuance of a staff delisting determination, public reprimand letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the staff determination. The Exchange is also proposing to revise Listing Rule 5815(a)(6), which currently provides that at an oral hearing, the company may make such presentation as it deems appropriate, and the Hearings Panel may question any representative appearing at the hearing. To improve the efficient and effective functioning of the hearings process in connection with the company's appeal of a delisting determination, public reprimand letter, or denial of a listing application, the Exchange proposes amending Listing Rule 5815(a)(5) and (a)(6) to: (1) Establish a requirement, and set forth the process, for a company to provide a written submission and written update in connection with either a written or oral hearing; (2) prohibit a company from introducing in a written update or during an oral hearing before a Hearings Panel any legal arguments that were not previously raised; and (3) prohibit a company from introducing during an oral hearing before a Hearings Panel any material information unless the material information was previously raised by the company in writing or was solicited by the Hearings Panel, or the company can show that the material information did not earlier exist or exceptional or unusual circumstances are present.

The proposed revisions to Listing Rule 5815 would contain an express requirement that for both oral and written hearings a company must state in writing with specificity the grounds upon which it is seeking review in advance of a hearing (the ''Written Submission'').[6] This requirement will ensure that a company makes a Written Submission. In addition, the requirement that a company state ''with specificity'' the grounds on which is it seeking review will ensure that the Written Submission includes sufficient detail to be useful in the Hearings Panel's review of the record before the hearing.

The proposed revisions to Listing Rule 5815 will clarify the ability of Nasdaq staff to respond in writing to a company's Written Submission. The proposed revisions to Listing Rule 5815 would also provide a company with the option to supplement the company's Written Submission by providing a written update to the Hearings Department no later than two business days in advance of the hearing, briefing the Hearings Panel on any new material information that has transpired since its Written Submission (the ''Written Update'').[7] The Exchange believes that allowing for a Written Update will improve the hearings process by allowing a company to provide updated information about fast-moving transactions, thereby enabling the Hearings Panel to prepare for the hearing with the most current data available on the company's steps toward achieving or maintaining compliance.

To ensure that companies provide the requisite information in a Written Submission or a Written Update, the Exchange proposes including certain evidentiary standards in proposed Listing Rule 5815. Under the proposed revisions to Listing Rule 5815, legal arguments are only permitted in the Written Submission, and the company must include in the Written Submission all legal arguments on which it intends to rely. A company that does not raise with specificity a legal argument in its Written Submission will be prohibited from introducing a new legal argument in the Written Update or during the hearing before the Hearings Panel.[8] The Hearings Panel will determine that a company has raised a legal argument with specificity if the legal argument includes sufficient detail to be useful in the Hearings Panel's review of the record before the hearing.

Otherwise, when a company raises a legal argument during a hearing or right before the hearing that was not

[3] *See* Listing Rule 5815(a)(1)(A).

[4] *See* Listing Rule 5815(a)(4). Under that rule, the company will be provided at least ten calendar days' notice of the hearing unless the company waives such notice.

[5] *Id.*

[6] As noted above, the Hearings Department generally calendars a hearing within 45 days of the request for a hearing and will establish deadlines for written submissions to the Hearings Panel. *See* Listing Rule 5815(a)(4). As determined by the Hearings Department, both oral and written hearing matters are generally considered on Thursdays, and the company's written submission is typically due on the third Friday before the hearing. The Hearings Department will generally establish the Thursday before the Hearing as the deadline for Nasdaq staff to respond in writing.

[7] Because one of the purposes of the Written Update is to allow a company to supplement its Written Submission, a company would be permitted to submit a Written Update even if Nasdaq staff does not respond in writing to the company's Written Submission.

[8] There is precedent for the requirement that an appellant include all legal arguments in an opening brief, such as the Written Submission, in the SEC Rules of Practice and by the Federal Rules of Appellate Procedure. *See, e.g.,* SEC Rules of Practice 420, 17 CFR 201.420(c) (governing appeals to the Commission of determinations by Self-Regulatory Organizations, which requires that an application for review ''set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor'' and that any exception to a determination ''not supported in an opening brief'' may ''be deemed to have been waived''). *See also* SEC Rules of Practice Rule 222, 17 CFR 201.222(a) (governing prehearing submissions, which allows a hearing officer, on his or her own motion, or at the request of a party or other participant, to order any party to furnish information including ''an outline or narrative summary of its case or defense'' and ''the legal theories upon which it will rely''). *See, e.g., Barna* v. *Bd. of Sch. Dirs. of the Panther Valley Sch. Dist.,* 877 F.3d 136, 145–46 (3d Cir. 2017) (noting that Fed. R. App. P. 28 requires an appellant's opening brief to set forth and address each argument the appellant wishes to pursue in an appeal and that the court will not ''reach arguments raised for the first time in a reply brief or at oral argument'').

contained in its Written Submission, it deprives Nasdaq staff of the opportunity to provide a thorough response to the legal argument and it deprives the Hearings Panel the benefit of Nasdaq staff's views and perspective. As a result, the Hearings Panel would not be able to properly adjudicate the legal issue. While new legal arguments are not permitted in the Written Update, the Exchange does not believe that any prejudice will result to a company from this requirement because the Exchange believes a company would have developed its legal arguments early in the hearings process as part of formulating its Written Submission. The Written Update is solely intended to give a company the additional opportunity to provide an update on any new material information that has transpired since its Written Submission and to reply to Nasdaq staff's response.[9]

In addition, under the proposed revisions to Listing Rule 5815, a company that fails to raise with specificity any material information relating to its appeal of a delisting determination, public reprimand letter, or denial of a listing application in either its Written Submission or Written Update (''New Material Information''), with certain exceptions, will be prohibited from introducing such information during the oral hearing before the Hearings Panel. Information would not be considered New Material Information if, in the Hearings Panel's opinion, the company had previously included information with sufficient detail to be useful in the Hearings Panel's review of the record before the hearing. This revision is intended to improve the Hearings Panel's timely access to material information, and the proposed Listing Rule 5815 includes certain safeguards to ensure such access.

New Material Information would be permitted in three situations. First, the prohibition on introducing New Material Information during the hearing only applies absent solicitation from the Hearings Panel. This is to ensure that the Hearings Panel is not restricted or limited in its ability to ask questions of a company and has the latitude needed to receive answers to its inquiries during the oral hearing.

Second, if the Hearings Panel determines that the company has shown that the New Material Information did not exist at the time the company was permitted to submit a Written Update, *i.e.,* the information is truly new, then the company will be permitted to introduce such evidence at the hearing. For example, where a key component of a company's compliance plan is a merger, and the company obtains a fully executed version of the merger agreement the day before the hearing, the executed merger agreement would constitute information that did not exist at the time the company was permitted to submit a Written Update. However, the fact that the company was pursuing a merger, the potential merger parties, and the material terms of the contemplated merger, should have been previously disclosed by the company, as some or all of such information likely existed at the time the company was permitted to submit a Written Update.

Third, if the Hearings Panel determines that the company has shown that ''exceptional or unusual circumstances'' exist that warrant consideration of the New Material Information, then the company will be permitted to introduce such evidence at the oral hearing. As stated in the proposed revisions to Listing Rule 5815, ''exceptional or unusual circumstances'' would include, but are not necessarily limited to, material information that was not earlier discoverable by the listed company despite all reasonable measures having been taken.[10] This is intended to provide a prudent safety valve for companies that have otherwise exercised due diligence in providing timely information to the Hearings Panel, yet it is circumscribed to the degree necessary to avoid becoming an exception that swallows the general standard.

Where a Hearings Panel permits a company to introduce New Material Information, the proposed revisions to Listing Rule 5815 also provides Nasdaq staff an opportunity to respond in writing to the New Material Information within up to three business days, or such shorter time as the Hearings Panel requests, following the oral hearing. Because the company had the opportunity to present its view on the New Material Information at the oral hearing, the company may respond to the staff's submission only if the Hearings Panel requests it do so. This approach balances the company's need to introduce new information during a hearing; the Nasdaq staff's ability to provide a fulsome review of such information to benefit the Hearings Panel's ultimate consideration of an issue; and the interest in timely resolving a matter after a hearing.

The proposed changes to Listing Rule 5815 will be operative for any company that requests a hearing to review a staff delisting determination, public reprimand letter, or written denial of a listing application after the date of an SEC approval of the proposed rule change.[11]

The Exchange believes that the above-mentioned revisions to Listing Rule 5815 will enhance the hearings process by providing the Hearings Panel with the most developed record in as timely a manner as possible. The Exchange further believes that the proposed revisions will avoid situations that Nasdaq staff has observed where, in advance of a hearing, companies provide little information about their plan to achieve or regain compliance or regarding their appeal of a public reprimand letter or denial of an initial listing application, and instead present such information for the first time during the hearing. When companies belatedly provide information to the Hearings Panel, Nasdaq staff has observed that it does not provide the Hearings Panel with adequate time to prepare for and consider the information in advance of the hearing. Similarly, where companies belatedly provide legal arguments to the Hearings Panel, Nasdaq staff is unable to adequately brief the Hearings Panel concerning its response to the legal argument and, as a result, the Hearings Panel does not have adequate time to prepare for and consider the legal argument in advance of the hearing and thus cannot properly adjudicate the issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(5) and 6(b)(7) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove

[9] Nasdaq has observed that companies are primarily seeking to introduce material information such as a new equity offering or merger, as opposed to legal arguments, at the hearing; thus, the Written Update will provide companies with an opportunity to update the Hearings Panel with material information closer in time to the hearing, but far enough in advance that the Hearings Panel has adequate time to consider such information.

[10] *Cf.* SEC Rules of Practice 452, 17 CFR 201.452 (a party may file a motion for leave to adduce additional evidence prior to the issuance of a decision by the Commission upon a ''show[ing] with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously'').

[11] Companies that have requested a written or oral hearing before a Hearings Panel to review the staff delisting determination, public reprimand letter, or written denial of a listing application prior to the date of SEC approval of the proposed rule change will be subject to the rule text in Listing Rule 5815(a)(5)–(6) that was effective prior to the date of such SEC approval. For such companies, the online rulebook will contain a hyperlink to the older version of the rule.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5) and (7).

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 preventing companies from engaging in gamesmanship in the hearings process while affording companies a fair process and reasonable opportunity to present material arguments and evidence to the Hearings Panel at an appropriate time in the hearings process.

Specifically, this proposal will prevent companies from providing substantive information for the first time during a hearing, after having provided the Hearings Panel either no written compliance plan before the hearing or little detail regarding their compliance plan or appeal of a public reprimand letter or denial of an initial listing application before the hearing. In such circumstances, a Hearings Panel has little or no opportunity to review material information regarding a company's compliance plan or a company's appellate position, or to formulate questions to ask the company, in advance of the hearing. As a result, the Hearings Panel may need more time or information to fully consider the matter following the hearing. In the Exchange's view, these current practices effectively reward a company that withholds information by extending the time it remains listed pending a Hearings Panel decision.[14]

Likewise, when companies withhold legal arguments from their Written Submissions regarding a compliance plan or their appellate position, Nasdaq staff may be unable to fully develop legal arguments or advise the Hearings Panel effectively regarding a company's request for relief. As a result, the Hearings Panel would not be able to properly adjudicate the legal issue during the hearing. While legal arguments are not permitted in the Written Update, the Exchange does not believe that any prejudice will result to a company because the Exchange believes a company would have developed its legal arguments early in the hearings process as part of formulating its Written Submission.

The Exchange believes that this proposal is in keeping with the principles described in Sections 6(b)(5) and 6(b)(7) because it will ensure that the hearings process operates effectively and efficiently, allowing companies the opportunity to present information and legal arguments about their appellate position or ability to achieve and maintain compliance, while also affording the Hearings Panel an opportunity to review that information or legal argument and benefit from Nasdaq staff's views about the information presented. As such, the Exchange believes that this proposal will strengthen the integrity and transparency of the hearings process. Furthermore, the Exchange believes that the proposed changes to the hearings process appropriately balance the potential harm of a delisting decision or a denial of initial listing to the company and its current investors with the expectations of prospective investors, who are entitled to believe that a company listed on Nasdaq satisfies all of Nasdaq's listing requirements.[15] Likewise, the Exchange believes that the proposed changes to the hearings process appropriately balance the potential harm to companies issued a public reprimand letter with an improved opportunity to adequately develop the record in advance of the oral hearing.

The Exchange believes that the proposed process is fair because companies retain the ability to introduce all relevant information before a Hearings Panel, and the proposed changes require that they do so in a more efficient way that helps to minimize the length of time a Hearings Panel needs to make a decision. The Exchange further believes that the proposed process limiting legal arguments to the Written Submission is fair because the Exchange believes a company would have developed its legal arguments early in the hearings process as part of formulating its Written Submission. In addition, building in time for Nasdaq staff to provide a thorough response to the legal argument in advance of the hearing allows the Hearings Panel to properly adjudicate a legal issue with the benefit of having fully considered the company's and Nasdaq staff's views in advance of the hearing.

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 seeking review of a delisting determination, public reprimand letter, or denial of an initial listing application before a Hearings Panel would be affected in the same manner by this change. Moreover, as described above, Nasdaq believes that the proposed rule change is necessary to enhance investor protection from companies that withhold material information or legal arguments from the Hearings Panel until the day of the hearing. This conduct may result in the Hearings Panel's need for additional time to review the information and, thus, potentially unqualified companies remaining listed longer pending a Hearings Panel decision.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–002. This file number should be included on the

[14] Generally, a timely request for a hearing stays the suspension and delisting action pending the issuance of a written Panel Decision. Listing Rule 5815(a)(1)(B).

[15] *See In re Tassaway,* Securities Exchange Act Release No. 11291, 45 S.E.C. 706, 709, 1975 SEC LEXIS 2057, at *6 (Mar. 13, 1975) (''[P]rimary emphasis must be placed on the interests of prospective future investors . . . [who are] entitled to assume that the securities in [Nasdaq] meet [Nasdaq's] standards. Hence the presence in [Nasdaq] of non-complying securities could have a serious deceptive effect.'').

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–2020–002 and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15552 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 203A–2(d); SEC File No. 270–630, OMB Control No. 3235–0689

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title of the collection of information is: ''Exemption for Certain Multi-State Investment Advisers (Rule 203A–2(d)).'' Its currently approved OMB control number is 3235–0689. 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 control number.

Pursuant to section 203A of the Investment Advisers Act of 1940 (the ''Act'') (15 U.S.C. 80b–3a), an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless that adviser has at least $25 million in assets under management or advises a Commission-registered investment company. Section 203A also prohibits from Commission registration an adviser that: (i) Has assets under management between $25 million and $100 million; (ii) is required to be registered as an investment adviser with the state in which it maintains its principal office and place of business; and (iii) if registered, would be subject to examination as an adviser by that state (a ''mid-sized adviser''). A mid-sized adviser that otherwise would be prohibited may register with the Commission if it would be required to register with 15 or more states. Similarly, Rule 203A–2(d) under the Act (17 CFR 275.203a–2(d)) provides that the prohibition on registration with the Commission does not apply to an investment adviser that is required to register in 15 or more states. An investment adviser relying on this exemption also must: (i) Include a representation on Schedule D of Form ADV that the investment adviser has concluded that it must register as an investment adviser with the required number of states; (ii) undertake to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that it would be required by the laws of fewer than 15 states to register as an investment adviser with the state; and (iii) maintain in an easily accessible place a record of the states in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV relying on the rule.

Respondents to this collection of information are investment advisers required to register in 15 or more states absent the exemption that rely on rule 203A–2(d) to register with the Commission. The information collected under rule 203A–2(d) permits the Commission's examination staff to determine an adviser's eligibility for registration with the Commission under this exemptive rule and is also necessary for the Commission staff to use in its examination and oversight program. This collection of information is codified at 17 CFR 275.203a–2(d) and is mandatory to qualify for and maintain Commission registration eligibility under rule 203A–2(d). Responses to the recordkeeping requirements under rule 203A–2(d) in the context of the Commission's examination and oversight program are generally kept confidential.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 106. These advisers will incur an average one-time initial burden of approximately 8 hours, and an average ongoing burden of approximately 8 hours per year, to keep records sufficient to demonstrate that they meet the 15-state threshold. These estimates are based on an estimate that each year an investment adviser will spend approximately 0.5 hours creating a record of its determination whether it must register as an investment adviser with each of the 15 states required to rely on the exemption, and approximately 0.5 hours to maintain these records. Accordingly, we estimate that rule 203A–2(d) results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 848 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

[16] 17 CFR 200.30–3(a)(12).

Dated: July 13, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15435 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89319; File No. SR–CboeBZX–2020–055]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

July 14, 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 July 1, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee 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://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform (''BZX Equities'') to add two additional tiers to the supplemental incentive program of the Add Volume Tiers.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for orders priced at or above $1.00, the Exchange provides a standard rebate of $0.0025 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

One of the tiered pricing models is set forth in Footnote 1 of the fee schedule (Add Volume Tiers), which provides Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity on the Exchange and meet certain criteria. For example, a set of criteria is applied to displayed orders that add liquidity in Tape B securities (*i.e.,* orders that yield fee code B) [3] called the supplemental incentive program tier. The supplemental incentive program tier provides an additional enhanced rebate of $0.0001 to Members that add Tape B ADV of greater than or equal to 0.50% of the Tape B TCV.

The Exchange now proposes to add two additional tiers to the supplemental incentive program tiers. A set of criteria for proposed Supplemental Incentive Program—Tape A would be applied to displayed orders that add liquidity in Tape A (*i.e.,* orders that yield fee code V [4]). A set of criteria for proposed Supplemental Incentive Program—Tape C would be applied to displayed orders that add liquidity in Tape C (*i.e.,* orders that yield fee code Y [5]). The proposed Supplemental Incentive Program—Tape A would provide an additional enhanced rebate of $0.0001 to Members that add Tape A ADV of greater than or equal to 0.50% of Tape A TCV. Similarly, proposed Supplemental Incentive Program—Tape C would provide an additional enhanced rebate of $0.0001 to Members that add Tape C ADV of greater than or equal to 0.50% of Tape C TCV. Based on these proposed changes, the Exchange also proposes to clarify which fee codes are applicable to each of the supplemental incentive program tiers, and also to rename the existing supplemental incentive program tier to Supplemental Incentive Program—Tape B.

The Exchange believes the proposed new tiers will encourage Members to increase their Displayed liquidity in Tape A and C securities on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of $0.00250.

[4] Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of $0.00250.

[5] Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of $0.00250.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed changes to the supplemental incentive program are reasonable because they will provide an additional opportunity for Members to receive an enhanced rebate. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[8] including the Exchange,[9] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[10]

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed tiers and have a reasonable opportunity to meet the tier's criteria. The Exchange also notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rebate would apply to all Members that meet the applicable required criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will not [sic] impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, 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 Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [11]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all Members equally in that all Members are eligible for the proposed tiers and will all receive the applicable proposed rebate if such criteria is met. Additionally, the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes the supplemental incentive program tiers will incentivize Members to grow their volume on the Exchange and add volume in Tape A and C securities. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants.

Next, the Exchange believes the proposed rule changes do not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 13 other equities exchanges and off-exchange venues, including 32 alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 20% of the market share.[12] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities* and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[14] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received 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 [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[8] *See e.g.,* Nasdaq Price List, Rebate to Add Displayed Liquidity.

[9] *See e.g.,* Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers.

[10] *See e.g.,* Nasdaq Price List, Rebate to Add Displayed Liquidity, Rebate to Add Displayed Liquidity, Shares Executed at or Above $1.00, Added by Firm, which offers an additional rebate of $0.0001 in Tape B (other than Supplemental Orders or Designated Retail orders).

[11] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[12] *See* Cboe Global Markets U.S. Equities Market Volume Summary (June 26, 2020), available at *http://markets.cboe.com/us/equities/market_share/.*

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–055 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–055, and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15559 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89313; File No. SR–CboeBZX–2020–054]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Rules Regarding Off-Floor Transactions and Transfers

July 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to adopt rules regarding off-floor transactions and transfers. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new rules regarding off-floor transactions and transfers.

Prohibition on Off-Floor Transactions

Rules 19c–1 and 19c–3 under the Securities Exchange Act of 1934 (the ''Act') describe rule provisions that each national securities change must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange's rules, stated policies, and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include these provisions. Therefore, the proposed rule change adopts these provisions in new Rule 20.9 in accordance with Rules 19c–1 and 19c–3 under the Act.[5]

Off-Floor Position Transfers

Today, the Exchange does not permit off-floor transfers of options positions and has no rule that specifically addresses off-floor transfers. The Exchange proposes to adopt Rule 20.10 to specify the limited circumstances under which a Member (''Member'') may effect transfers of their options positions without first exposing the order.[6] This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the Exchange. This Rule would permit transfers upon the occurrence of

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* CFR 240.19c–1 and 240.19c–3; *see also* Cboe Options, Inc. (''Cboe Options'') Rule 5.12(d) and (e).

[6] *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); *see also* Cboe Options Rule 6.7.

significant, non-recurring events. This Rule states that a Member must be on at least one side of the transfer.

Specifically, proposed Rule 20.10(a) states:

> Notwithstanding Rule 20.9, existing positions in options listed on the Exchange of a Member or of a Non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange (an ''off-floor transfer'') if the off-floor transfer involves one or more of the following events:
>
> (1) An adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
>
> (2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same person (as defined in Rule 1.5)), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
>
> (3) the consolidation of accounts where no change in ownership is involved;
>
> (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a person;
>
> (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;
>
> (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
>
> (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;
>
> (8) the donation of positions to a not-for-profit corporation;
>
> (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
>
> (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[7]

The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.[8] 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.[9] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Rule 20.10(b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[10] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.[11]

However, netting is permitted for transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market-Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at the Clearing Corporation. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market-Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market-Maker may have a nominee with an appointment in class XYZ on Cboe Options, and have another nominee with an appointment in class XYZ on the Exchange, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Cboe Options transactions and another for Exchange 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.

Proposed Rule 20.10(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading 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; [12] or (4) the then-current market price of the positions at the time the transfer is effected.[13]

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.

Proposed Rule 20.10(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).[14] The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the

[7] *See* proposed Rule 20.10(a); *see also* Cboe Options Rule 6.7(a).

[8] *See* proposed Rule 20.10(a)(5) and (7).

[9] *See* proposed Rule 20.10(h).

[10] 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). *See also* Cboe Options Rule 6.7(b).

[11] *See* Cboe Options Rule 6.7(b).

[12] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[13] *See* Cboe Options Rule 6.7(c).

[14] This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

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.[15] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Rule 20.10. Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Rule 20.10 will be subject to appropriate disciplinary action in accordance with the Rules.

Similarly, proposed Rule 20.10(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.[16]

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[17]

The Exchange proposes within Rule 20.10(g) that the transfer procedure set forth in Rule 20.10 is intended to facilitate non-routine, nonrecurring movements of positions.[18] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

The Exchange proposes within Rule 20.10(h) notes that the transfer procedure set forth in Rule 20.10 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.[19]

Off-Floor RWA Transfers

The Exchange proposes to adopt Rule 20.11 to facilitate the reduction of risk-weighted assets (''RWA'') attributable to open options positions.[20] SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[21] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[22]

Subject to certain exceptions, Clearing Members are subject to the Net Capital Rules.[23] However, a subset of Clearing Members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[24] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[25] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[26] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market-Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options

[15] *See* Cboe Options Rule 6.7(d).

[16] *See* Cboe Options Rule 6.7(e).

[17] *See* Cboe Options Rule 6.7(f).

[18] *See* Cboe Options Rule 6.7(g).

[19] *See* Cboe Options Rule 6.7(h).

[20] *See* Cboe Options Rule 6.8; *see also* Securities Exchange Act Release No. 87107 (September 25, 2019), 84 FR 52149 (October 1, 2019) (SR–CBOE–2019–044).

[21] 17 CFR 240.15c3–1.

[22] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.,* vertical spreads).

[23] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[24] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[25] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[26] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. The Exchange currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Member or non-Member (including an affiliate of a Member) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below); [27] and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[28]

These transfers will not result in a change in ownership, as they must occur between accounts of the same person.

''Person'' is defined in Rule 1.5(p) a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government. In other words, RWA transfers may only occur between the same individual or legal entity. RWA transfers are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market-Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market-Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market-Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market-Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market-Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market-Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market-Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Member must give up a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the transaction will clear.[29] A Member may change the give up for a transaction within a specified period of time.[30] Additionally, a Member may also change the Clearing Member [31] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[32] In the above example, if Market-Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Rule 6.30 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Member restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. 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 there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different exchanges, but only if the Market-Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at OCC. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class

[27] This transfer would establish a net reduction of RWA attributable to the transferring person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[28] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

[29] *See* Rule 6.30.

[30] *See* Rule 6.31.

[31] The Clearing Member Trade Assignment (''CMTA'') process at OCC facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[32] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

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.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market-Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market-Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market-Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market-Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market-Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market-Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market-Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market-Maker A cleared the September transaction directly into its account with Clearing Member Y or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[33] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[34]

In-Kind Exchange of Options Positions and Fund Shares and UIT Interests

The Exchange proposes to adopt Rule 20.12 regarding in-kind exchanges of options positions and exchange-traded fund (''Fund'') shares and unit investment trust (''UIT'') interests.[35] As discussed further below, the ability to effect ''in kind'' transfers is a key component of the operational structure of a Fund and a UIT. Currently, in general, Funds and UITs can effect in-kind transfers with respect to equity securities and fixed-income securities. The in-kind process is a major benefit to Fund shareholders and UIT unit holders, in general, the means by which assets may be added to or removed from Funds and UITs. In-kind transfers protect Fund shareholders and UIT unit holders from the undesirable tax effects of frequent ''creations and redemptions'' (described below) and improve the overall tax efficiency of the products. However, currently, the Rules do not provide for Funds and UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for Funds and UITs that hold them. As a result, the use of options by Funds and UITs is substantially limited.

Proposed Rule 20.12 would add a circumstance under which off-Exchange transfers of options positions would be permitted to occur, in addition to the circumstances in proposed Rules 20.10 and 20.11. Specifically, under proposed Rule 20.12, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Member in connection with transactions (a) to purchase or redeem ''creation units'' of Fund Shares between an ''authorized participant'' [36] and the issuer [37] of such Fund Shares [38] or (b) to create or redeem units of a UIT between a broker-dealer and the issuer [39] of such UIT units, which transfers would occur at the price used to calculate the net asset value (''NAV'') of such Fund Shares or UIT units, respectively. This proposed new exception, although limited in scope, would have a significant impact in that it would help protect Fund Shareholders and UIT holders from undesirable tax consequences and facilitate tax-efficient operations. The frequency with which Funds and authorized participants, and UITs and sponsors, would rely on the proposed exception would depend upon such factors as the number of Funds and UITs, respectively, holding options positions traded on the Exchange, the market demand for the shares of such Funds and units of such UITs, the redemption activity of authorized participants and sponsors, respectively, and the investment strategies employed by such Funds and UITs.

While the Exchange recognizes that, in general, the execution of options transactions on exchanges provides certain benefits, such as price discovery and transparency, based on the circumstances under which proposed Rule 20.12 would apply, the Exchange does not believe that such benefits would be compromised. In this regard, as discussed more fully below, the Exchange notes that in conjunction with the creation and redemption process, positions would be transferred at a price(s) used to calculate the NAV of such Fund Shares and UIT units. In

[33] *See* proposed paragraph (a)(4).

[34] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. All RWA transfers will be subject to all applicable recordkeeping requirements applicable to Members and Clearing Members under the Act, such as Rules 17a–3 and 17a–4.

[35] *See* Cboe Options Rule 6.9; *see also* Securities Exchange Act Release Nos. 87340 (October 17, 2019) (SR–CBOE–2019–048) (Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)); and 88786 (April 30, 2020), 85 FR 26998 (May 6, 2020) (SR–CBOE–2020–042) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.9 To Permit In-Kind Transfers of Positions Off of the Exchange in Connection With Unit Investment Trusts (''UITs'')).

[36] The Exchange is proposing that, for purposes of proposed Rule 20.12, the term ''authorized participant'' would be defined as an entity that has a written agreement with the issuer of Fund Shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.,* specified numbers of Fund Shares). While an authorized participant may be a Member and directly effect transactions in options on the Exchange, an authorized participant that is not a Member may effect transactions in options on the Exchange through a Member on its behalf.

[37] The Exchange proposes that, for purposes of proposed Rule 20.12, any issuer of Fund Shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the ''1940 Act'').

[38] A Fund Share is a share or other security principally traded on a national securities exchange and defined as an NMS stock, which includes interest in open-end management investment companies. *See* Rule 19.3(i).

[39] The Exchange proposes that, for purposes of proposed Rule 20.12, any issuer of UIT units would be a trust registered with the Commission as a unit investment trust under the 1940 Act.

addition, although options positions would be transferred off of the Exchange, they would not be closed or ''traded.'' Rather, they would reside in a different clearing account until closed in a trade on the Exchange or until they expire. Further, as discussed below, proposed Rule 20.12 would be clearly delineated and limited in scope, given that the proposed exception would only apply to transfers of options effected in connection with the creation and redemption process.

Funds

As described in further detail below, while Funds do not sell and redeem individual shares to and from investors, they do sell large blocks of their shares to, and redeem them from, authorized participants in conjunction with what is known as the Fund creation and redemption process. Under the proposed exception, Funds that hold options listed on the Exchange would be permitted to effect creation and redemption transactions with authorized participants on an ''in-kind'' basis, which is the process that may generally be utilized by Funds for other asset types. This ability would allow such Funds to function as more tax-efficient investment vehicles to be benefit of investors that hold Fund Shares. In addition, it may also result in transaction cost savings for the Funds, which may be passed along to investors.

Due to their ability to effect in-kind transfers with authorized participants in conjunction with the creation and redemption process described below, Funds have the potential to be significantly more tax-efficient than other pooled investment products, such as mutual funds.[40] Funds issue shares that may be purchased or sold during the day in the secondary market at market-determined prices. Similar to other types of investment companies, Funds invest their assets in accordance with their investment objectives and investment strategies, and Fund Shares represent interests in a Fund's underlying assets. Funds are, in certain respects, similar to mutual funds in that they continuously offer their shares for sale. In contrast to mutual funds, however, Funds do not sell or redeem individual shares. Rather, through the creation and redemption process referenced above, authorized participants have contractual arrangements with a Fund and/or its service provider (*e.g.,* its distributor) purchase and redeem shares directly from that Fund in large aggregations known as ''creation units.'' In general terms, to purchase a creation unit of Fund Shares from a Fund, in return for depositing a ''basket'' of securities and/or other assets identified by the Fund on a particular day, the authorized participant will receive a creation unit of Fund Shares. The basket deposited by the authorized participant is generally expected to be representative of the Fund's portfolio[41] and, when combined with a cash balancing amount (*i.e.,* generally an amount of cash intended to account for any difference between the value of the basket and the NAV of a creation unit), if any, will be equal in value to the aggregate NAV of the shares of the Fund comprising the creation unit. The NAV for Fund Shares is represented by the traded price for Funds holding options positions on days of creation or redemption, and an options pricing model on days in which creations and redemptions do not occur. After purchasing a creation unit, an authorized participant may then hold individual shares of the Fund and/or sell them in the secondary market. In connection with effecting redemptions, the creation process described above is reversed. More specifically, the authorized participant will redeem a creation unit of Fund Shares to the Fund in return for a basket of securities and/or other assets (along with any cash balancing account).

The Fund creation and redemption process, coupled with the secondary market trading of Fund Shares, facilitates arbitrage opportunities that are intended to help keep the market price of Fund Shares at or close to the NAV per share of the Fund. Authorized participants play an important role because of their ability, in general terms, to add Fund Shares to, or remove them from, the market. In this regard, if shares of a Fund are trading at a discount (*i.e.,* below NAV per share), an authorized participant may purchase Fund Shares in the secondary market, accumulate enough shares for a creation unit and then redeem them from the Fund in exchange for the Fund's more valuable redemption basket. Accordingly, the authorized participant will profit because it paid less for the Fund Shares than it received for the underlying assets. The reduction in the supply of Fund Shares available on the secondary market, together with the sale of the Fund's basket assets, may cause the price of Fund Shares to increase, the price of the basket assets to decrease, or both, thereby causing the market price of the Fund Shares and the value of the Fund's holdings to move closer together. In contrast, if the Fund Shares are trading at a premium (*i.e.,* above NAV per share), the transactions are reversed (and the authorized participant would deliver the creation basket in exchange for Fund Shares), resulting in an increase in the supply of Fund Shares which may also help to keep the price of the shares of a Fund close to the value of its holdings.

In comparison to other pooled investment vehicles, one of the significant benefits associated with a Fund's in-kind redemption feature is tax efficiency. In this regard, by effecting redemptions on an in-kind basis (*i.e.,* delivering certain assets from the Fund's portfolio instead of cash), there is no need for the Fund to sell assets and potentially realize capital gains that would be distributed to shareholders. As indicated above, however, because the Rules currently do not allow Funds to effect in-kind transfers of options off of the Exchange, Funds that invest in options traded on the Exchange are generally required to substitute cash in lieu of such options when effecting redemption transactions with authorized participants. Because they must sell the options to obtain the requisite cash, such Funds (and therefore, investors that hold shares of those Funds) are not able to benefit from the tax efficiencies afforded by in-kind transactions.

An additional benefit associated with the in-kind feature is the potential for transaction cost savings. In this regard, by transacting on an in-kind basis, Funds may avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets. Again, however, this benefit is not available today to Funds with respect to their options holdings.

UITs

Although UITs operate differently than Funds in certain respects, as described below, the anticipated potential benefits to UIT investors (*i.e.,* greater tax efficiencies and transaction

[40] This summary of the Fund creation and redemption process is based largely on portions of the discussion set forth in Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the ''Proposed ETF Rule Release'') in which the Commission proposed a new rule under the 1940 Act that would permit Funds registered as open-end management investment companies that satisfy certain conditions to operate without the need to obtain an exemptive order. The proposed rule was adopted on September 25, 2019. *See* Investment Company Act Release No. 33646 (September 25, 2019).

[41] Under certain circumstances, however, and subject to the provisions of its exemptive relief from various provisions of the 1940 Act obtained from the Commission, a Fund may substitute cash and/or other instruments in lieu of some or all of the Fund's portfolio holdings. For example, today, positions in options traded on the Exchange would be generally substituted with cash.

cost savings) from the proposed exemption would be similar as discussed below. Specifically, under the 1940 Act,[42] a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.[43] A UIT's investment portfolio is relatively fixed, and, unlike a Fund, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including Funds), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like Funds, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations known as ''units.'' A broker-dealer purchases a unit of UIT shares from the UIT's trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by ''in-kind'' transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to the aggregate NAV of the shares of the UIT comprising a unit.[44] The UIT then issues units that are publicly offered and sold. Unlike Funds, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (*i.e.,* the primary period, which may range from a single day to a few months). Similar to the process for Funds, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of Funds, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Proposed Rule

The Exchange believes that it is appropriate to permit off-Exchange transfers of options positions in connection with the creation and redemption process and recognizes that the prevalence and popularity of Funds have increased greatly. Currently, Funds serve both as popular investment vehicles and trading tools[45] and, as discussed above, the creation and redemption process, along with the arbitrage opportunities that accompany it, are key Fund features. Although Funds and UITs operate differently in certain respects, the ability to effect in-kind transfers is also significant for UITs. As described above, UITs and Funds are situated in substantially the same manner; the key differences being a UIT's fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implication and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, the Exchange believes that providing for an additional, narrow circumstance to make it possible for Funds and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified.

The Exchange submits that its proposal is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off of the Exchange. In this regard, the proposed circumstance would be available solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of Fund Shares between Funds and authorized participants,[46] and units of UITs between UITs and sponsors. As a result of this process, such transfers would occur at the price(s) used to calculate the NAV of such Fund Shares and UIT units (as discussed above), which removes the need for price discovery on an Exchange for pricing these transfers. Moreover, as described above, Funds and authorized participants, and UITs and sponsors, are not seeking to effect the opening or closing of new options positions in connection with the creation and redemption process. Rather, the options positions would reside in a different clearing account until closed in a trade on the Exchange or until they expire.

The proposed transfers, while occurring between two different parties, will occur off the Exchange and will not be considered transactions (as is the case for current off-Exchange transfers permitted by proposed Rule 20.10(a)). While the prices of options transactions effected on the Exchange are disseminated to OPRA, back-office transfers of options positions in clearing accounts held at OCC (in accordance with OCC Rules)[47] are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions.[48] The Exchange believes that price transparency is important in the options markets. However, the Exchange expects any transfers pursuant to the proposed rule will constitute a minimal percentage of the total average daily volume of options. Today, the trading of Funds and UITs that invest in options is substantially limited on the Exchange, primarily because the current rules do not permit Funds or UITs to effect in-kind transfers of options off the Exchange. The Exchange continues to expect that any impact this proposal could have on price transparency in the options market is minimal because

[42] 15 U.S.C. 80a–4(2).

[43] The Exchange also notes that, though a majority of Funds are structured as open-ended funds, some Funds are structured as UITs, and currently represent a significant amount of assets within the Fund industry. These include, for example, SPDR S&P 500 ETF Trust (''SPY'') and PowerShares QQQ Trust, Series 1 (''QQQ'').

[44] The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. *See* § 270.2a–4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of § 270.2a–4(a), which provides for other events that would trigger computation of a UIT's NAV.

[45] As noted in the Proposed ETF Rule Release, during the first quarter of 2018, trading in U.S.-listed Funds comprised approximately 18.75% of U.S. equity trading by share volume and 28.2% of U.S. equity trading by dollar volume (based on trade and quote data from the New York Stock Exchange and Trade Reporting Facility data from the Financial Industry Regulatory Authority, Inc. (FINRA)). *See* Proposed ETF Rule Release at 83 FR 37334.

[46] *See supra* note 37. The term ''authorized participant'' is specific and narrowly defined. As noted in the Proposed ETF Rule Release, the requirement that only authorized participants of a Fund may purchase creation units from (or sell creation units to) a Fund ''is designed to preserve an orderly creation unit issuance and redemption process between [Funds] and authorized participants.'' Furthermore, an ''orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism.'' *See* Proposed ETF Rule Release at 83 FR 37348.

[47] OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers. All transfers pursuant to proposed Rule 20.12 would be required to comply with OCC rules

[48] For example, any transfers that would be effected pursuant to proposed Rule 20.10(a) are not disseminated to OPRA.

proposed Rule 20.12 is limited in scope and is intended to provide market participants with an efficient and effective means to transfer options positions under clearly delineated, specified circumstances. Additionally, as noted above, the NAV for Fund and UIT transfers will generally be based on the disseminated closing price for an options series on the day of a creation or redemption, and thus the price (although not the time or quantity of the transfer) at which these transfers will generally be effected will be publicly available.[49] Further, the Exchange generally expects creations or redemptions to include corresponding transactions by the authorized participant that will occur on an exchange and be reported to OPRA.[50] Therefore, the Exchange expects that any impact the proposed rule change could have on price transparency in the options market would be de minimis.

Other than the transfers covered by the proposed rule, transactions involving options, whether held by a Fund or an authorized participant, or a UIT or a sponsor would be fully subject to all applicable trading Rules.[51] Accordingly, the Exchange does not believe that the proposed new exception would compromise price discovery or transparency.

Further, the Exchange believes that providing an additional exception to make it possible for Funds and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified because, while the proposed exception would be limited in scope, the benefits that may flow to Funds that hold options and their investors may be significant. Specifically, the Exchange expects such Funds and UITs and their investors would benefit from increased tax efficiencies and potential transaction cost savings. By making such Funds and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other Funds and UITs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[52] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[53] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[54] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes proposed Rule 20.9 is consistent with the Act, because it adopts provisions in the Rules specifically required by Rules 19c–1 and 19c–3 under the Act. The Exchange's rules, stated policies, and procedures currently comply with these provisions of the Rules under the Act, and the proposed rule will change will add transparency to the Rules, which will benefit investors.

The Exchange believes proposed Rule 20.10 regarding off-floor position transfers is consistent with the Section 6(b)(5)[55] requirements that the rules of an exchange be 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)[56] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Rule 20.10 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed Rule 20.10(f) that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will enable the Exchange to review transfers for compliance with the

[49] If there is no disseminated closing price, the Fund or UIT would price according to a pricing model or procedure as described in the fund's prospectus.

[50] The Exchange notes that for in-kind creations, an authorized participant will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA. For in-kind redemptions, the Exchange generally expects that an authorized participant will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position would likely be acquired in an on-exchange transaction that would be reported to OPRA. Such transactions are generally identical to the way that creations and redemptions work for equities and fixed income transactions—while the transfer between the authorized participant and the fund is not necessarily reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

[51] As indicated above, the operation of the arbitrage mechanism accompanying the creation and redemption process generally contemplates ongoing interactions between authorized participants and the market in transactions involving both Fund Shares and the assets comprising a Fund's creation/redemption basket.

[52] 15 U.S.C. 78f(b).

[53] 15 U.S.C. 78f(b)(5).

[54] *Id.*

[55] *Id.*

[56] *Id.*

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 Options 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 Rule 20.10(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 Rule 20.10(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 Rule 20.10(f) which are intended to protect investors and the general public. While Cboe Options grants an exemption to the President (or senior-level designee),[57] 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.

The Exchange believes proposed Rule 20.11 regarding RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

Proposed Rule 20.11 does not unfairly discriminate against market participants, as all Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Members.

The Exchange believes proposed Rule 20.12 to permit off-Exchange transfers in connection with the in-kind Fund and UIT creation and redemption process will promote just and equitable principles of trade and help remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit Funds and UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for Funds and UITs that invest in equities and fixed-income securities. This process represents a significant feature of the Fund and UIT structure generally, with advantages that distinguish Funds and UITs from other types of pooled investment vehicles. In light of the associated tax efficiencies and potential transaction cost savings, the Exchange believes the ability to

[57] *See* Cboe Options Rule 6.7(f).

utilize an in-kind process would make such Funds and UITs more attractive to both current and prospective investors and enable them to compete more effectively with other Funds and UITs that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. In addition, the Exchange believes that because it would permit Funds and UITs that invest in options traded on the Exchange to benefit from tax efficiencies and potential transaction cost savings afforded by the in-kind creation and redemption process, which benefits the Exchange expects would generally be passed along to investors that hold Fund Shares and UIT units, the proposed rule change would protect investors and the public interest.

Moreover, the Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off the Exchange. Other than the transfers covered by the proposed exception, transactions involving options, whether held by a Fund or an authorized participant, or a UIT or a sponsor, would be fully subject to the applicable trading Rules. Additionally, the transfers covered by the proposed exception would occur at a price(s) used to calculate the NAV of the applicable Fund Shares or UIT units, which removes the need for price discovery on the Exchange. Accordingly, the Exchange does not believe that the proposed rule change would compromise price discovery or transparency.

When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'' [58] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[59] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition among exchanges. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the lifeblood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public.

Currently, the Exchange Rules do not allow Funds or UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for Funds and UITs that hold them. As a result, the use of options by Funds and UITs is substantially limited. While the proposed exception would be limited in scope, the Exchange believes the benefits that may flow to Funds and UITs that hold options and their investors may be significant. Specifically, the Exchange expects that such Funds and UITs and their investors could benefit from increased tax efficiencies and potential transaction cost savings. By making such Funds and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other Funds and UITs, and other investment vehicles, that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction. This may lead to further development of Funds and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to be a competitive trading tool.

The Exchange does not believe the proposed rule change regarding off-floor position transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will enable the Exchange to be aware of transfers and monitor and review the transfers for compliance with the proposed rule.

Adopting an exemption, similar to Cboe Options Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to proposed Rule 20.9 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 regarding off-floor position transfers will impose an undue burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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

[58] *See* H.R. Rep. 94–229, at 92 (1975) (Conf. Rep.).

[59] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

non-routine, nonrecurring movements of positions. As provided for in proposed Rule 20.10(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Rule 20.10(g) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Options 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.

The Exchange does not believe the proposed rule change regarding off-floor RWA Transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, as use of the proposed process is voluntary. All Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

The Exchange does not believe the proposed rule change regarding off-floor in-kind transfers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed exception would be voluntary. As an alternative to the normal auction process, proposed Rule 20.12 would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for Funds and UITs under specified circumstances. The proposed exception would enable all Funds and UITs that hold options to enjoy the benefits of in-kind creations and redemptions already available to other Funds and UITs (and to pass these benefits along to investors). The proposed rule change would apply in the same manner to all authorized participants and sponsor broker-dealers that choose to use the proposed process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, it is intended to provide an additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Further, the Exchange believes the proposed rule change will eliminate a significant competitive disadvantage for Funds and UITs that invest in options. Furthermore, as indicated above, in light of the significant benefits provided (*e.g.,* tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of Funds and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that the proposed rule change is based on Cboe Rule 6.9. As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for Funds that hold options to utilize the in-kind transfers proposed herein.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[60] and Rule 19b–4(f)(6) thereunder.[61]

A proposed rule change filed under Rule 19b–4(f)(6)[62] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[63] 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 to so that it may adopt the proposed position transfer rules as soon as possible which, according to the Exchange, would provide for fair competition among options exchanges. The proposed rule change does not present any unique or novel regulatory issues and is substantively similar to the rules of Cboe Options. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[64]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[60] 15 U.S.C. 78s(b)(3)(A).

[61] 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.

[62] 17 CFR 240.19b–4(f)(6).

[63] 17 CFR 240.19b–4(f)(6)(iii).

[64] 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).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–054 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–054 and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15555 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

[65] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89317; File No. SR–MIAX–2020–23]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule to Increase the Number of Additional Limited Service MIAX Express Interface Ports Available to Market Makers

July 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to increase the number of additional Limited Service MIAX Express Interface (''MEI'') Ports available to Market Makers.[3] The Exchange does not propose to amend the fees for additional Limited Service MEI Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, 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 the Fee Schedule to offer two (2) additional Limited Service MEI Ports to Market Makers. The Exchange does not propose to amend the fees charged for the additional Limited Service MEI Ports.

Currently, MIAX assesses monthly MEI Port Fees on Market Makers based upon the number of MIAX matching engines[4] used by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports[5] and two (2) Limited Service MEI Ports[6] per matching engine to which they connect. The Full Service MEI Ports, Limited Service MEI Ports, and the additional Limited Service MEI Ports all include access to MIAX's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports for which they will be assessed the existing $100 monthly fee for each additional port they request. This fee has been unchanged since 2016.[7]

The Exchange originally added the Limited Service MEI Ports to enhance the MEI Port connectivity made available to Market Makers, and has subsequently made additional Limited Service MEI Ports available to Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[4] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* Fee Schedule, Section 5)d)ii), note 29.

[5] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 27.

[6] Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 28.

[7] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

Makers.[8] Limited Service MEI Ports have been well received by Market Makers since their addition. The Exchange now proposes to offer to Market Makers the ability to purchase an additional two (2) Limited Service MEI Ports per matching engine over and above the current six (6) additional Limited Service MEI Ports per matching engine that are available for purchase by Market Makers. The Exchange proposes making a corresponding change to footnote 30 of the Exchange's Fee Schedule to specify that Market Makers will now be limited to purchasing eight (8) additional Limited Service MEI Ports per matching engine, for a total of ten (10) per matching engine. All fees related to MEI Ports shall remain unchanged and Market Makers that voluntarily purchase the additional Limited Service MEI Ports will remain subject to the existing $100 monthly fee per port.

The Exchange is increasing the number of additional Limited Service MEI Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient access to new and existing Members,[9] to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX Options and MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX Systems to all Members. Absent the proposed increase in available MEI Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act[12] because the proposed additional Limited Service MEI Ports will be available to all Market Makers and the current fees for the additional Limited Service MEI Ports apply equally to all Market Makers regardless of type, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange is proposing to increase the number of available Limited Service MEI Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient and equal access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX Options and MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX Systems for all Members. Absent the proposed increase in available MEI Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs. Further, the Exchange notes the decision of whether to purchase two additional Limited Service MEI Ports is completely optional and it is a business decision for each Market Maker to determine whether the additional Limited Service MEI Ports are necessary to meet their business requirements.

The Exchange further believes that the availability of the additional Limited Service MEI Ports is equitable and not unfairly discriminatory because it will enable Market Makers to maintain uninterrupted access to the MIAX System and consequently enhance the marketplace by helping Market Makers to better manage risk, thus preserving the integrity of the MIAX markets, all to the benefit of and protection of investors and the public as a whole.

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that voluntarily purchase the two additional Limited Service MEI Ports will be charged the existing $100 monthly fee per port, which has been unchanged since 2016.[13] The Exchange does not propose to amend the fees applicable to additional Limited Service MEI Ports which have been previously filed with the Commission and become effective after notice and public comment.[14] As stated above, the Exchange proposes to expand its network by making available two additional Limit Service MEI Ports due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the additional Limited Service MEI Ports will generate. Specifically, the Exchange estimates it will cost approximately $350,000 in capital expenditures on hardware, software, and other items to expand the network to make available the two additional Limited Service MEI Ports. This estimated cost also includes providing the necessary engineering and support personnel to transition those Market Makers who wish to acquire the two additional Limited Service MEI Ports.

The Exchange projects that approximately six or seven Market Makers will elect to purchase the additional Limited Service MEI Ports, which will be subject to the existing monthly fee of $100 per port. Accordingly, the Exchange projects that

[8] *See* Securities Exchange Act Release Nos. 70137 (August 8, 2013), 78 FR 49586 (August 14, 2013) (SR–MIAX–2013–39); 70903 (November 20, 2013), 78 FR 70615 (November 26, 2013) (SR–MIAX–2013–52); 78950 (September 27, 2016), 81 FR 68084 (October 3, 2016) (SR–MIAX–2016–33); and 79198 (October 31, 2016), 81 FR 76988 (November 4, 2016) (SR–MIAX–2016–37).

[9] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 7.

[14] *See supra* notes 7 and 8.

the annualized revenue from the two additional Limited Service MEI Ports will be approximately $16,800 (assuming that seven Market Makers purchase the two additional Limited Service MEI Ports). Therefore, the Exchange's cost in expanding its network to provide its Members with the two additional Limited Service MEI Ports—approximately $350,000—is clearly greater than the anticipated annualized revenue the Exchange expects to bring in from the two additional Limited Service MEI Ports—approximately $16,800. Thus, the Exchange is not generating a supra-competitive profit from the provision of these two additional Limited Service MEI Ports.

Subjecting the two additional Limited Service MEI Ports to the existing $100 monthly fee per port is also designed to encourage Market Makers to be efficient with their port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing the two additional ports. There is no requirement that any Market Maker maintain a specific number of Limited Service MEI Ports and a Market Maker may choose to maintain as many or as few of such ports as each Market Maker deems appropriate.

Finally, subjecting the two additional Limited Service MEI Ports to the existing $100 monthly fee will help to encourage Limited Service MEI Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg. SCI'').[15] Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[16] By encouraging Members to be efficient with their usage of Limited MEI Ports, the current fee that will continue to apply to the proposed two (2) additional Limited Service MEI Ports will support the Exchange's Reg. SCI obligations in this regard by ensuring that unused ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not impose a burden on competition but will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposed increase in the number of additional Limited Service MEI Ports available per Market Maker is intended to allow the Exchange to increase its inventory of MEI Ports to meet increased Member demand. The Exchange is increasing the number of available additional Limited Service MEI Ports in response to Market Maker demand for increased connectivity to the MIAX System. The Exchange's current inventory may soon be insufficient to meet those needs. Again, the Exchange is not proposing to amend the fees for MEI Ports, just to increase the number of MEI Ports available per Market Maker. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because the two additional Limited Service MEI Ports will be available to all Market Makers on an equal basis. It is a business decision of each Market Maker whether to pay for the additional Limited Service MEI Ports.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[17] and Rule 19b–4(f)(2) [18] 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 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–MIAX–2020–23 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–MIAX–2020–23. 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–MIAX–2020–23, and should be submitted on or before August 10, 2020.

[15] 17 CFR 242.1000–1007.

[16] 17 CFR 242.1001(a).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15558 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89315; File No. SR–BOX–2020–27]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Sections I.C.2 (Strategy Order Facilitation and Solicitation Transactions) and II.D (Strategy QOO Order Fee Cap and Rebate) of the Fee Schedule on the BOX Options Market LLC Facility

July 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2020, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

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 the Fee Schedule for trading on BOX to amend Section I.C.2 (Strategy Order Facilitation and Solicitation Transactions) and Section II.D (Strategy QOO Order Fee Cap and Rebate) to adopt the ''long stock interest'' strategy type. As proposed, a ''long stock interest strategy'' is defined as a transaction done to achieve long stock interest involving the purchase, sale, and exercise of in-the-money options of the same class. The Exchange currently has the following strategies defined in the BOX Fee Schedule: Short stock interest, merger, reversal, conversion, jelly roll, box spread and dividend strategies.[5] The Exchange notes that the proposed long stock interest strategies are currently traded on the BOX Trading Floor; however because these strategies are not defined within the Fee Schedule, these transactions are assessed the applicable manual transaction fees and are not eligible for the Strategy QOO Order Fee Cap and Rebate. The Exchange believes that the proposed long stock interest strategy type belongs in the group of strategies offered fee caps and rebates on the Exchange, as it is similar in nature to the short stock interest strategy. In particular, a short stock interest strategy is a transaction done to achieve a *short stock* interest arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class where a long stock interest strategy is a transaction done to achieve *long stock* interest involving the purchase, sale, and exercise of in-the-money options of the same class.[6]

The Exchange now proposes to amend Section I.C.2 and Section II.D of the BOX Fee Schedule to include the long stock interest strategy type in the respective fee and rebate structures applicable to other strategy types offered on the Exchange. Specifically, the Exchange proposes to amend Section I.C.2 to state that fees for long stock interest Strategy Orders executed through the electronic Facilitation and Solicitation auction mechanisms will be subject to the table below:

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A ''short stock interest strategy'' is defined as a transaction done to achieve a short stock interest arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class. A ''merger strategy'' is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. A ''reversal strategy'' is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A ''conversion strategy'' 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. A ''jelly roll strategy'' is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. A ''box spread strategy'' is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. A ''dividend strategy'' is defined as a transaction done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

[6] In essence, the long stock interest strategy is taking the inverse position of the short stock interest strategy by utilizing call options. Under certain circumstances, stocks can become difficult to borrow because of limited supply. Under these market conditions, the cost of borrowing shares in order to short the stock can be prohibitively expensive. Customers may implement a long stock interest strategy in order to take a long stock position and offset the high short borrow costs associated with hard to borrow stocks.

Account type	Agency order		Facilitation order or solicitation order		Responses in the solicitation or facilitation auction mechanisms	
	Penny interval classes	Non-penny interval classes	Penny interval classes	Non-penny interval classes	Penny interval classes	Non-penny interval classes
Public Customer	$0.00	$0.00	$0.00	$0.00	$0.25	$0.40
Professional Customer	0.10	0.10	0.10	0.10	0.25	0.40
Broker Dealer	0.25	0.25	0.25	0.25	0.25	0.40
Market Maker	0.25	0.25	0.25	0.25	0.25	0.40

Further, the Exchange proposes that fees for long stock interest strategy orders executed through the electronic Facilitation and Solicitation mechanisms be capped at $1,000 per day per customer along with other applicable strategy orders. The Exchange also proposes that on each trading day, Participants are eligible to receive a $500 rebate per customer for executing long stock interest Strategy Orders through the electronic Facilitation or Solicitation mechanisms. The rebate will be applied once the $1,000 fee cap per customer is met. The rebate will be paid to the Participant that entered the order into the BOX system.[7]

Under Section II.D, as proposed, the manual transaction fees for long stock interest strategies executed on the same trading day will be capped at $1,000 per day per customer along with other applicable strategy orders. Currently, on each trading day, Floor Brokers are eligible to receive a $500 rebate per customer for presenting certain Strategy QOO Orders on the BOX Trading Floor. The rebate will be applied once the $1,000 fee cap per customer for all dividend, short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met. The Exchange proposes to now include long stock interest strategies to the above-mentioned rebate.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange notes that it operates in a highly competitive market in which the Exchange must continually reassess its fees in order to maintain its competitiveness within the options exchange industry. The proposed changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

The Exchange believes that the proposed addition of long stock interest strategies to Sections I.C.2 and II.D to the BOX Fee Schedule is reasonable, equitable and not unfairly discriminatory. As discussed herein, long stock interest strategies are currently traded on the BOX Trading Floor, however they are not defined in the BOX Fee Schedule and are thus charged the applicable manual transaction fees in Section II.A. and are not eligible for the applicable fee caps and rebates. The Exchange believes that the proposed addition of long stock interest strategies to Sections I.C.2 and II.D of the BOX Fee Schedule is reasonable and appropriate as the long stock interest strategy is similar in nature to the short stock interest strategy. Both strategy types are executed to achieve short stock interest (short stock interest strategy) or long stock interest (long stock interest strategy) involving the purchase, sale, and exercise of in-the-money options of the same class. As such, the Exchange further believes it is reasonable and appropriate to include the long stock interest strategy type with the other strategies that may benefit from the fee caps and rebates available in Sections I.C.2 and II.D of the BOX Fee Schedule.

Further, the Exchange believes that including long stock interest strategies in Sections I.C.2 and Section II.D of the BOX Fee Schedule will incentivize Participants to submit increased order flow to the Exchange thus creating increased trading opportunities ultimately benefitting all market participants. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory as all Participants, regardless of account type, may submit these types of strategies to the Exchange and may avail themselves of the proposed fee caps and rebates.

Lastly, the Exchange represents that the purpose of the proposed rule change is to attract additional order flow to the Exchange. The Exchange believes that implementing the rebate and fee cap for long stock interest strategies—similar to the rebates and fee caps currently in place for short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies—should increase order flow to the Exchange resulting in increased trading opportunities ultimately benefitting all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies uniformly to all Participants that incur transaction fees for long stock interest strategies. Further, the Exchange notes that long stock interest strategies are currently traded on the BOX Trading Floor but are not eligible to receive the fee caps and rebates discussed herein. As such, the Exchange believes that including long stock interest strategies in Sections I.C.2 and II.D. of the BOX Fee Schedule will incentivize Participants to submit these strategy types to the Strategy Order Facilitation and Solicitation mechanisms or the BOX Trading Floor, which in turn, will bring increased liquidity and order flow to the Exchange for the benefit of all market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

[7] The Exchange notes that short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies are all subject to the same fees, fee cap and rebate.

[8] 15 U.S.C. 78f(b)(4) and (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BOX–2020–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–27, and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89308; File No. SR–CBOE–2020–034]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating To Authorize for Trading Flexible Exchange Options (''FLEX options'') on Full-Value Indexes With a Contract Multiplier of One

July 14, 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 June 30, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to authorize for trading flexible exchange options (''FLEX options'') on full-value indexes with a contract multiplier of one. 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 proposed rule change authorizes for trading on the Exchange FLEX Options on full-value indexes with a contract multiplier of one. Currently, Rule 4.21(b)(1) states the index multiplier for FLEX Index Options is 100. The proposed rule change deletes the parenthetical with that provision from current Rule 4.21(b)(1), and instead proposes to describe the index multiplier for FLEX Index Options in proposed Rule 4.20(b). Options with the same underlying but different units of trading or index multipliers, as applicable, are different classes.[3] An index multiplier is a term of a class (and thus applicable to all series in the

[3] For example, the Exchange may list for trading on five securities mini-options, which are options with a unit of trading of ten shares, which is ten times lower than the standard-sized option of 100 shares. *See* Rule 4.5, Interpretation and Policy .18. While a mini-option has the same underlying as a standard-sized option, they are separate products. *See* Securities Exchange Act Release No. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (SR–CBOE–2013–001).

class)[4] rather than a term individual to a series. The Exchange, therefore, believes including the provision regarding the index multiplier of FLEX Index Options in Rule 4.20, which describes which classes the Exchange may authorize for trading, is more appropriate.

The proposed provisions in Rule 4.20(b) that state the index multiplier may be 100 for FLEX Index Options on full-value indexes (proposed clause (1)) and is 100 for FLEX Index Options on reduced-value indexes (proposed clause (2)) merely restate the parenthetical from current Rule 4.21(b)(1) in a more appropriate part of the Rules, and thus are nonsubstantive changes.[5] Additionally, proposed Rule 4.20(a) states that the unit of trading for FLEX Equity Options is the same as the unit of trading for non-FLEX Equity Options overlying the same equity security. The unit of trading for equity options (both FLEX and non-FLEX) that may be listed on the Exchange is 100,[6] except for mini-options, which have a unit of trading of 10.[7] This is not a substantive change, but rather is merely a clarification in the Rules regarding the current unit of trading for FLEX Equity Options. Therefore, the proposed rule change has no impact on which FLEX Equity Options may be traded on the Exchange. The ''unit of trading'' in respect of any series of options means the number of units (*i.e.,* shares in the case of equity options) of the underlying interest subject to a single option contract in the series.[8]

Rule 4.11 defines an ''index multiplier'' as the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract. Currently, the Exchange has specified the index multiplier for index options it currently lists as 100.[9] While the Exchange has no current plans to designate an index multiplier of one for non-FLEX index options, Rule 4.11 permits the Exchange to specify what the index multiplier for an index option is contract and thus provides the Exchange with authority to list an index option with a multiplier of one.[10] Similarly, Article I, Section 1, I(3) of the OCC By-Laws defines ''index multiplier'' as the dollar amount (as specified by the Exchange on which such contract is traded) by which the current index value is to be multiplied to obtain the aggregate current index value. Unlike the definition of a unit of trading in the OCC By-Laws, which states the unit of trading in is designated by OCC but is 100 shares if not otherwise specified, the definition of index multiplier includes no such default.[11] Therefore, given the inclusion of a default unit of trading for equity options but the lack of a default index multiplier for index options, the Exchange believes the current index multiplier definition in the OCC By-Laws (which would have previously been filed with the Commission) permits any index multiplier specified by the listing Exchange. This is consistent with the lack of default number in Exchange's definition of index multiplier and the ability for the Exchange to specify the index multiplier, as noted above.

The current index multiplier for all FLEX Index Options is 100, and thus does not provide the same flexibility as the broader Exchange and OCC definitions. The proposed rule change provides that the index multiplier for FLEX Index options on full-value indexes may also be one (in addition to the current index multiplier of 100).[12] One-hundred contracts for a FLEX Index Option with a multiplier of one are economically equivalent to one contract for a FLEX Index Option with a multiplier of 100.[13] Rule 4.20 permits the Exchange to authorize for trading a FLEX Option class on any equity security or index if it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Rules 4.3 and 4.10, respectively, even if the Exchange does not list that non-FLEX Option class for trading. As discussed above, the Rules (and OCC By-Laws) authorize the Exchange to specify an index multiplier of one for an index option, subject to any applicable rule filing requirements. Therefore, while the Exchange does not list a non-FLEX Index Option with a multiplier of one, the Exchange may authorize for trading a FLEX Index Option with a multiplier of one for any index it may authorize for non-FLEX trading pursuant to Rule 4.10.

When submitting a FLEX Order, the submitting FLEX Trader[14] must include all required terms of a FLEX Option series.[15] Pursuant to current Rule 4.21(b)(1), the submitting FLEX Trader must include the underlying equity security or index (*i.e.,* the FLEX Option class) on the FLEX Order. The proposed rule change amends Rule 4.21(b)(1) to state that if a FLEX Trader specifies a full-value index on a FLEX Order, the FLEX Trader must also include whether the index option has an index multiplier of 100 or 1 when identifying the class of FLEX Order. While the concept of a flexible index multiplier is permissible under OCC's By-Laws, the Exchange does not propose to make the index multiplier a flexible term that a FLEX Trader can designate (unlike the other terms of FLEX Options (strike price, settlement, expiration date, and exercise style) that are designated by the FLEX Trader rather than by the Exchange).[16] Instead, as discussed above, the Exchange is specifying the index multiplier for FLEX Options on full-value indexes may be one or 100, as permitted by the current definition of index multiplier in Rule 4.11, and is therefore authorizing new classes of FLEX Index Options. Therefore, each FLEX Index Option series in a FLEX Index Option class with a multiplier of

[4] In other words, options on the S&P 500 Index (''SPX options'') with a multiplier of one are a different class than options on the S&P 500 with a multiplier of 100, just as options on the S&P 500 Index with a multiplier of 100 are a different class than options on the reduced-value S&P 500 Index (with one-tenth the value of the of the S&P 500 Index) with a multiplier of 100.

[5] The separation of this provision for FLEX Index Options on full-value and reduced-value indexes relates to the proposed rule change to permit FLEX Index Options on full-value indexes to also have a multiplier of one.

[6] *See* Options Clearing Corporation (''OCC'') By-Laws Article I, Section I(U)(5), which defines ''unit of trading'' in respect of any series of options as the number of units of the underlying interest designated by OCC as the minimum number to be the subject of a single option contract in such series, and stating that in the absence of any such designation for a series of options in which the underlying security is a common stock, the unit of trading is 100 shares.

[7] *See* Rule 4.5, Interpretation and Policy .18(a).

[8] *See* Rule 4.21(b)(1); and Options Clearing Corporation (''OCC'') Bylaws Article I, Section 1, U(5).

[9] *See* index option specifications, available at *http://www.cboe.com/products/stock-index-options-spx-rut-msci-ftse.*

[10] Such listing would be subject to any applicable filing requirements, such as a Form 19b–4(e).

[11] *See* OCC Bylaws Article I, Section 1, U(5)

[12] *See* proposed Rule 4.20(b)(1).

[13] The proposed rule change also amends Rule 5.74(a)(4) to provide that the minimum size of an agency order for a FLEX solicitation auction mechanism (''SAM'') will be 50,000 FLEX Index Option contracts if the multiplier is one, which is proportionately equivalent to 500 FLEX Index Option contracts if the multiplier is 100, the current minimum size of agency orders for SAM auctions. This corresponds to the minimum size of 5,000 mini-options.

[14] A ''FLEX Trader'' is a Trading Permit Holder the Exchange has approved to trade FLEX Options on the Exchange.

[15] These terms include, in addition to the underlying equity security or index, the type of options (put or call), exercise style, expiration date, settlement type, and exercise price. *See* Rule 4.21(b). A ''FLEX Order'' is an order submitted in FLEX Options. The submission of a FLEX Order makes the FLEX Option series in that order eligible for trading. *See* Rule 5.72(b).

[16] Pursuant to the OCC By-Laws, which would have previously been filed with the Commission, the Exchange could make the multiplier a flexible term, as the index multiplier is listed as a variable term in the case of a flexibly structured index option. *See* OCC By-Laws Article I, Section 1, V(1).

one will include the same flexible terms as any other FLEX Option series, including strike price, settlement, expiration date, and exercise style as required by Rule 4.21(b).[17]

The table below demonstrates the proposed differences between a FLEX Index Option contract if the multiplier is one and a FLEX Index Option if the multiplier is 100 on the S&P 500 Index. If the intraday value of the S&P 500 Index is 3,109.50, one S&P 500 Index option (''SPX option'') contract has a notional value of $310,950 (100 times 3,109.50). Suppose at that time, an SPX July 3200 call option is trading at $21.80, making the cost of that contract overlying 100 units of the index $2,180. Proportionately equivalent FLEX Index Option contracts if the multiplier is one on an SPX July 3200 call would provide investors with the ability to manage and hedge their positions and portfolio risk on their underlying investment, at a price of $21.80 per contract.

Term	Index multiplier of 100	Index multiplier of 1
Strike Price	3200	3200
Bid/offer	21.80	21.80
Total Value of Deliverable	$320,000	$3,200
Total Value of Contract	2,180	21.80

The Exchange believes there is demand from investors for FLEX Index Options with an index multiplier of one, and that the proposed rule change will expand investors' choices and flexibility with respect to the trading of index options. Permitting investors to trade FLEX Index Option contracts on full-value indexes with an index multiplier of one will provide investors with additional granularity with respect to the prices at which they may execute and exercise their FLEX Options on the Exchange, as investors may execute and exercise over-the-counter options with this smaller contract multiplier. The Exchange believes this additional granularity will appeal to investors, as it will provide them with an additional tool to manage the positions and associated risk in their portfolios based on notional value, which currently may equal a fraction of a standard contract.

For example, suppose a FLEX Trader holds a security portfolio of $10,000,000. The FLEX Trader desires to hedge its portfolio with FLEX SPX Index Options with an index multiplier of 100. Assume the current value of the S&P 500 Index is 3,253.82. With a 100 multiplier, a FLEX SPX Index Option contract with an index multiplier of 100 would have a notional value of $325,382.00. In order to hedge the entire portfolio, the FLEX Trader would need to trade 30.73 contracts ($10,000,000/$325,382). The nearest whole number of contracts would be 31 contracts, which would have a total notional value of $10,086,842. As a result, the FLEX Trader could only hedge within $86,842 of its portfolio value with FLEX Index Options. A FLEX SPX Index Option contract with an index multiplier of one would have a notional value of $3,253.82. In order to hedge the entire $10,000,000 portfolio, the FLEX Trader would need to trade 3,073.3 contracts ($10,000,000/$3,253.82). The nearest whole number of contracts would be 3,073 FLEX SPX Index Option contracts with an index multiplier of one, which would have a total notional value of $9,998,988.86.[18] This will allow the FLEX Trader to hedge within $1,011.14 of its portfolio value. Therefore, the proposed rule change would permit this FLEX Trader to hedge its portfolio more effectively with far greater precision ($85,830.86).

The Exchange notes a FLEX Trader currently has the option to trade a reduced-value contract on the S&P 500 Index in the form of XSP options.[19] Given the circumstances in the previous paragraph, a FLEX SPX Index Option contract with a multiplier of 100 would have a notional value of $325,382.00, while a FLEX XSP Index Option contract (which also has an index multiplier of 100)[20] would have a notional value of $32,538.20. In order to hedge the FLEX Trader's entire portfolio, the FLEX Trader would need to trade 307.3 XSP contracts ($10,000,000/$32,538.20). The nearest whole number of contracts would be 300, which would have a total notional value of $9,989,227.40. As a result, the FLEX Trader could hedge within $10,772.60 of its portfolio value. While the multipliers of reduced-value indexes are $100, the reduced value has a similar effect as a smaller multiplier. A FLEX Index Option with an index multiplier of one corresponds to a reduced-valued index that is 1/100th the value of the full-value index (as noted above, the Exchange is currently authorized to list options on certain reduced-value indexes with such value). It just uses a different multiplier rather than a different value of the underlying index.

The Rules permit trading in a put or call FLEX Option series only if it does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading.[21] In other words, a FLEX Option series may not have identical terms as a non-FLEX Option series listed for trading. Rule 1.1 defines the term ''series'' as all option contracts of the same class that are the same type of option and have the same exercise price and expiration date. Therefore, a FLEX Option series in one class may have the same exercise style, same expiration date, settlement, and same exercise price as a non-FLEX Option series in a different class, even if they are on the same underlying security or index. For example, pursuant to the Exchange's rules, a FLEX Option overlying Apple stock that is a mini-option (*i.e.* a multiplier of 10) may be listed with the same exercise style, same expiration date, settlement,

[17] As discussed below, these are the terms designated by the Commission as those that constitute standardized options, and therefore, the Exchange believes the proposed rule change is consistent with Section 9(b) of the Act. *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993) (''1993 FLEX Approval Order'').

[18] The FLEX Trader could also trade 30 FLEX SPX Index Option contracts (for a total notional value of $9,761,460) for SPX (with a multiplier of 100) and 73 FLEX SPX Index Option contracts (with a multiplier of one) for a total notional value of $237,528.86), which would have the same total notional value. However, executing these two separate transactions introduces price risk, as each could execute at separate prices, which may interfere with the FLEX Trader's investment objective.

[19] Not all indexes on which the Exchange lists options have equivalent reduced-value indexes.

[20] Because XSP is a reduced-value index, FLEX XSP Index Options may not have an index multiplier of one under the proposed rule change.

[21] *See* Rule 4.21(a)(1).

and same exercise price as a non-FLEX Option overlying Apple stock that is not a mini-option (*i.e.* a multiplier of 100). The terms of these series are not identical, as they are in different classes, and thus are permissible under Rule 4.21(a)(1). Similarly, pursuant to the proposed rule change, a FLEX Option series overlying the S&P 500 with a multiplier of one may have the same exercise style, same expiration date, settlement, and same exercise price as a non-FLEX Option series overlying the S&P 500 with a multiplier of 100, as they are series in different classes.

FLEX Index Options with a multiplier of one will be traded in the same manner as all other FLEX Options pursuant to Chapter 5, Section F of the Rules. As demonstrated above, there are two important distinctions between FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one due to the difference in multipliers. The proposed rule change amends certain Rules describing the exercise prices and bids and offers of FLEX Options to reflect these distinctions. The proposed rule change amends Rule 4.21(b)(6) to describe the difference between the meaning of the exercise price of a FLEX Index Option with a multiplier of 100 and a FLEX Index Option with a multiplier of one. Specifically, the proposed rule change states that the exercise price for a FLEX Index Option series in a class with a multiplier of one is set at the same level as the exercise price for a FLEX Index Option series in a class with a multiplier of 100. The proposed rule change also adds the following examples to Rule 4.21(b)(6) regarding how the deliverable for a FLEX Index Option with a multiplier of one will be calculated (as well as for a FLEX Index Option with a multiplier of 100 and a FLEX Equity Option, for additional clarity and transparency): If the exercise price of a FLEX Option series is a fixed price of 50, it will deliver: (A) 100 shares of the underlying security at $50 (with a total deliverable of $5,000) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.* the index multiplier) times 50 (with a total deliverable value of $5,000) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to one (*i.e.* the index multiplier) times 50 (with a total deliverable value of $50) if a FLEX Index Option with a multiplier of one. If the exercise price of a FLEX Option series is 50% of the closing value of the underlying security or index, as applicable, on the trade date, it will deliver: (A) 100 shares of the underlying security at a price equal to 50% of the closing value of the underlying security on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to one (*i.e.* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of one times that percentage amount) if a FLEX Index Option with a multiplier of one.[22] The descriptions of exercise prices for FLEX Equity Options and FLEX Index Options with a multiplier of 100 are true today, and merely add for purposes of clarity examples to the rule regarding the exercise price of a FLEX Equity Option or a FLEX Index Option with a multiplier of 100, the deliverables for which are equal to the exercise price times the 100 contract multiplier to determine the deliverable dollar value. Because a FLEX Index Option with a multiplier of one has a multiplier of 1/100 of the multiplier of a FLEX Index Option with a multiplier of 100, the value of the deliverable of a FLEX Index Option with a multiplier of one as a result is 1/100 of the value of the deliverable of a FLEX Index Option with a deliverable of 100.

Similarly, the proposed rule change amends Rule 5.3(e)(3) to describe the difference between the meaning of bids and offers for FLEX Equity Options, FLEX Index Options with a multiplier of 100, and FLEX Index Options with a multiplier of one. Currently, that rule states that bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit.[23] As noted above, a FLEX Option contract unit consists of 100 shares of the underlying security or 100 times the value of the underlying index, as they currently have a 100 contract multiplier.[24] The proposed rule change clarifies that bids and offers are expressed per unit, if a FLEX Equity Option or a FLEX Index Option with a multiplier of 100, and adds an example (as set forth below). This is true today, and merely adds clarity to the Rules.

The proposed rule change also adds to Rule 5.3(e)(3) the meaning of bids and offers for FLEX Index Option with a multiplier of one. Specifically, bids and offers for FLEX Index Options with a multiplier of one must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per 1/100th unit.[25] Additionally, the proposed rule change adds examples of the meaning of bids and offers of FLEX Options: If the exercise price of a FLEX Option series is a fixed price, a bid of ''0.50'' represents a bid of (A) $50 (0.50 times 100 shares) for a FLEX Equity Option; (B) $50 (0.50 times an index multiplier of 100) for a FLEX Index Option with a multiplier of 100; and (C) $0.50 (0.50 times an index multiplier of one) for a FLEX Index Option with a multiplier of one.

If the exercise price of a FLEX Option series is a percentage of the closing value of the underlying equity security, a bid of ''0.50'' represents a bid of (A) 50% (0.50 times 100 shares) of the closing value of the underlying equity security on the trade date if a FLEX Equity Option; (B) 50% (0.50 times an index multiplier of 100) of the closing value of the underlying index on the trade date if a FLEX Index Option with a multiplier of 100; and (C) 0.50% (0.50 times an index multiplier of one) of the closing value of the underlying index on the trade date if a FLEX Index Option with a multiplier of one. The Exchange believes this approach identifies a clear, transparent description of the

[22] This corresponds to the calculation of exercise prices for other types of options with a reduced multiplier. For example, Rule 4.5, Interpretation and Policy .18(b) provides that strike prices (*i.e.,* exercise prices) for mini-options (which have multipliers of 10 rather than 100, as set forth in Rule 4.5, Interpretation and Policy .18(a)) are set at the same level as for standard options. For example, a call series strike price to deliver 10 shares of stock at $125 per share has a total deliverable value of $1,250 (10 × 125) if the strike is 125. A standard non-FLEX option with a strike price of 125 would have a total deliverable value of $12,500 (100 × 125).

[23] The proposed rule change reorganizes the language in this provision to make clear that the phrase ''if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date'' applies to the entire clause (B) of 5.4(e)(3).

[24] *See* current Rule 4.21(b)(1).

[25] This corresponds to the meaning of bids and offers for other types of options with reduced multiplier. For example, Rule 5.3(c) provides that bids and offers for an option contract overlying 10 shares (*i.e.,* mini-options) must be expressed in terms of dollars per 1/10th part of the total value of the contract (for example, an offer of 0.50 represents an offer of $5.00 for an option contract having a unit of trading consisting of 10 shares, as opposed to $50 for a standard option contract having a unit of trading consisting of 100 shares).

differences between FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one. Additionally, the Exchange believes the proposed terms of FLEX Index Options with a multiplier of one are consistent with the terms of the Options Disclosure Document (''ODD'').[26] The proposed rule change also provides additional clarity regarding the meaning of bids and offers of FLEX Equity Options and FLEX Index Options with a multiplier of 100.

The proposed rule change also clarifies that the System rounds bids and offers and offers of FLEX Options to the nearest minimum increment following application of the designated percentage to the closing value of the underlying security or index. This is consistent with current functionality and is merely a clarification in the Rules. For example, suppose a FLEX Trader enters a bid of 0.27 for a FLEX Equity Option, and the underlying security has a closing value of 24.52 on the trade date. Following the close on the trade date, the System calculates the bid to be 6.6204 (0.27×24.52). Because the minimum increment for bids and offers in a FLEX Option class is $0.01, the System rounds 6.6204 to the nearest penny, which would be a bid of $6.62.

Pursuant to Rule 4.22(a), a FLEX Option position becomes fungible with a non-FLEX option that becomes listed with identical terms. As noted above, while the Exchange Rules and OCC By-Laws imply that an index multiplier of one is permissible, subject to any other applicable filing requirements, the Exchange does not currently, and currently has no plans to, list for trading any non-FLEX Index Option class with a multiplier of one. Therefore, initially it would not be possible for a FLEX Index Option series with a multiplier of one to have the same terms as a non-FLEX Index Option series, and thus it would not be possible for a FLEX Index Option series with a multiplier of 100 to be identical to, and fungible with, any non-FLEX Option pursuant to Rule 4.22(a). As discussed above, options with different multipliers are different classes, and an option series in one class cannot be fungible with an option series in another classes, even if they are economically equivalent. Fungibility is only possible for series with identical terms. This is similar to how a FLEX XSP Index Option series is not fungible to an economically equivalent non-FLEX SPX Option series. If the Exchange determines to list non-FLEX Index options with a one multiplier in the future, then a FLEX Index Option with a multiplier of one would become fungible with any non-FLEX Index Option with a multiplier of one with the same terms pursuant to Rule 4.22(a).

The proposed rule change amends Rule 8.35(a) regarding position limits for FLEX Options to describe how FLEX Index Options with a multiplier of one will be counted for purposes of determining compliance with position limits. Because 100 FLEX Index Options with a multiplier of one are equivalent to one FLEX Index Option with a multiplier of 100 overlying the same index due to the difference in contract multipliers, proposed Rule 8.35(a)(7) states that for purposes of determining compliance with the position limits under Rule 8.35, 100 FLEX Index Option contracts with a multiplier of one equal one FLEX Index Option contract with a multiplier of 100 with the same underlying index.[27] This is consistent with the current treatment of other reduced-value FLEX Index Options with respect to position limits. The proposed rule change adds paragraph (g) to Rule 8.42 to make a corresponding statement regarding the application of exercise limits to FLEX Index Options with a multiplier of one. The margin requirements set forth in Chapter 10 of the Rules will apply to FLEX Index Options with a multiplier of one (as they currently do to all FLEX Options).[28]

The proposed rule change also corrects an administrative error in Rule 8.35(a). Currently, there are two subparagraphs numbered as (a)(5). The proposed rule change amends paragraph (a) to renumber the second subparagraph (a)(5) to be subparagraph (a)(6).

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of FLEX Index Options with a multiplier of one. The Exchange also understands that the OCC will be able to accommodate the listing and trading of FLEX Index Options with a multiplier of one. FLEX Index Options with a multiplier of one will be listed with different trading symbols than FLEX Index Options with a multiplier of 100 with the same underlying to reduce any potential confusion.[29]

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.[30] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[31] 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)[32] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will benefit investors by expanding investors' choices and flexibility with respect to the trading of FLEX Options. These options will provide investors with additional granularity with respect to the prices at which they may execute and exercise their FLEX Index Options on the Exchange, as investors may

[26] The ODD is available at *https://www.theocc.com/about/publications/character-risks.jsp.* The ODD states that the exercise price of a stock option is multiplied by the number of shares underlying the option to determine the aggregate exercise price and aggregate premium of that option. *See* ODD at 18. Similarly, the ODD states that the total exercise price for an index option is the exercise price multiplied by the multiplier, and the aggregate premium is the premium multiplied by the multiplier. *See* ODD at 8, 9, and 125. Per the ODD, the amount of the underlying interest may be a variable term with respect to flexibly structured options (*i.e.,* FLEX Options).

[27] The proposed rule change makes a corresponding change to Rule 8.35(b) to clarify that, like reduced-value FLEX contracts, FLEX Index Option contracts with a multiplier of one will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract for purposes of the reporting obligation in that provision (*i.e.,* 100 FLEX Index Options with a multiplier of one will equal one FLEX Index Option contract with a multiplier of 100 overlying the same index).

[28] Pursuant to Rule 8.43(j), FLEX Index Options with a multiplier of one will be aggregated with non-FLEX Index Options on the same underlying index in the same manner as all other FLEX Index Options.

[29] For example, a FLEX Index Option for index ABC with a multiplier of 100 may have symbol 4ABC (the ''4'' is the designation generally used for FLEX Options to distinguish from the non-FLEX Option with the same underlying), while a FLEX Index Option for class ABC with a multiplier of one may have symbol 4ABC9.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] *Id.*

execute and exercise unregulated over-the-counter options with this smaller contract multiplier. The Exchange believes this additional granularity will provide investors with an additional tool to manage more efficiently their positions and associated risk based on notional value so that they equal whole contracts, as opposed to fractions of a standard contract as currently may happen. Given the various trading and hedging strategies employed by investors, this additional granularity may provide investors with more control over the trading of their FLEX strategies and management of their positions and risk associated with FLEX option positions in their portfolios. FLEX Index Options with a multiplier of one are substantially similar to FLEX Index Options on reduced-value indexes, but will provide investors with further granularity with respect to options for which there already is a reduced-valued index and also a granular option with respect to options for which there is no reduced-value index.

FLEX Index Options with a multiplier of one will trade in the same manner as all other FLEX Options, with premiums (*i.e.,* bids and offers) and deliverables adjusted proportionately to reflect the difference in multiplier, and thus the difference in the deliverable value of the underlying. The Exchange believes the proposed rule change adds transparency and clarity to the Rules regarding the distinctions between FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one due to the different multipliers will benefit investor, as well as with respect to current terms of FLEX Options. This proposal is similar to rules regarding other reduced-value options.[33]

The Exchange believes the proposed rule change will further benefit investors, as it also provides clarity regarding bids and offers, and exercise prices, of FLEX Index Options with a multiplier of 100 and FLEX Equity Options (but makes no changes to the terms of these options or how they trade). These proposed rule changes include (1) providing examples of the meaning of the exercise prices and bids and offers of both FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one (as well as FLEX Equity Options) and (2) including the corresponding minimum size for a FLEX SAM Agency Order consisting of FLEX Index Options with a multiplier of one. This additional clarity and transparency in the Rules will benefit investors. The Exchange believes the proposed nonsubstantive changes (to clarify the current contract multiplier for FLEX Index Options with a multiplier of 100 and FLEX Equity Options in Rule 4.21(b), to add examples regarding exercise prices and the meaning of bids and offers of FLEX Index Options with a multiplier of 100 and FLEX Equity Options, and to correct the numbering of subparagraphs in Rule 8.35(a)) will protect investors, as they enhance transparency and clarity in the Rules but make no changes to the terms of these options or how they trade. Additionally, the correction to subparagraph numbering will enable investors to more easily reference rule provisions in different subparagraphs.

The Exchange believes the proposed rule change regarding the treatment of FLEX Index Options with a multiplier of one with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as FLEX Index Options with a multiplier of one will be counted for purposes of those limits in a proportional manner to FLEX Index Options with a multiplier of 100 and aggregated with non-FLEX Options overlying the same index manner as FLEX Index Options currently are. This is similar to limits imposed on reduced-value options. As noted above, while the multipliers of reduced-value indexes are $100, the reduced value has a similar effect as a smaller multiplier. A FLEX Index Option with a multiplier of one corresponds to a reduced-valued index that is 1/100th the value of the full-value index (as noted above, the Exchange is currently authorized to list options on certain reduced-value indexes with such value).[34] It just uses a different multiplier rather than a different value of the underlying index.[35] The Exchange believes its enhanced surveillances continue to be designed to deter and detect violations of Exchange Rules, including position and exercise limits and possible manipulative behavior, and those surveillance will apply to FLEX Index Options with a multiplier of one.

The Exchange does not believe the propose rule change raises price protection concerns that market participants may submit FLEX Index Options with a multiplier of one rather than the economically equivalent non-FLEX Index Options in order to get better pricing, or that a trade of a FLEX Index Option with a multiplier of one may occur at a price that would trade through the book of the non-FLEX full-value index option.[36] The Exchange believes the risk (if any) of a market participant trading a FLEX Index Option with a multiplier of one rather than a non-FLEX Index Option with a multiplier of 100 with the same underlying to use the FLEX market as a substitute for the non-FLEX market and achieve such a result is minimal. As further described below, this possibility exists today with respect to indexes on which the Exchange may list full- and reduced-value index options as well as economically equivalent index and ETF options, as a market participant could trade FLEX reduced-value index option series (as long as not listed as non-FLEX option series) as opposed to non-FLEX full-value index option series. Similarly, a market participant could trade FLEX Equity Options on an ETF overlying an index as opposed to a non-FLEX option overlying the same index (as long as not listed as a non-FLEX option series).[37]

The Exchange believes attempting to execute an order in the FLEX market as a substitute for the non-FLEX market would minimize execution opportunities for that order. Such trading would be inefficient for market participants and could introduce price and execution risk to market participants' trading strategies given the

[33] *See, e.g.,* Rules 4.5, Interpretation and Policy .18 (description of strike prices for mini-options, which have a multiplier of 10), 5.3(c) (description of bids and offers for mini-options), and 5.74(a)(4) (description of minimum size of FLEX Agency Order for mini-options). Just as terms for mini-options, which have a multiplier of 1/10th the size of standard options, equal 1/10th of the same terms for standard options, the proposed terms for FLEX Index Options with a multiplier of one, which have a multiplier 1/100th the size of FLEX Index Options with a multiplier of 100, equal 1/100th of the same terms as FLEX Index Options with a multiplier of 100.

[34] *See* Rule 4.10(h) through (m) and Rule 4.13(a)(3) (which lists European-style options currently approved for trading on the Exchange). The Exchange notes Rule 4.10 describes generic listing criteria for index options, which apply to reduced-value index options as well.

[35] This is also similar to position limits for other options with multipliers less than 100. *See, e.g.,* Rule 8.30, Interpretation and Policy .08 (describing position limits for mini-options).

[36] The same concern would have been raised if a market participant submits a FLEX Order for a mini-option for one of the securities specified in the rules rather than an economically equivalent non-FLEX mini-option overlying the same security.

[37] The Exchange notes there are no price protections in the non-FLEX market for economically equivalent options listed for trading. For example, suppose the Aug SPX 3300 call and Aug XSP 330 call are both listed for trading. A market participant could purchase the XSP call at a price that is through the market of the SPX option, which is economically equivalent. Similarly, an Aug SPY 330 call may trade at a price through the market of the Aug XSP 330 call, which is economically equivalent. Trade-throughs are only prohibited for identical series, not economically equivalent series.

reduced liquidity, participation, and price discovery in the FLEX market compared to the non-FLEX market.[38] Additionally, if a FLEX Index Option with a multiplier of one traded through the book of the equivalent non-FLEX Index Option with a multiplier of 100, while that would be a better price for one transaction participant, it would be a worse price for the participant on the opposite side, and thus it may be more difficult for the initiating participant to obtain an execution. For example, suppose the market for Aug ABC 800 call with a multiplier of 100 is 10.20–11.00. If a market participant submitted a FLEX Order to buy Aug ABC 800 call with a multiplier of one with a bid of 0.10 (equivalent to a bid of 10.00 in the non-FLEX market for the series with a multiplier of 100), it is unlikely another market participant would sell at that price, given that participant could sell the economically equivalent non-FLEX Option series at 10.20, which would be a better price for that seller. Given the likely difficulties (such as reduced liquidity and potentially longer timeframe to receive execution) of trading in the FLEX market as a substitute for trading an economically equivalent option in the non-FLEX market (such as to obtain a better execution price), the Exchange believes the risk of this occurring is de minimis. The Exchange has not observed market participants attempting to trade in the FLEX market rather than the non-FLEX market for this purpose in classes in which this is possible today.

Additionally, as noted above, the Exchange's surveillance program will incorporate FLEX Index Options with a multiplier of one. If the Exchange identifies FLEX Orders that appear to be attempts to use FLEX Index Options with a multiplier of one to avoid trading in the non-FLEX market, the Exchange may determine those orders to be inconsistent with just and equitable principles of trading and thus a violation of Rule 8.1. In addition, broker-dealers are also subject to due diligence and best execution obligations, which obligations may require broker-dealers to consider the prices of economically equivalent options when executing customer orders. The Exchange notes that market participants may currently, and currently do, execute orders like the ones being proposed in the unregulated OTC market, where neither the Exchange nor the Commission has oversight over market participants that may be purposely trading at prices through the listed market. As discussed below, the proposed rule change may encourage these orders to be submitted to the Exchange, which could bring these orders into a regulated market and be subject to surveillance and oversight to which they are currently not subject with respect to execution of these option orders.

As noted above, the Exchange may currently authorize for listing and trading on the Exchange options on indexes that are either full-value or reduced-value (subject to any applicable regulatory requirements).[39] Some reduced-value indexes are 1/10th the value of the full-value index (for example, the FTSE 100 Index), while others are 1/100th the value of the full-value-index (for example, the FTSE China 50 Index). The Exchange notes there are not reduced-value indexes and full-value indexes for all indexes on which the Exchange currently lists options for trading. For indexes on which the Exchange may currently list full- and reduced-value options, while the index multipliers of reduced-value indexes are $100, the reduced value has a similar effect as a smaller multiplier. As a result, the Exchange may currently authorize for trading a FLEX Index Option on a reduced-value index that is an economic equivalent of a non-FLEX Index Option on the full-value index, as long as the FLEX Index Option on the reduced-value index is not listed as a non-FLEX Index Option. For example, suppose the Exchange lists for trading a non-FLEX SPX Index Option call with an August expiration and exercise price of 3300. Assuming there is no non-FLEX XSP Index Option call with an August expiration and exercise price of 330 listed for trading, a FLEX Trader may submit a FLEX Order for a FLEX XSP Index Option call with an August expiration and exercise price of 330.

The Exchange notes there are numerous examples of economically equivalent options that trade on options exchanges today that create the possibility that a trade in a full (or reduced) contract would be through the book of the reduced (or full) contract (either in the FLEX or non-FLEX market). For example, the Exchange currently lists SPX options and XSP options, which are 1/10th the size of SPX options. It is possible for transactions in XSP options to occur through the price of an economically equivalent SPX option. Similarly, SPY options are economically equivalent to XSP options, as each are based on 1/10th the S&P 500 Index. It is possible for a SPY option to trade through the book of an equivalent XSP (and SPX) option. Suppose the Exchange lists for trading a non-FLEX XSP Index Option call with an August expiration and exercise price of 330. Assuming there is no non-FLEX SPY Option call with an August expiration and exercise price of 330 listed for trading, a FLEX Trader may submit a FLEX Order for a FLEX SPY Equity Option call with an August expiration and exercise price of 330. Additional examples of economically equivalent options (which can be FLEX and non-FLEX, thus making it possible that a FLEX Option could trade through the book of an economically equivalent non-FLEX option) that may be listed on options exchanges include options on the Russell 2000 Index, Mini-Russell 2000 Index, and IWM exchange-traded fund (''ETF'') and options on the Nasdaq 100, the Mini-Nasdaq 100, and the QQQ ETF, among others. Further, the Exchange permits FLEX Traders to apply Asian and Cliquet style settlement to FLEX Broad-Based Index options to provide investors with additional trading and hedging tools. It is possible, for example, for a FLEX SPX option to have the same strike and expiration date as a non-FLEX SPX option, and thus have an economic equivalent listed for trading, but the FLEX option could trade through the book of the non-FLEX option.[40]

As these examples demonstrate, it is currently possible for many economically equivalent options to be listed on the Exchange, both in the FLEX and non-FLEX markets. The Exchange has not observed market participants attempting to trade in the FLEX market rather than the non-FLEX market by using economically equivalent options. The proposed rule change similarly permits the possibility that FLEX Index Options with a multiplier of one may have a non-FLEX Index Option with a multiplier of 100 that is an economic equivalent listed for trading.[41] Like other FLEX products, the Exchange believes the proposed rule change may provide an additional trading and hedging tool to market participants to individual tailor certain terms of options to address their investment needs. The Exchange believes the benefits of this additional tool in the listed options market

[38] *See* Sections VII and X of the ODD regarding risks associated with FLEX Options.

[39] *See* Rule 4.10.

[40] The Exchange notes the approval of Asian and Cliquet style options included no reference to price protection concerns.

[41] The Exchange notes that FLEX Options that are Asian or Cliquet-settled, like FLEX Index Options with a multiplier of one, can never be fungible with non-FLEX options, as those settlement styles are not currently available for non-FLEX options. *See* Securities Exchange Act Release No. 75425 (July 10, 2015), 80 FR 42152 (July 16, 2015) (SR–CBOE–2015–044).

outweigh the de minimis (if any) risk of market participants using FLEX Index Options with a multiplier of one to trade through the markets for any economically equivalent non-FLEX option. The Exchange is not aware of any negative impact on execution prices as a result of the listing of economically equivalent options on the Exchange today, nor is the Exchange aware of any data or analysis suggesting that trading of FLEX Options has acted as a substitute for the trading of standardized non-FLEX options as a result of the ability to list FLEX Options that are economically equivalent to non-FLEX Options listed for trading on the Exchange. The Exchange understands that market participants generally use the same information when pricing economically equivalent options, which the Exchange believes further addresses any price protection concerns.

By permitting FLEX Index Options to trade with the same multiplier currently available to customized options in the OTC market, the Exchange believes the proposed rule change will remove impediments to and perfects the mechanism of a free and open market and a national market system by further improving a comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform to provide additional flexible terms available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the OCC as issuer and guarantor of FLEX Options.

The proposed rule change is also consistent with Section 9(b) of the Act [42] and Rule 9b–1 thereunder.[43] Rule 9b–1 provides that standardized options are options contracts trading on a national securities exchange that relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate. Additionally, Rule 9b–1 requires an options disclosure document (''ODD'') be provided to customers, which includes a glossary of relevant terms and identification of instruments underlying options classes and classes covered by the ODD. The current ODD, available on the OCC website (and previously filed with the Commission), describes flexibly structured options (*i.e.,* FLEX Options) that may be issued and traded on exchanges. Specifically, Chapter VII of the ODD states that the terms of a flexibly structured option that may be fixed by the parties are called variable terms, which is what makes these options different from other options. The ODD further states that included among the terms that an options market may identify as variable terms are the specification and amount of the underlying interest (*i.e.,* the multiplier associated with the underlying security or index). Therefore, the ODD currently includes a description of and risks associated with flexibly structured options, which may have an amount of the underlying interest that differs from the amount of the underlying interest associated with non-FLEX options overlying the same index, such as FLEX Index Options with a multiplier of one.

Additionally, as discussed above, the Exchange believes the OCC Bylaws imply that the Exchange may designate a multiplier of one for an index option class because the Bylaws are silent on a default index multiplier for index options but not for a default unit of trading for equity options. As further discussed above, the Exchange's rules currently permit it to specify the index multiplier of an option contract. Those rules would have been previously filed with the Commission. Therefore, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, as it is consistent with the rules of another self-regulatory organization.

The Commission has not historically issued orders designating new classes as ''standardized options'' pursuant to Rule 9b–1.[44] This includes listing of options that contain multipliers other than 100. For example, when the Commission approved mini-options,[45] there was no Commission ''designation'' of mini-options as being standardized options available for trading on national securities exchanges. The multiplier of an option relates to the value of the underlying, and thus is part of the class designation rather than a term of the series. Each series of a FLEX Index Option with a multiplier of one will contain the terms designated by the Commission as those that constitute standardized options, and therefore, are consistent with Section 9(b) of the Act. Specifically, the Commission provided that ''[a]part from the flexibility with respect to strike prices, settlement, expiration dates, and exercise style, all of the other terms of FLEX Options are standardized pursuant to OCC and CBOE rules. Standardized terms include matters such as exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules, margin requirements, and other matters pertaining to the rights and obligations of holders and writers.'' [46] The number of shares or amount of cash received or paid, as applicable, upon settlement of an option relate is a right or obligation, respectively of a holder or writer. Therefore, like all FLEX Options, in accordance with the 1993 FLEX Approval Order, investors will have the ability to designate the strike price, settlement, expiration date, and exercise style of FLEX Index Options with a multiplier of one, and all other terms (including matters such as exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules, margin requirements, and other matters pertaining to the rights and obligations of holders and writers (such as the index multiplier)) will be standardized pursuant to OCC and CBOE Rules (specifically, OCC Bylaw Article I, Section 1, I(3) and Cboe Rule 4.11, as discussed above, pursuant to which the Exchange specifies the index multiplier for an index). When submitting a FLEX Order for a FLEX Index Option with a multiplier of one, a FLEX Trader will designate each of the strike price, settlement, expiration date, and exercise style for option contract it seeks to trade, and the other terms will be the same as the standardized terms on the same underlying indexes as designated by the Exchange. A FLEX Trader electing to submit a FLEX Order for a FLEX Index Option on an index with a multiplier of one as opposed to for a FLEX Index Option on the same index with a multiplier of 100 is no different than a FLEX Trader electing to submit a FLEX Order for a FLEX Index Option on one index as opposed to a FLEX Index Option on another index. If the Exchange determines to list non-FLEX index options with a multiplier of one, a FLEX Index Option with a multiplier of one with the same terms would become fungible with such options.

The Exchange notes that FLEX Options listed on the Exchange were initially listed on only two indexes—the

[42] *See* 15 U.S. Code § 78i.

[43] *See* 17 CFR 240.9b–1.

[44] *See* 17 CFR 240.9b–1.

[45] *See supra* note 3.

[46] *See* 1993 FLEX Approval Order.

S&P 500 (SPX) and the S&P 100 (XSP)—and were subject to minimum size requirements.[47] FLEX Options may now be listed on the Exchange on any underlying equity or index and in any size, demonstrating the broader demand and benefits of FLEX Options and the innovation that has continued to occur with respect to these options. When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.[48] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[49] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition in the options trading industry. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the life-blood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Options exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public. The Exchange believes that the proposed rule change will help further competition by providing market participants with yet another investment option for the listed options market.

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 that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all FLEX Index Options with a multiplier of one will be available for all indexes currently eligible for FLEX trading, and all FLEX Traders may trade FLEX Index Options with a multiplier of one. FLEX Index Options with a multiplier of one will trade in the same manner as FLEX Index Options with a multiplier of 100, with certain terms proportionately adjusted to reflect the different contract multipliers. The Exchange believes it is appropriate to limit FLEX Index Options with a multiplier of one to full-value indexes, as several indexes have large notional values, which makes the precision afforded by FLEX Index Options with a multiplier of one the most beneficial to market participants.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change relates solely to FLEX options listed solely for trading on the Exchange. Other options exchanges may determine to offer flexible options, including with a different contract multiplier. To the extent the proposed rule change makes the Exchange a more attractive trading venue for market participants on other exchanges, those market participants may elect to become Exchange market participants.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. The Exchange believes this is an enhancement to a comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform to provide additional contract granularity that available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants will benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The proposed nonsubstantive changes (to move and clarify the current contract multiplier for FLEX Equity Options and FLEX Index Options with a multiplier of 100 in Rule 4.21(b) and to correct the numbering of subparagraphs in Rule 8.35(a), as well as examples of the exercise prices and the meanings of bids and offers) will have no impact on competition, as they merely clarify or correct, as applicable, information in the Rules and make no changes to how FLEX Options trade.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[47] As noted above, it is possible for a FLEX XSP option to be economically equivalent to a non-FLEX SPX option. However, the 1993 FLEX Approval Order made no reference to any concerns regarding the listing of FLEX Options economically equivalent to non-FLEX Options. *See id.*

[48] *See* H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.).

[49] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

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–2020–034 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–2020–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–034, and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15551 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89310; File No. SR–NYSEArca–2020–59]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To Permit the Listing and Trading of Shares of the United States Gold and Treasury Investment Trust Under NYSE Arca Rule 8.201–E

July 14, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 30, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) to amend NYSE Arca Rule 8.201–E (''Commodity-Based Trust Shares'') to permit a trust to hold (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash, and to issue and redeem shares for such commodity and/or cash; and (2) to list and trade shares of the United States Gold and Treasury Investment Trust under NYSE Arca Rule 8.201–E as proposed to be amended. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes (1) to amend NYSE Arca Rule 8.201–E (''Commodity-Based Trust Shares'') to permit a trust to hold (a) a specified commodity deposited with the Trust (defined below), or (b) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash, and (2) to list and trade shares (''Shares'') of the United States Gold and Treasury Investment Trust (''Trust'') under NYSE Arca Rule 8.201–E as proposed to be amended.[4]

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended.[5] The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.[6]

The sponsor of the Trust is Wilshire Phoenix Funds LLC (''Sponsor''). The ''Trustee'' is Delaware Trust Company and the ''Gold Custodian'' is JPMorgan Chase Bank, N.A. The Bank of New York Mellon will be the administrator (''Administrator''), transfer agent (''Transfer Agent'') and cash and treasury custodian (''Treasury Custodian'') of the Trust. Foreside Fund Services, LLC will be the Trust's marketing agent (''Marketing Agent'').

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2–E(j)(5) and 8.201–E of other precious metals and gold-based commodity trusts, including the GraniteShares Gold Trust; [7] Merk Gold Trust; [8] ETFS Gold Trust; [9] ETFS

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] On May 8, 2020, the Trust filed Amendment No. 1 to its registration statement on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a) (File No. 333–235913) (the ''Registration Statement''). The description of the operation of the Trust and the Shares herein is based, in part, on the Registration Statement.

[5] 15 U.S.C. 80a–1.

[6] 17 U.S.C. 1.

[7] Securities Exchange Act Release No. 81077 (July 5, 2017) (SR–NYSEArca–2017–55) (order approving listing and trading shares of the GraniteShares Gold Trust under NYSE Arca Equities Rule 8.201).

[8] Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137).

[9] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

Platinum Trust [10] and ETFS Palladium Trust (collectively, the ''ETFS Trusts''); [11] APMEX Physical-1 oz. Gold Redeemable Trust; [12] Sprott Gold Trust; [13] SPDR Gold Trust (formerly, streetTRACKS Gold Trust); iShares Silver Trust; [14] iShares COMEX Gold Trust; [15] Long Dollar Gold Trust; [16] Euro Gold Trust, Pound Gold Trust and Yen Gold Trust; [17] and the Gold Trust.[18] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') [19] and listing of iShares COMEX Gold Trust and iShares Silver Trust on the American Stock Exchange LLC.[20] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[21]

[10] Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

[11] Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

[12] Securities Exchange Act Release No 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18).

[13] Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113).

[14] See Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust).

[15] See Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[16] See Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR–NYSEArca–2016–84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

[17] See Securities Exchange Act Release No. 80840 (June 17, 2017) (SR–NYSEArca–2017–33) (order approving listing and trading of shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust under NYSE Arca Equities Rule 8.201).

[18] See Securities Exchange Act Release No. 81918 (October 23, 2017), 82 FR 49884 (October 27, 2017) (SR–NYSEArca–2017–98) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of The Gold Trust under NYSE Arca Rule 8.201–E).

[19] See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE).

[20] See Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[21] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

Proposed Amendment to NYSE Arca Rule 8.201–E

Under NYSE Arca Rule 8.201–E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.'' [22] Rule 8.201–E(c)(1) currently states that such securities are issued by a trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and may be redeemed in the same specified minimum number by a holder for the quantity of the underlying commodity. The Exchange proposes to amend Rule 8.201–E(c)(1) to provide as follows: ''The term ''Commodity-Based Trust Shares'' means a security (a) that is issued by a trust (''Trust'') that holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.''

The Commission has previously approved listing and trading on the Exchange of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole or part.[23] The Exchange believes the proposed change will provide a trust issuing Commodity-Based Trust Shares and holding a specified commodity with the flexibility to issue or redeem shares partially or wholly for cash. Such alternative would allow a trust to structure the procedures for issuance and redemption of shares in manner that as determined by the issuer, may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than, or in addition to, the underlying commodity upon requesting the issuance or redemption of shares. In addition, the proposed change will accommodate a trust's holding U.S. Department of Treasury securities (such as U.S. Treasury Bills (''T-Bills'')) in addition to a specified commodity in order to achieve its investment objective. The Exchange, therefore, believes the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange further proposes to amend Rule 8.201–E(c)(2) to state that the term ''commodity'' is defined in Section 1a(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently referenced in Rule 8.201–E (c)(2)) to reflect an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[24]

Operation of the Trust [25]

According to the Registration Statement, the Trust will have no assets other than (a) physical gold bullion (''Physical Gold'') and (b) short term duration T-Bills in proportions that seek to closely replicate the Gold Treasury Index (the ''Index''), as described below.

[22] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Rule 8.201–E (c)(1) defines the term ''Commodity-Based Trust Shares'' as follows: ''The term ''Commodity-Based Trust Shares'' means a security (a) that is issued by a trust (''Trust'') that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.''

[23] *See, e.g.,* Securities Exchange Act Release Nos. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113) (approving listing on the Exchange of Sprott Physical Gold Trust); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR–NYSEArca–2010–84) (approving listing on the Exchange of the Sprott Physical Silver Trust); 68430 (December 13, 2012) (SR–NYSEArca–2012–111) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201; 82448 (January 5, 2018) (SR–NYSEArca–2017–131) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Sprott Physical Gold and Silver Trust under NYSE Arca Rule 8.201–E); 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18) (order approving listing and trading shares of the APMEX Physical-1 oz. Gold Redeemable Trust); 50603 October 28, 2004 (SR–NYSE–2004–22) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares).

[24] Public Law 111–203, 124 Stat. 1900 (2010).

[25] The description of the operation of the Trust, the Shares and the gold market contained herein is based, in part, on the Registration Statement. *See* note 4, *supra.*

The Trust will also hold U.S. dollars for short periods of time in connection with (i) the purchase, sale and/or maturity of T-Bills, (ii) the purchase and sale of Physical Gold, (iii) creations and redemptions of Shares (as described below), and (iv) to pay fees and expenses of the Trust.

The investment objective of the Trust is for the Shares to closely reflect the Index, which is published by the ''Index Calculation Agent'', less the Trust's liabilities and expenses. The amount of Physical Gold and T-Bills held by the Trust will be determined by the Index. On the last business day of each month (the ''Rebalance Date''), the Index will dynamically calculate its weightings of Physical Gold, and T-Bills based on the volatility of gold and the volatility of the U.S. equity markets utilizing a mathematically derived passive rule-based methodology as discussed further below. The Trust, to closely replicate the Index, will rebalance its holdings in Physical Gold and T-Bills on a monthly basis for consistency with the Index weights.[26]

The Gold Treasury Index

The Index is calculated and published by the Index Calculation Agent. The Index value using the London Bullion Market Association (''LBMA'') Gold Price PM (defined below) [27] will be calculated and published daily each business day at approximately 5:00 p.m. (Eastern time (''E.T.'')). The current Index value will be disseminated by one or more major market vendors at least every 15 seconds during the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m. Eastern time (''E.T.'').

The Exchange, the Index Calculation Agent or a third party financial data provider will calculate an intraday indicative value for the Shares (''IIV'') every fifteen seconds during the Exchange's Core Trading Session.[28]

According to the Registration Statement, the Index has two components: (i) A notional component representing Physical Gold (the ''Physical Gold Component'') and (ii) a notional component representing T-Bills (the ''Treasury Component'').

On each Rebalance Date, the Index rebalances its weighting of the Physical Gold Component and the T-Bill Component utilizing a mathematically derived passive rules-based methodology. This methodology employs realized volatility of the LBMA Gold Price PM [29] and volatility measures of the U.S. equity markets utilizing a look-back period, among other parameters. At the end of each month, the Index Calculation Agent calculates the Index's new weights for the Physical Gold Component and the T-Bill Component based on the immediately preceding period's LBMA Gold Price PM (defined below) and volatility measures of the U.S. equity markets.

According to the Registration Statement, the new percentage weight for the Physical Gold Component will generally be lower than the prior month if realized volatility is higher than during the previous calculation, and vice versa. In addition, during times of distress within the U.S. equity markets, as signaled by volatility measures, the Index will calculate a higher weight for the overall exposure to gold. The weights of the Physical Gold Component and the T-Bill Component will never be negative. The weight for the Physical Gold Component will not exceed 100%. The combined weights of the Physical Gold Component and the T-Bill Component will always sum to 100%, and if the weight of the Physical Gold Component is 100%, then the weight of the T-Bill Component will be zero.

On each Rebalance Date, following the calculation of the weighting of the components of the Index, the Trust will rebalance its assets in order to closely replicate the Index. The Index's weight for the Physical Gold Component is always positive and therefore represents a long position in Physical Gold to the extent of the percentage of Physical Gold represented in the Index.

Index Components

Physical Gold Component

The Physical Gold Component of the Index is a notional component representing Physical Gold. The price of Physical Gold used to determine the weighting of the Physical Gold Component and the T-Bill Component of the Index, as well as the value of Physical Gold held by the Trust, will be based on the LBMA Gold Price PM. If such day's LBMA Gold Price PM is not available, the LBMA Gold Price AM (defined below) is used.[30] If no LBMA Gold Price (defined below) is available for the day, the Administrator values the Trust's gold based on the most recently announced LBMA Gold Price PM or LBMA Gold Price AM.

T-Bill Component

The T-Bill Component of the Index is a notional component representing T-Bills, which are short-term U.S. Treasury securities.[31]

The Trust's Net Asset Value (''NAV'') and the NAV per Share

According to the Registration Statement, the Trust's NAV will be equal to the sum of the value of the ''Physical Gold Holdings'' [32] and the ''Treasury and Cash Holdings,'' [33] less the expenses and liabilities of the Trust. The NAV per Share, which will be calculated by the Administrator on each business day, is equal to the Trust's NAV divided by the number of outstanding Shares.

In accordance with the Trust's valuation policy and procedures, the Administrator will generally determine the price of the Trust's Physical Gold by reference to the LBMA Gold Price PM.[34]

The Administrator will determine the fair value of T-Bills based on the price of each T-Bill held by the Trust plus any cash, which will be held in U.S. dollars, as of 4:00 p.m., E.T. or as soon thereafter as practicable, on each business day.

On each business day at 4:00 p.m., E.T., or as soon thereafter as practicable (the ''Evaluation Time''), the Administrator will evaluate the Physical Gold held by the Trust and calculate and publish the Trust's Physical Gold Holdings. To calculate the Trust's Physical Gold Holdings, the Administrator will:

1. Determine the LBMA Gold Price; and

2. Multiply the LBMA Gold Price by the amount of Physical Gold owned by the Trust as of the Evaluation Time on such day.

Creation and Redemption of Shares

On any business day (other than business days on which banking

[26] With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[27] *See* note 33, *infra.*

[28] For purposes of this filing, the IIV is the value referenced in NYSE Arca Rule 8.201–E(e)(2)(v).

[29] *See* note 33, *infra.*

[30] *See* note 33, *infra.*

[31] U.S. Treasury securities are debt obligations issued by, and backed by the full faith and credit of the U.S. government. U.S. Treasury securities are highly liquid, have low volatility, and generally come in three varieties based on maturity: (i) Treasury bills; (ii) Treasury notes; and (iii) Treasury bonds.

[32] ''Physical Gold Holdings'' is defined in the Registration Statement as the Trust's holdings of Physical Gold.

[33] ''Treasury and Cash Holdings'' is defined in the Registration Statement as the value of the T-Bills and U.S. dollars held by the Trust.

[34] For purposes of calculating the NAV of the Trust, to ascertain the price of Physical Gold held by the Trust, the prices (the ''LBMA Gold Price'') obtained from auctions conducted by ICE Benchmark Administration (''IBA''), a benchmark administrator appointed by the LBMA, will be used, which are generally conducted in the morning (London time) (the ''LBMA Gold Price AM'') and in the afternoon (London time) (the ''LBMA Gold Price PM'').

institutions in the United Kingdom are authorized or permitted by law to close for all or part of the day or a day on which the London gold market is closed for all or part of the day), an ''Authorized Participant'' may place an order with the Marketing Agent to create one or more ''Creation Units.'' Creation orders must be placed by 9:15 a.m., E.T.[35] Creation Units are issued on the creation order settlement date as of 2:45 p.m., E.T. on the business day immediately following the creation order date at the applicable NAV per Share on the creation order date, if the required payment has been timely received. Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are not required to register as broker-dealers to engage in securities transactions, and (2) participants in the Depository Trust Company (''DTC'').

The total payment required to create each Creation Unit is an amount of cash equal to the NAV of at least 10,000 Shares of the Trust on the creation order date. The size of a Creation Unit is subject to change.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any business day (other than business days on which the LBMA Gold Price PM or other applicable benchmark price is not announced), an Authorized Participant may place an order with the Marketing Agent to redeem one or more Creation Units. Redemption orders must be placed by 9:15 a.m., E.T.

By placing a redemption order, an Authorized Participant agrees to deliver the Creation Units to be redeemed through DTC's book-entry system to the Trust not later than the redemption order settlement date as of 2:45 p.m., E.T. on the business day immediately following the redemption order date.

The redemption proceeds from the Trust consist of cash. The amount of cash included in a redemption is equal to the NAV of the number of Creation Unit(s) of the Trust requested in the Authorized Participant's redemption order on the redemption order date. The Transfer Agent will distribute the cash redemption amount at 2:45 p.m., E.T. on the redemption order settlement date through DTC to the account of the Authorized Participant as recorded on DTC's book entry system.

Availability of Information

The IIV for the Shares will be disseminated by one or more major market data vendors on at least a 15-second delayed basis, as required by NYSE Arca Rule 8.201–E(e)(2)(v). The IIV will be calculated based on the amount of Physical Gold and T-Bills held in the Trust's portfolio, which are derived from updated bids and offers indicative of the spot price of gold and market prices of T-Bills.[36]

The website for the Trust (*www.wshares.com*) will contain the following information, on a per Share basis, for the Trust: (a) The mid-point of the bid-ask price [37] at the close of trading (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website for the Trust will also provide the Trust's prospectus. Finally, the Trust's website will provide the prior day's closing price of the Shares as traded in the U.S. market. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as gold over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares. In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each business day and will be posted on the Trust's website. The current Index value will be disseminated by one or more major market vendors at least every 15 seconds during the Exchange's Core Trading Session. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m., E.T.). In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk.* The Trust's website will also provide the Trust's prospectus, as well as the most recent reports to stockholders.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Rule 8.201–E(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34–

[35] The Sponsor represents that, for the Trust to fulfill cash creation and redemption orders on a given business day to reflect the corresponding NAV on that business day, the Trust must execute buy or sell orders at price determination times of the assets used in the NAV calculation. Because the LBMA Gold Price PM fix occurs at 3:00 p.m. London time, which is normally 10:00 a.m., E.T., the cut-off time for creation and redemption orders is 9:15 a.m., E.T. to enable the Trust to buy and sell Physical Gold on that day's LBMA Gold Price PM. An Authorized Participant's arbitrage opportunities with respect to the price it must pay for a Creation Unit should not be materially impacted by the requirement that creation and redemption orders must be received by 9:15 a.m. E.T. on a business day. After the order cut-off time of 9:15 a.m., E.T., Authorized Participants can place creation or redemption orders that will occur at the next business day's NAV. Authorized Participants may also be able to arbitrage by trading gold futures on COMEX (a division of CME Group Inc.), which can be traded from 6:00 p.m. to 5:00 p.m. (E.T.), Sunday through Friday.

[36] The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[37] The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Further, NYSE Arca Rule 8.201–E(g) sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201–E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[38] The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. If the IIV or the official Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the official Index value occurs. If the IIV or the official Index value persists past the trading day in which it occurred, the Exchange will halt trading in the Shares.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[39] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[40]

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting

[38] See NYSE Arca Rule 7.12–E.

[39] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[40] For a list of the current members of ISG, see *www.isgportal.org.*

premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[41] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Commission has previously approved listing and trading on the Exchange of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole or part.[42] The Exchange believes the proposed amendment to Rule 8.201–E(c)(1) will provide a trust issuing Commodity-Based Trust Shares and holding a specified commodity with the flexibility to issue or redeem shares partially or wholly for cash. Such alternative would allow a trust to structure the procedures for issuance and redemption of shares in manner that as determined by the issuer, may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than, or in addition to, the underlying commodity upon requesting the issuance or redemption of shares. In addition, the proposed change will accommodate a trust's holding U.S. Department of Treasury Securities (such as T-Bills) in addition to a specified commodity in order to achieve its investment objective. The Exchange, therefore, believes the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange's proposal to amend Rule 8.201–E (c)(2) to state that the term ''commodity'' is defined in Section 1a(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently referenced in Rule 8.201–E (c)(2)) reflects an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each business day and will be posted on the Trust's website. The IIV relating to the Shares and the current Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk.* The Trust's website will also provide the Trust's prospectus, as well as the most recent reports to stockholders.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product related, in part, to physical gold that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating, in part, to physical gold.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[41] 15 U.S.C. 78f(b)(5).

[42] *See* note 23, *supra.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–59 and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15553 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89307; File No. SR–CBOE–2020–066]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.24

July 14, 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 July 2, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.24. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.24. Disaster Recovery

(a)–(d) No change.

(e) *Loss of Trading Floor.* If the Exchange 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 will operate using this configuration only until the Exchange's trading floor facility is operational. Open outcry trading will not be available in the event the trading floor becomes inoperable, except in accordance with paragraph (2) below and pursuant to Rule 5.26, as applicable.

(1) *Applicable Rules.* In the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules will not be in force, including but not limited to the Rules (or applicable portions of the Rules) in Chapter 5, Section G, and as follows (subparagraphs (A) through (E) will *be effective* until [June 30]*August 31,* 2020):

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.24 regarding the Exchange's business continuity and disaster recovery plans. Rule 5.24 describes which Trading Permit Holders (''TPHs'') are required to connect to the Exchange's backup systems as well as certain actions the Exchange may take as part of its business continuity plans so that it may maintain fair and orderly markets if unusual circumstances occurred that could impact the Exchange's ability to conduct business. This includes what actions the Exchange would take if its trading floor became inoperable. Specifically, Rule 5.24(e) states if the Exchange 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

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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.[5]

Rule 5.24(e)(1) currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,[6] and that all non-trading rules of the Exchange would continue to apply. The Exchange recently adopted several rule changes that would apply during a time in which the trading floor in inoperable, which are effective until June 30, 2020.[7] The Exchange believes these rules were necessary to implement to maintain a fair and orderly market while the trading floor was not operable in order to create an all-electronic trading environment similar to the otherwise unavailable open outcry trading environment.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID–19.[8] The trading floor remained closed until June 15, 2020. During the time when the trading floor was closed, the Exchange operated in an all-electronic trading environment and the temporary rules in Rule 5.24(e)(1) applied to that electronic trading environment. The Exchange believes that, while those temporary rules did not fully replicate open outcry trading, they allowed all-electronic trading to occur more similarly to open outcry trading.[9]

The trading floor is currently open for open outcry trading, and the Exchange is operating pursuant to its normal hybrid trading rules. The Exchange implemented numerous health and safety measures in connection with the reopening of the trading floor on June 15, 2020 to help protect the safety and welfare of the trading floor community and help prevent the continued spread of COVID–19.[10] However, the Exchange recognizes the ongoing nature of the COVID–19 pandemic in the United States, which may cause the Exchange to once again close its trading floor to help prevent the continued spread of COVID–19.

In the event the Exchange did close its trading floor again, the Exchange believes it would be necessary to again apply the recently adopted temporary rules in Rule 5.24(e)(1) to maintain a fair and orderly market while the trading floor was not operable in order to create an all-electronic trading environment similar to the otherwise unavailable open outcry trading environment. As noted above, Rule 5.24(e)(1) is effective only until June 30, 2020 (and the rules became inapplicable upon the reopening of the trading floor on June 15, 2020). Given the Exchange may believe it is appropriate to close the trading floor with little advanced notice and in a short timeframe to help protect the safety and welfare of the trading floor community, the Exchange proposes to extend the effectiveness of the temporary rules in Rule 5.24(e)(1) to August 31, 2020 (unless further extended). The Exchange believes this will permit the Exchange to as seamlessly as possible transition back to an all-electronic trading environment. The Exchange notes Rule 5.24(e)(1) will not apply to trading during times when the trading floor remains operable.

Previously when the temporary provisions of Rule 5.24(e)(1) were in place, the Exchange's Regulatory Division has continued its standard routine surveillance reviews for electronic trading and implemented a regulatory plan to surveil the rules in place in Rule 5.24(e)(1) when operating in a screen-based only environment. In the event the Exchange closes its trading floor again and the temporary provisions in Rule 5.24(e)(1) become applicable in an all-electronic trading environment, the Exchange's Regulatory Division would reimplement that regulatory plan to surveil those rules.

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.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] 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)[13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by permitting the Exchange to as seamlessly as possible transition back to an all-electronic trading environment in the event the Exchange determines it is appropriate to again close its trading floor. The Exchange expects it would take this action if it believes necessary and appropriate to help protect the safety and welfare of the trading community. Such a determination may

[5] Pursuant to Rule 5.26, the Exchange may enter into a back-up trading arrangement with another exchange, which could allow the Exchange to use the facilities of a back-up exchange to conduct trading of certain of its products. The Exchange currently has no back-up trading arrangement in place with another exchange.

[6] Chapter 5, Section G of the Exchange's rulebook sets forth the rules and procedures for manual order handling and open outcry trading on the Exchange.

[7] *See* Securities Exchange Act Release Nos. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020) (SR–CBOE–2020–019); 88447 (March 20, 2020), 85 FR 17129 (March 26, 2020) (SR–CBOE–2020–023); 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020) (SR–CBOE–2020–026); 88530 (March 31, 2020), 85 FR 19182 (April 6, 2020) (SR–CBOE–2020–031); and 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR–CBOE–2020–047).

[8] On March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic and 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.

[9] The Exchange continues to consider other enhancements to the all-electronic trading configuration that it believes may permit this configuration to further replicate the open outcry trading environment. The Exchange would submit separate rule filings for any such proposed enhancements. The Exchange notes it recently submitted a separate rule filing to adopt a virtual trading floor, which the Exchange may determine to make available if the trading floor becomes inoperable (or is operating in a modified state). *See* Securities Exchange Act Release No. 89131 (June 23, 2020), 85 FR 38951 (June 29, 2020) (SR–CBOE–2020–055). If the Commission approves that filing, and the trading floor subsequently becomes inoperable and the Exchange makes the virtual trading floor available, the temporary rules in Rule 5.24(e)(1) would not be in effect (the Exchange intends to submit a partial amendment to SR–CBOE–2020–055 to make that clear). Separately, the Exchange believes the temporary rules in Rule 5.24(e)(1) should be effective for a period of time while the virtual trading floor is available, the Exchange will submit a separately rule filing to propose that change.

[10] *See* Exchange Notice C2020052601, *Standards of Conduct related to the Reopening of the Cboe Options Trading Floor and COVID–19* (May 26, 2020), *available at https://cdn.cboe.com/resources/release_notes/2020/Standards-of-Conduct-related-to-the-Reopening-of-the-Cboe-Options-Trading-Floor-Notice-Final.pdf.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

occur with little advance notice, and closure of the trading floor may need to occur in a short time frame. The Exchange continues to believe the recent amendments to Rule 5.24(e)(1) allowed all-electronic trading to occur more similarly to open outcry trading while the trading floor was closed. The Exchange believes the proposed rule change is necessary and appropriate to provide TPHs with execution opportunities in an all-electronic trading environment for orders that generally execute in open outcry trading. Additionally, the proposed rule change will provide TPHs with an all-electronic trading environment to which they became accustomed when the trading floor was previously closed, and therefore will provide investors with consistent rules that apply when the Exchange operates in an all-electronic environment. The proposed rule change will provide investors with definitive knowledge of what rules will apply when the trading floor is closed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive filing, but rather extends the effectiveness of temporary rules as part of the Exchange's business continuity plans, which are intended to allow the Exchange to continue to maintain fair and orderly markets while the Exchange's trading floor continues to be inoperable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange believes extension of the temporary rules put in place due to the ongoing COVID–19 pandemic will permit the Exchange to minimize disruptions in the market during a transition back to an all-electronic trading environment if the Exchange believes it is necessary and appropriate to help protect the safety and welfare of the trading community. 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 temporary rules to continue with minimal interruption, thereby avoiding investor confusion that could result from an interruption in the effectiveness of the rules. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[18]

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.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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 Commission has waived the five business day notification requirement for this proposed rule change.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–066 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–2020–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–066 and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15550 Filed 7–17–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for Judicial Review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final. The actions relate to the proposed Newell Road Bridge Replacement Project (Federal-aid project number BRLS–5100(017)) in the City of Palo Alto, County of Santa Clara, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the bridge replacement project will be barred unless the claim is filed on or before December 17, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Tom Holstein, Senior Environmental Planner, Caltrans District 4 Office of Local Assistance, 12th Floor, 111 Grand Avenue, Oakland, CA 94623.

Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone (510) 286–6371 or email *tom.holstein@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following bridge replacement project in the State of California.

The City of Palo Alto proposes to replace the existing Newell Road Bridge (37C–0223) between Edgewood Drive in the City of Palo Alto and Woodland Avenue in the City of East Palo Alto with a new two-lane bridge on the existing alignment of Newell Road. Across San Francisquito Creek at Newell Road, the Project would: Maintain connections for vehicular, bicycle, and pedestrian transportation; improve pedestrian and bicycle access; improve safety for all modes of transportation; accommodate increased flows related to San Francisquito Creek improvements to address anticipated flooding risks; and upgrade the channel width beneath the bridge to allow for the 70-year storm event (7,500 cubic feet per second) to pass. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Report/Environmental Assessment with Finding of No Significant Impact for the project, issued May 21, 2020, and in other documents in Caltrans' project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The FEIR/EA, FONSI, and other project records can be viewed and downloaded from the project website at *https://www.cityofpaloalto.org/gov/city_information/projects/newell_road_bridge_replacement_project.asp.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
3. Federal-Aid Highway Act of 1970, 23 U.S.C. 109
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act, (Pub. L. 112–141)
5. Clean Air Act Amendments of 1990 (CAAA)
6. Clean Water Act of 1977 and 1987
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 and 1987)
8. Federal Land Policy and Management Act of 1976 (Paleontological Resources)
9. Noise Control Act of 1972
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Water Bank Act Wetlands Mitigation Banks, ISTEA 1991, Sections 1006–1007
18. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130
19. Coastal Zone Management Act of 1972
20. Coastal Zone Management Act Reauthorization Amendments of 1990
21. Executive Order 11988, Floodplain Management
22. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979)
23. Rivers and Harbors Appropriation Act of 1899, Section 9 and 10
24. Title VI of the Civil Rights Act of 1964, as amended
25. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 13, 2020.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–15639 Filed 7–17–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 15597

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 general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

[19] 17 CFR 200.30–3(a)(12).

Currently, the IRS is soliciting comments concerning Form 15597, Foreclosure Sale Purchaser Contact Information Request.

DATES: Written comments should be received on or before September 18, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Chakinna Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Foreclosure Sale Purchaser Contact Information Request.

OMB Number: 1545–2199.

Form Number: Form 15597.

Abstract: Form 15597, Foreclosure Sale Purchaser Contact Information Request, is information requested of individuals or businesses that have purchased real property at a third-party foreclosure sale. If the IRS has filed a ''Notice of Federal Tax Lien'' publically notifying a taxpayer's creditors that the taxpayer owes the IRS a tax debt, AND a creditor senior to the IRS position later forecloses on their creditor note (such as the mortgage holder of a taxpayers primary residence) THEN the IRS tax claim is discharged or removed from the property (if the appropriate foreclosure rules are followed) and the foreclosure sale purchaser buys the property free and clear of the IRS claim EXCEPT that the IRS retains the right to ''redeem'' or buy back the property from the foreclosure sale purchaser w/in 120 days after the foreclosure sale. Collection of this information is authorized by 28 U.S.C. 2410 and IRC 7425.

Current Actions: There are no changes made to the burden previously reported to OMB. This is for renewal purposes only.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Responses: 150.

Estimated Time per Respondent: 4.08 hours.

Estimated Total Annual Burden Hours: 613.

The following paragraph applies to all of 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 as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 9, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15593 Filed 7–17–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Source of Compensation for Labor or Personal Services

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning source of compensation for labor or personal services.

DATES: Written comments should be received on or before September 18, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Source of Compensation for Labor or Personal Services.

OMB Number: 1545–1900.

Regulation Project Number: TD 9212.

Abstract: TD 9212 contains final regulations that describe the proper basis for determining the source of compensation for labor or personal services performed partly within and partly without the United States. The final regulations affect individuals who earn compensation for labor or personal services performed partly within and partly without the United States and are needed to provide appropriate guidance regarding the determination of the proper source of that compensation.

Current Actions: There are no changes being made to the regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, and businesses and other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,000 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15572 Filed 7–17–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Representation of Taxpayers Before the Internal Revenue Service

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning representation of taxpayers before the Internal Revenue Service.

DATES: Written comments should be received on or before September 18, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Chakinna B. Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Representation of taxpayers before the Internal Revenue Service.

OMB Number: 1545–0150.

Form Number: 2848 and 2848 (SP).

Abstract: Form 2848 or Form 2848(SP) is issued to authorize someone to act for the taxpayer in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. The information on the form is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

Form 2848

Estimated Number of Respondents: 458,333.

Estimated Time per Respondent: 1.99 hours.

Estimated Total Annual Burden Hours: 912,083 hours.

Form 2848 (SP)

Estimated Number of Respondents: 80,000.

Estimated Time per Respondent: 2.26 hours.

Estimated Total Annual Burden Hours: 180,800 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15573 Filed 7–17–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 706 and Schedule R–1 (Form 706)

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 general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and Schedule R–1 (Form 706), Generation-Skipping Transfer Tax.

DATES: Written comments should be received on or before September 18, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Adams, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317–6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

OMB Number: 1545–0015.

Forms Number: 706 and Schedule R–1 (Form 706).

Abstract: Form 706 is used by executors to report and compute the Federal estate tax imposed by Internal Revenue Code section 2001 and the Federal generation-skipping transfer (GST) tax imposed by Code section

2601. The IRS uses the information on the form to enforce the estate and GST tax provisions of the Code and to verify that the taxes have been properly computed. Schedule R–1 (Form 706) serves as a payment voucher for the Generation-Skipping Transfer (GST)tax imposed on a direct skip from a trust, which the trustee of the trust, must pay.

Current Actions: Prior to this revision, Schedule R–1 and its instructions were embedded in Form 706. However, Schedule R–1 and its instructions were removed, to create a separate hybrid form for Schedule R–1 and its instructions. There are changes in the paperwork burden previously approved by OMB, due to the reduction in filers based on the most recent filing data.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Responses: 30,729.

Estimated Time per Respondents: 36.50.

Estimated Total Annual Burden Hours: 1,121,903.

The following paragraph applies to all of 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 as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 2020.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2020–15584 Filed 7–17–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of The Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Douglas Poms,

International Tax Counsel, Tax Policy.

[FR Doc. 2020–15621 Filed 7–17–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will take place via conference call on Tuesday, August 4, 2020 at 12:00 p.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: July 14, 2020.

Frederick E. Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2020–15578 Filed 7–17–20; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

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Part II

Department of Homeland Security

Federal Emergency Management Agency

44 CFR Parts 59, 61, and 62

National Flood Insurance Program: Conforming Changes To Reflect the Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12) and the Homeowners Flood Insurance Affordability Act of 2014 (HFIAA), and Additional Clarifications for Plain Language; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59, 61, and 62

[Docket ID FEMA–2018–0026]

RIN 1660–AA95

National Flood Insurance Program: Conforming Changes To Reflect the Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12) and the Homeowners Flood Insurance Affordability Act of 2014 (HFIAA), and Additional Clarifications for Plain Language

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations to codify certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014, and to clarify certain existing NFIP rules relating to NFIP operations and the Standard Flood Insurance Policy.

DATES: This rule is effective on October 1, 2021.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at *http://www.regulations.gov* and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Kelly Bronowicz, Director, Policyholder Services Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 557–9488.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of the Rule

On July 16, 2018, FEMA published a Notice of Proposed Rulemaking (NPRM) (83 FR 32956) proposing to make several non-substantive changes to the NFIP regulations to improve their readability, uniformity, and clarity. In addition, FEMA proposed to codify certain requirements of the Biggert-Waters Flood Insurance Reform Act of 2012 (Pub. L. 112–141, 126 Stat. 916) (BW–12) and the Homeowner Flood Insurance Affordability Act of 2014 (Pub. L. 113–89, 128 Stat. 1020) (HFIAA).

The NPRM proposed to codify the provisions of BW–12 that require FEMA to (1) increase the maximum coverage amount for multi-family properties to the same amount as that allowed for commercial properties; (2) establish a minimum deductible amount for NFIP polices; (3) stop denying payment to policyholders for damage or loss to a condominium unit under the Dwelling Form based solely on the fact that the condominium association has inadequate flood insurance coverage on the entire condominium; and (4) review, among other things, the processes and procedures for making flood in progress determinations. The NPRM also proposed to codify HFIAA's requirement that FEMA offer a high deductible option of $10,000.

The NPRM solicited public comment on these proposed changes. FEMA received three comments related to the rulemaking and five unrelated comments that were outside the scope of the rulemaking. FEMA does not consider the five comments unrelated to this rulemaking in this preamble. In this final rule, FEMA adopts the changes it proposed in the NPRM, with some minor revisions in consideration of the related comments and corrections of typographical errors. FEMA describes these changes below.

II. Summary and Discussion of Public Comments

Of the three comments germane to this rulemaking, one anonymous commenter [FEMA–2018–0026–0005] commented on the need for more dams, the second, from the Association of State Floodplain Managers (ASFPM) [FEMA–2018–0026–0004], commented on the inclusion of spouses on the General Property Form of the Standard Flood Insurance Form (SFIP) and identified a typographical error, and the third, a member of the public [FEMA–2018–0026–0003], suggested that FEMA should modify the Residential Condominium Building Association Policy (RCBAP) to better take into account certain State laws concerning the maintenance and repair of condominium buildings and the units therein.

A. Dams

The anonymous commenter [FEMA–2018–0026–0005] suggested that FEMA ''build more dams to hold back the waters from flooding.'' FEMA is committed to building a culture of preparedness by, in part, incentivizing investments that reduce risk—including pre-disaster mitigation—and reduce disaster costs at all levels.[1] This includes encouraging the investment in infrastructure that reduces future disaster costs, such as dams and levees. However, this comment suggests actions beyond the scope of this rulemaking, which focuses on making conforming and clarifying changes to the National Flood Insurance Program's regulations and policy forms. For this reason, FEMA declines to make changes to this rulemaking in response to this comment.

B. Spouse as Named Insured in General Property Form

The Association of State Floodplain Managers (ASFPM) [FEMA–2018–0026–0004] noted that it supports FEMA's effort to revise the NFIP's regulations to clarify rules relating to the NFIP's operation and align them with BW–12 and HFIAA. ASFPM disagreed, however, with FEMA's proposal to add the insured's spouse as a named insured for both the Dwelling Form and the General Property Form of the SFIP. While ASFPM understands that a homeowners policy may typically include the insured's spouse as a named insured, it is not included in a commercial policy. ASFPM spoke with insurance specialists who confirmed that there may be a good chance that the spouse is not part of the commercial venture and has no interest in the business and therefore, should not be automatically included in the General Property Form. ASFPM therefore recommended removing the spouse as a named insured in the General Property Form.

FEMA did not intend to modify this provision in the NPRM and agrees with ASFPM's comments that the spouse of a named insured should not automatically be included as an insured in the General Property Form of the SFIP. The current General Property Form of the SFIP does not automatically include the spouse of a named insured as an insured under the policy. *See* 44 CFR part 61, App. A(2), II.A. Accordingly, this final rule will not modify the provision from the status quo. FEMA thanks ASFPM for identifying this inadvertent proposed change.

C. Replacement of ''Covered'' With ''Insured''

ASFPM [FEMA–2018–0026–0004] also noted that while it has no issues with FEMA's proposal to replace the word ''covered'' with the word ''insured'' in the SFIP, the NPRM did not propose doing so throughout the

[1] Federal Emergency Management Agency, 2018–2022 Strategic Plan, *https://www.fema.gov/media-library-data/1533052524696-b5137201a4614ade5e0129ef01cbf661/strat_plan.pdf.*

SFIP, including the title of Section IV, ''Property Not Covered.'' ASFPM recommended that FEMA review the different SFIP forms and ensure they are consistent with the use of ''insured.''

FEMA proposed to replace the word ''covered'' with the word ''insured'' in the SFIP because ''covered'' is a generic and undefined term that does not conform to common industry or Agency usage. FEMA agrees with ASFPM's comment and has replaced the word ''covered'' with ''insured'' in all instances where appropriate throughout the three SFIP forms.

D. Residential Condominium Building Association Policy (RCBAP)

A member of the public [FEMA–2018–0026–0003] suggested several modifications to the Residential Condominium Building Association Policy (RCBAP). The RCBAP insures residential condominium association buildings and offers building coverage up to $250,000 multiplied by the number of units and contents coverage up to $100,000 per building. Under existing NFIP regulations, the RCBAP acts as primary coverage for an entire condominium building, including portions of a condominium building which an individual unit owner is responsible for maintaining, such as interior walls and cabinetry.[2] Individual unit owners may choose to purchase a Dwelling Form policy that provides excess building coverage beyond that offered by an RCBAP, subject to statutory coverage limits. The requirement that the RCBAP act as primary coverage for all losses to condominium buildings and the units therein simplifies the claims process by allowing the NFIP to pay claims without having to divide payments between unit owners and condominium associations based on a wide array of condominium building bylaws and relevant state laws.

The commenter suggested that FEMA modify the RCBAP to better take into account certain state laws concerning the maintenance and repair of condominium buildings and the units therein. The commenter explained that many state laws divide responsibility for maintaining and repairing condominium buildings between a condominium association and individual unit owners. According to the commenter, the RCBAP's present design causes FEMA to deem the excess building coverage of an individual unit owner's Dwelling Form policy duplicative, excessive, and unable to provide coverage that an individual policyholder could use upon suffering a loss. The commenter stated that treating the Dwelling Form's building coverage as excess to the RCBAP causes delays in insurance payments reaching individual unit owners, which in turn delays repairs, ultimately leading to litigation between condominium owners and their associations. The commenter is concerned that as a result, informed individual owners will cease purchasing building coverage under a Dwelling Form policy if they are aware that they will only receive payment of loss if the loss exceeds coverage under the RCBAP.

In addition, the commenter also stated that FEMA's treatment of a unit owner's Dwelling Form policy as excess to a condominium association's RCBAP violates section 1312(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4019(c)) (added by section 100214 of BW–12), which generally prohibits FEMA from denying or limiting coverage under an individual condominium unit owner's policy based solely or in part on the flood insurance coverage of the condominium association on the overall property.

The commenter also suggested defining the term ''common elements'' or making clear to policyholders that the applicable state definition will be used in interpreting the policy, likely for the purposes of interpreting Dwelling Form SFIP, Art. III.C.3.a. Moreover, the commenter recommended expanding the condominium loss assessment coverage provisions in III.C.3 of the Dwelling Form to clearly state what flood damaged items, if any, are excluded from coverage under the condominium loss assessment provision.

In sum, the commenter proposed that FEMA redesign the RCBAP so that it conforms with the laws in most states regarding condominiums (*e.g.,* individuals insure the inside of their units, and the associations insure what they are responsible for under state law to repair). The commenter believes that this would (1) encourage individual unit owners to purchase building coverage, and (2) protect financial institutions, as a unit owner's financial institution is usually only named on the individual's Dwelling Form policy but not the RCBAP.

FEMA appreciates the commenter's suggestions on substantive changes FEMA could make to the SFIP to increase its marketability. As part of its 2018–2022 Strategic Plan, FEMA is committed to building a culture of preparedness by, in part, taking steps to double the number of properties covered by flood insurance through the private sector or the government. FEMA believes that designing flood insurance products that meet consumer needs will help achieve this goal. However, FEMA does not intend to make such substantive changes to the SFIP in this rulemaking. FEMA's intent in this rule is to clarify the SFIP to improve overall readability as well as conform it to BW–12 and HFIAA. FEMA thanks the commenter for this comment and will take it under advisement if FEMA considers substantive changes to the SFIP in the future.

FEMA disagrees with the commenter's view that making coverage under a unit owner's Dwelling Form policy excess to the condominium association's RCBAP violates 42 U.S.C. 4019(c). Condominium associations commonly charge individual unit owners loss assessments when the association's insurance coverage is insufficient to cover damage after a flood. When a Dwelling Form policy insures a condominium unit, the policy provides coverage for loss assessments charged to the policyholder by their condominium association for covered flood damage. *See* Dwelling Form SFIP, Art. III.C.3.a. Prior to the enactment of BW–12, the policy excluded coverage for loss assessments if the reason for the assessment is due to application of the RCBAP's coinsurance penalty provision. *See* Dwelling Form SFIP, Art. III.C.3.b.4. As a result, FEMA would deny coverage for a portion of flood damage under both the RCBAP and the Dwelling Form of the SFIP.

Section 100214 of BW–12 now prohibits FEMA from denying or limiting coverage under an individual condominium unit owner's policy based solely or in part on the flood insurance coverage of the condominium association on the overall property, including situations where the condominium association did not maintain a minimum amount of coverage through an RCBAP. *See* 42 U.S.C. 4019(c). As a result, FEMA no longer denies coverage for a loss assessment under the Dwelling Form SFIP that results from the application of the RCBAP's coinsurance penalty, and this rulemaking removes the contrary provision. *See* Dwelling Form SFIP, Art. III.C.3.b.4.

Contrary to the commentor's assertion, the current structure of the RCBAP acting as primary coverage for a condominium building and the Dwelling Form acting as excess coverage does not violate 42 U.S.C. 4019(c). The Dwelling Form's excess coverage provision (VII.C.2) does not result in the denial of otherwise covered damage. Rather, it merely apportions the coverage between the Dwelling Form and the RCBAP. Ultimately, the flood

[2] *See* SFIP Dwelling Form, Art. VII.C.2.

damage is still covered, though the payment may go to the condominium association rather than directly to the unit owner.

Additionally, interpreting 42 U.S.C. 4019(c) to prohibit treating the Dwelling Form as excess coverage to the RCBAP coverage would be contrary to FEMA's statutory authority, fundamental tenets of insurance law, and Congressional intent. If FEMA were not able to treat Dwelling Form coverage as excess to RCBAP coverage, Dwelling Form policyholders could be entitled to receive payments for damage that FEMA would also be required to pay for under an RCBAP. Congress has not given FEMA authority to ''double pay'' for the same damage.[3] Further, such double payments would also be contrary to fundamental principles of insurance law.[4] Finally, Congress' intent in enacting 42 U.S.C. 4019(c) was to ensure Dwelling Form policyholders can still receive payments where RCBAP coverage is inadequate; it was not intended to require FEMA pay for the same damage under two separate policies.[5] Treating the Dwelling Form coverage as excess to the RCBAP coverage comports with this purpose.

FEMA appreciates the commenter's suggestions to clarify parts of the Dwelling Form's coverage for condominium loss assessments. However, FEMA does not agree with the commenter's suggestion of defining ''common elements'' based on applicable state laws. The NFIP is a national program that is best implemented through uniform guidance irrespective of various state laws. Defining ''common elements'' based on state law, rather than a uniform standard, would increase policyholder confusion and complicate claims adjusting processes.

FEMA also does not agree that it is necessary to list in the SFIP items excluded from coverage of condominium loss assessments. FEMA has already provided guidance in this respect in the NFIP Claims Manual.[6] On page 54, the Manual explains ''[The Dwelling Form's coverage of condominium loss assessments] does not include an assessment from the Condominium Association for property not covered by the SFIP, such as the cleanup of debris, sand, landscape lighting, repairs to parking lots, decks, sidewalks, pools, etc.'' It is FEMA's position that this guidance states with sufficient clarity what flood damaged items are excluded from coverage under the condominium loss assessment provision.

FEMA also wishes to point out that Coverage B (Personal Property) in the Dwelling Form of the SFIP will continue to include coverage for ''interior walls, floor, and ceiling'' not otherwise covered by an RCBAP policy. This coverage is limited to no more than 10 percent of the contents coverage limit chosen by the insured. This allows an individual unit owner to purchase his or her own policy that provides coverage beyond that offered by the RCBAP.

III. Summary of Other Changes

The final rule also includes corrections of typographical errors and other non-substantive stylistic changes from the NPRM. For instance, FEMA corrects the capitalization of some section headings to ensure consistency. FEMA also removed an inadvertent inclusion of ''initial installment payment'' in the revised 44 CFR 61.11(c) and added an inadvertently-removed unnumbered paragraph in the revised RCBAP section III.C.2.a (stating ''[t]his coverage does not increase the Coverage A or Coverage B limit of liability.''). FEMA also hyphenated the usage of ''single-family'' and ''two-to-four'' through the rule to conform to current NFIP styles. FEMA also updated cross-references to the Dwelling Form in 44 CFR 61.17(g).

Last, in the Maximum Amounts of Coverage Table at 44 CFR 61.6(a), FEMA replaced the term ''Condominium Building'' with ''Residential Condominium Building'' to make clear that the particular coverage limit is limited to condominium buildings used for residential purposes, rather than non-residential condominium buildings. This change reflects current practice and is for clarification purposes only.

IV. Regulatory Analysis

A. Executive Orders 12866, ''Regulatory Planning and Review'', 13563, ''Improving Regulation and Regulatory Review'', and 13771, ''Reducing Regulation and Controlling Regulatory Costs''

Executive Orders 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and 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. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

In this rule FEMA makes several nonsubstantive changes to the National Flood Insurance Program (NFIP) regulations at 44 CFR parts 59, 61, and 62, as well as the Appendices to Part 61. FEMA is codifying certain provisions of the Biggert Waters Flood Insurance Reform Act of 2012 (BW–12) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) that it has already implemented in its Flood Insurance Manual and other related guidance documents. FEMA is also revising certain provisions of the NFIP regulations relating to NFIP operations and the Standard Flood Insurance Policy to consolidate and update the

[3] Congress has only authorized FEMA to sell ''insurance against loss resulting from physical damage to or loss of real property or personal property.'' 42 U.S.C. 4011(a).

[4] For instance, one such principle is that of indemnity, which requires that ''the value of the benefit paid the insured will not exceed the amount of the loss.'' 1 New Appleman on Insurance Law Library Edition § 1.05 (2019). (This principle is essential for mitigating the moral hazard that would result from policyholders profiting from insured losses). And ''Congress did not intend to abrogate standard insurance law principles'' when it created the National Flood Insurance Program. *Leland* v. *Fed. Ins. Adm'r,* 934 F.2d 524, 530 (4th Cir. 1991) (quoting *Drewett* v. *Aetna Cas. & Sur. Co.,* 539 F.2d 496, 498 (5th Cir.1976)).

[5] In December 2011, the Senate Banking Committee explained the intent behind section 116 of *the Flood Insurance Reform and Modernization Act of 2011* (2011 S. 1940), which eventually became law as Section 100214 of BW–12. The Committee explained that the provision ''[c]larifies that condominium owners with flood insurance policies should receive claims payments regardless of the adequacy of flood insurance coverage of the condominium association and other condominium owners.'' *See* Senate Report 112–98, p. 8.

[6] *https://www.fema.gov/media-library-data/1559248107320-0943773d439f0ea73003ce1adcf48be7/NFIP_Claims_Manual.pdf.*

regulatory text and standardize key terminology.

There are 34 regulatory changes in this rule (itemized in Table 1). The majority of these changes are nonsubstantive clarifications. The remaining changes codify an existing practice, policy, or process.

Pursuant to OMB Circular A–4, FEMA assesses the impacts of this rule against a no-action baseline and a pre-statutory baseline. With the no-action baseline, FEMA assesses what the world would be like absent the final rule. With the pre-statutory baseline, FEMA assesses what the world would be like absent the relevant statute(s) (in this case, BW–12 and HFIAA). With this approach, FEMA considers the full impacts of the rule.

Under a no-action baseline, this rule has no quantifiable transfers, costs, or benefits. The rule makes non-substantive improvements to the language and organization of the NFIP regulations through clarifications and codifications, which do not result in any quantifiable transfers, costs, or benefits. The rule also codifies certain provisions of BW–12 and HFIAA that FEMA has already implemented via the Flood Insurance Manual and other related guidance documents, which results in no quantifiable transfers or benefits. WYO (Write Your Own) companies will, however, incur opportunity costs as they spend time becoming familiar with the rule's changes. Pursuant to the final rule, FEMA will no longer require individual waivers for condominium loss assessment restrictions; this results in cost savings.

The analysis below utilizes a pre-statutory baseline of 2012. The summary of changes table (Table 1) lists all changes the rule makes to FEMA's current regulations, a description of each change, and their impact.

(a) TABLE 1—SUMMARY OF CHANGES

[Pre-statutory baseline]

Current section No./ subject matter	Rule change	Mandatory or discretionary action	Impact
Non-substantive Clarifications & Consolidations			
1. § 59 Definitions	FEMA will add and revise definitions to support clarifications and codifications described below. This is a non-substantive change that clarifies existing definitions and does not alter the administration of the program.	Discretionary	No change in compliance burden.
2. § 61.1 Purpose of part.	FEMA will remove irrelevant second sentence that does not relate to the substantive content of part 61. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
3. § 61.3 Coverage and benefits provided under the SFIP.	FEMA will clarify language to provide a more complete statement of coverage and benefits provided by the SFIP. The coverage and benefits provided under the SFIP are already stated in regulations; this is just a consolidated, unified statement of coverage and benefits under the SFIP. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
4. § 61.5 Deductibles	An application of BW–12 section 100210 and HFIAA section 12, that will clarify existing policy/practice by moving content of 61.5 to new unified cancellation/nullification section in 44 CFR 62.5 (discussed below). FEMA also will replace the current deductible tables with provisions describing the minimum deductibles required by BW–12 section 100210 and the $10,000 deductible option required by HFIAA section 12. This is a non-substantive change because FEMA has always had this authority and has always made these deductible options available to policyholders despite not being explicitly provided for in the CFR.	Mandatory	No change in compliance burden.
5. § 61.6 Maximum amounts of coverage available.	FEMA will clarify the maximum coverage limit tables in section 61.6 with non-substantive changes to improve readability and conformance with standard program terminology and terminology introduced by BW–12. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
6. § 61.10 Requirements for Issuance or Renewal of Flood Insurance Coverage.	FEMA will clarify/consolidate existing regulation language. This new provision will clarify that no flood insurance coverage will be issued unless there is (a) receipt of full amount due and (b) submission of a complete application with all the required rating information. Although this has always been the case, and these concepts are covered in sections 61.5 and 61.11, FEMA believes that increased clarity is needed by adding a consolidated statement in the regulations. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
7. § 61.13 Standard Flood Insurance Policy.	This provision will clarify that SFIP is authorized only under terms and conditions established by Act, regulations, SFIP, and Administrator interpretations. FEMA also will clarify that the agent acts only for policyholder and that the risk of loss is borne by the National Flood Insurance Fund, not the WYO company. This does not represent a substantive change in policy or terms and conditions of the SFIP, but instead will make terms clearer.	Discretionary	No change in compliance burden.

(a) TABLE 1—SUMMARY OF CHANGES—Continued

[Pre-statutory baseline]

Current section No./ subject matter	Rule change	Mandatory or discretionary action	Impact
8. § 62.5 Policy Nullification and Cancellation.	FEMA will make changes that will clarify and consolidate the existing reasons for which a policy may be cancelled or nullified. The current reasons for which a policy may be cancelled or nullified are spread throughout the regulations and FEMA's interpretations of those regulations in the Flood Insurance Manual. This will consolidate those reasons into one section for greater clarity and transparency to the public. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
9. § 62.6 Broker and Agents for Servicing Agent.	This provision will clarify FEMA's existing policy by adding it to regulation that a broker or agent selling NFIP policies must be licensed in the state in which the property is located. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
10. SFIP Article I	FEMA will change SFIP Article I to clarify the types of property insured by the SFIP. Clarifications are about coverage limits and multiple policies covering one building. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
11. SFIP Article II—Definitions.	FEMA will revise and add some definitions for clarity. In particular, the changes will clarify that the named insured must also include the building owner if building coverage is purchased. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
12. SFIP Article III	FEMA will clarify that references to insured property do not extend coverage to any type or item of property not otherwise insured in accordance with the terms and conditions of SFIP. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
13. SFIP Article III.A	FEMA is making minor non-substantive changes to Article III.A.5.b.2 to improve the grammar of the section; revise Article III.A.8 to remove the phrase ''in a building enclosure.'' This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
14. SFIP Article III.B	FEMA will revise the numbering in this section to improve readability and organization; revise Article III.B.3 by removing the phrase ''in a building enclosure.'' This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
15. SFIP Article III.D	FEMA will revise the language in this section so that the word ''structure'' is replaced by the word ''building'' throughout the section except at III.D.5.c. The reason for this change is the NFIP insures SFIP defined ''buildings,'' not any structure that does not meet the definition of ''building'' as defined in the SFIP. FEMA also will improve the language in III.D.3.d and III.D.3.e by replacing the phrase ''this coverage'' with the phrase ''Coverage D'' to clarify that the coverage referred to in these provisions is Coverage D. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
16. SFIP Article V.B	FEMA is making a non-substantive, clarifying adjustment to the Flood in Progress Exclusion at SFIP Art. V.B to align with reports required by BW–12 section 100227. This change does not impact the application of the exclusion, but will help support more consistent reading of the provison.	Discretionary	No change in compliance burden.
17. SFIP Article VII.B ...	FEMA will move the provision on concealment of fraud and policy voidance for consolidation into unified section on policy cancellations and nullifications (discussed below). This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
18. SFIP Article VII.E ...	FEMA will remove Article VII.E, Cancellation of the Policy by You, and incorporate the language into a new consolidated section on policy nullifications, cancellations, and non-renewals. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.

(a) TABLE 1—SUMMARY OF CHANGES—Continued

[Pre-statutory baseline]

Current section No./ subject matter	Rule change	Mandatory or discretionary action	Impact
19. SFIP Article VII.F ...	FEMA will remove Article VII.F, Non-Renewal of the Policy by Us, and incorporate the language into a new Article VIII discussing policy nullifications, cancellations, and non-renewals. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
20. SFIP Article VII.G ...	This provision will revise the reformation section for clarity/readability. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
21. SFIP Article VII.U ...	FEMA will move the provision on duplicate policies for consolidation into unified section on policy cancellations and nullifications (discussed below). This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
22. SFIP Article VII.V ...	FEMA will revise Article VII.V.1.a.1 of the current policy to remove all the language after ''It is your principal residence.'' The reason for this change is that this language, which is essentially a definition of the term ''principal residence,'' has been incorporated into the new definition of ''principal residence'' being added to Definitions section in Article II. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
23. SFIP Article VIII	FEMA will clarify the existing reasons for which a policy may be cancelled, nullified, or not renewed. This will mirror similar section being established at 44 CFR 62.5 (discussed above). This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
24. SFIP Article IX	FEMA will clarify that the SFIP and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the SFIP are governed by the National Flood Insurance Act and the regulations. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
25. Entire SFIP—Global Language Replacements.	FEMA will replace the word ''covered'' with the word ''insured'' because the word ''covered'' does not conform to common industry or Agency usage. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
26. 62.22 Judicial Review (preamble sec. III.F.5).	FEMA will replace references to the ''Federal Insurance Administration'' with the current organizational title, ''Federal Insurance and Mitigation Administration.'' This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
27. SFIP Article VII.D ...	FEMA will redesignate Article VII.D as Article VII.C. Replaces the phrase ''structure during the course of construction'' in Article VII.D.2 of the current rule with ''building under construction,'' which is the proper term of art, as used in Article III.A.5.a and Article VI.A. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
28. § 61.4 Limitations on Coverage.	FEMA will delete this provision because some of the language is duplicative with language in other sections, and the rest of the language is more appropriately moved to other sections of the regulation. Move 61.5(a) and (b) to become a new 44 CFR 61.4. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
29. § 62.3 Servicing agent.	FEMA will remove the name of specific direct servicing agent. This is a non-substantive change that codifies current practices that began more than a decade before the baseline regarding the public announcement of the direct servicing agent.	Discretionary	No change in compliance burden.
30. Part 59 Authority Citation.	FEMA will replace the citations to Reorganization Plan No. 3 and Executive Order 12127 with a citation to the codification of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.* This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
31. Part 61 Authority Citation.	FEMA will update authority citations to reflect changes to FEMA's source of authority from Executive orders to statute. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.

(a) TABLE 1—SUMMARY OF CHANGES—Continued

[Pre-statutory baseline]

Current section No./ subject matter	Rule change	Mandatory or discretionary action	Impact
32. Part 62 Authority Citation.	FEMA will update authority citations to reflect changes to FEMA's source of authority from Executive orders to statute. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
Codification of Existing Policy and Practice			
33. § 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.	FEMA will codify BW–12's addition of the Post-Wildfire Exception to the 30-day waiting period required by 42 U.S.C. 4013(c). This change does not alter the current administration of the program because FEMA immediately complied with the law. FEMA also is making a clarification by removing the second clause of the first sentence of 61.11(e) and 61.11(f) because these clauses accommodate a business model that the WYO companies no longer use. This change does not alter the current administration of the program but rather provides greater clarity for the reader.	Mandatory	No change in compliance burden.
34. SFIP Article III.C	FEMA will codify BW–12 section 100214, which prohibits the application of SFIP Article III.C.3.b.4 (disallowing the payment of a condominium loss assessment on a unit policy if the condominium building is underinsured). Prior to BW–12, FEMA issued individual waivers of this provision as the need arose. The changes will delete Article III.C.3.b.4, thus no longer requiring FEMA to issue individual waivers.	Mandatory	Cost savings of $2,048 over 10 years ($1,799 at 3 percent and $1,539 at 7 percent discount rates.)

1. Costs

This rule makes non-substantive improvements to the language and organization of the NFIP regulations. These changes do not result in any quantifiable costs, other than opportunity costs, that WYO companies will incur as they spend time becoming familiar with the changes.

This rule revises section 61.11 to codify an additional exception to the 30-day waiting period before coverage on a flood insurance policy takes effect. Prior to BW–12, there were only two exceptions to this 30-day waiting period. The first exception was for the initial purchase of flood insurance in connection with the making, increasing, extension, or renewal of a loan. The second exception was for the initial purchase of flood insurance pursuant to a revision or updating of floodplain areas or flood risk zones, if such purchase took place within 1 year of the notice of such revision.

The final rule codifies Section 100241 of BW–12, which amended Section 1306(c) of the NFIA (42 U.S.C. 4013(c)), by placing a third exception to the 30-day new policy waiting period. This new exception applies to situations where the flooding to an insured privately owned property is the result of flooding on Federal land that was caused or exacerbated by post-wildfire conditions, also on Federal land. FEMA implemented this new exception via bulletin. *See* WYO Bulletin W–12045 (July 10, 2012) (announcing the implementation of Section 100241), *see also,* WYO Bulletin W–18001 (Jan. 16, 2018) (replacing WYO Bulletin W–12045). To date, circumstances have not existed requiring FEMA to apply this exception. The change updates the regulations to reflect the revised statutory language and existing Agency practice.

According to FEMA's NFIP claim data, since implementation of this exception in July 2012, no parties have made claims that apply to this provision. Additionally, due to both the brief window of applicability (the 30-day waiting period after initial enrollment in the NFIP) and the narrow circumstances to which this exception applies (flood damage due to flood on Federal land caused, or exacerbated, by post-wildfire conditions), invocation of this exception will be rare. This provision serves as an added enticement to potential enrollees of the NFIP to join the NFIP if they believe that a wildfire on Federal land may cause, or exacerbate, flooding on their property. In accordance with the data, there has not been and FEMA estimates that there will continue to be no additional burden on any party.

2. Benefits

The majority of provisions represent clarifications of the regulation, or remove regulations that are no longer applicable. The few non-clarifying provisions reflect certain provisions that FEMA has already implemented through policy. These provisions streamline operations or meet greater potential needs of policyholders (codifications). It is only with codifications where any quantifiable impacts appear. This analysis considers the following as possible benefits of this rule:

i. Clarification of NFIP Terms & Conditions

This analysis looks at the many efficiencies of the final rule; FEMA cannot quantify the bulk of these benefits. Although FEMA has not quantified them, they are essential to the justification of the final rule and provide significant benefits for stakeholders.

Under current conditions, the NFIP-related sections of the CFR contain inconsistencies or vague language that may cause confusion to stakeholders. The following are selected examples of changes presented in Table 1:

a. Making Explicit the Implicit

The current NFIP deductible charts at 44 CFR 61.5(d) show several possible deductible options, but not all the deductible options available under the program. A note to these tables indicates that policyholders may submit any other deductible amounts not currently listed in this chart (including the $10,000 deductible option required under HFIAA). Notwithstanding this note, the current regulation's listing of deductible options may give readers the impression that the list is exhaustive. In this rulemaking, FEMA removes the

deductible charts and replaces them with a requirement that FEMA must provide policyholders with deductible options in various amounts, up to and including $10,000, subject to certain minimum deductibles. This change does not expand or contract the deductible options the NFIP offers; rather, it clarifies that FEMA offers various options, including the $10,000 deductible, subject to other restrictions.

This rulemaking also changes the language in Appendix A(1) of Part 61 to clarify that FEMA also insures personal property under this policy. FEMA has always insured personal property under this policy, but the change makes this more explicit in the initial coverage statement. This rulemaking also changes Appendix A(2) to Part 61 to state that the policy insures only one building and that the insured building is the one specifically described in the Flood Insurance Application. FEMA has always limited coverage under the SFIP to one building; with this change, FEMA clearly states this at the very beginning of the SFIP.

b. Modifying, Adding or Removing Definitions

In this rule, FEMA revises definitions such as ''deductible,'' ''emergency program,'' ''act,'' and ''basement.'' These non-substantive changes are clearer and more consistent with the language in the Articles of the SFIP, as are the addition of acronyms for ease of repetitive use (such as that for the Special Flood Hazard Area as ''SFHA'') or to remove a term or definition that FEMA no longer uses (*e.g.,* ''Expense Constant'' which no longer applies, or ''Probation Premium'' which is better changed to ''Probation Surcharge'').

This increased precision and consistent use of terms increases clarity of FEMA's NFIP regulations for the insurance companies, flood insurance policyholders, academic researchers, and private citizens. This improved accuracy will minimize confusion.

ii. Codification of Dwelling Policy Underinsurance Exception

Article III.C.3.b.4 of the SFIP, found in Appendix A(1) to Part 61, prevents payment of condominium loss assessments on a unit policy if the condominium building is underinsured. The SFIP also requires policyholders to exhaust the coverage limits of the RCBAP policy (the primary policy) before the Dwelling Policy (the secondary policy) can take effect. This poses a challenge in the event FEMA disallows the primary policy in the above circumstance. Since 2007, FEMA required policyholders facing such a predicament to obtain a waiver from FEMA to process such claims.

Pursuant to Section 100214 of BW–12, this rule removes Article III.C.3.b.4 of the SFIP, which prohibits such claim payments and necessitates the submission and processing of waivers. As a result of this statutory change, FEMA no longer requires waivers for this prohibition.

To estimate the cost savings that result from FEMA's removal of this requirement, FEMA considered the frequency of these specific circumstances. Between 2007, when FEMA began issuing the waivers, and 2013, when FEMA terminated the waiver process (following the passage and FEMA's provisional implementation of BW–12), there were four occurrences: Twice in Illinois, once in Texas, and once in Tennessee. Four occurrences over 6 years equate to an estimated frequency of 0.667 instances each year, assuming that the rate remains consistent in the future.

FEMA requires 3 hours to process a waiver request. Two General Schedule (GS) Federal employees in the National Capital Region, at the GS–14 and GS–15 levels, process waiver requests in equal proportion. Utilizing 2018 GS scale [7] published hourly wage rates from the Office of Personnel Management (OPM) for the midpoint (step 5) of these grade levels FEMA calculated fully loaded [8] wage rates of $90.85 and $106.87 per hour, respectively. At approximately 90 minutes per officer for each expected waiver, the subtotal is $136.28 [9] and $160.30,[10] respectively. An Assistant Administrator at the Senior Executive Service (SES) level must clear each waiver. This review and approval takes approximately 5 minutes.[11] FEMA estimates that a fully loaded SES hourly rate is $126.66 per hour.[12] The subtotal of the SES time is $10.56.[13] The total opportunity cost to process each waiver is $307.16.[14]

(b) TABLE 2—PROJECTED COST SAVINGS OF CODIFICATION OF DWELLING POLICY UNDERINSURANCE EXCEPTION

	Avg frequency of waivers	Total cost per waiver	Annual cost savings	NPV at 3% (m)	NPV at 7% (m)
Year 1	0.67	$307	$205	205	205
Year 2	0.67	307	205	199	191
Year 3	0.67	307	205	193	179
Year 4	0.67	307	205	187	167
Year 5	0.67	307	205	182	156
Year 6	0.67	307	205	177	146
Year 7	0.67	307	205	171	136

[7] GS Scale based on 2018 OPM tables, hourly basic wage rates by grade and step for the locality pay area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA. Accessed March 1st, 2018. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/18Tables/html/DCB_h.aspx.*

[8] Bureau of Labor Statistics, Employer Cost for Employee Compensation News Release, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation; civilian workers, by major occupational and industry group, December 2017. *https://www.bls.gov/news.release/archives/ecec_03202018.htm.*

The per hour benefits multiplier is calculated by dividing total compensation for all workers ($35.87) by wages and salaries for all workers ($24.49), which yields a per hour benefits multiplier of 1.46. ($35.87 ÷ $24.49 = 1.46468). Fully-loaded wage rates are calculated by multiplying the per hour benefits multiplier by the applicable wage rate. GS–14: $62.23 × 1.46 = $90.85 and GS–15: $73.20 × 1.46 = $106.87.

[9] $90.85 (hourly wage rate of $62.23 × 1.46) * 1.5 hours = $136.28.

[10] $106.87 (hourly wage rate of $73.20 × 1.46) * 1.5 hours = $160.30.

[11] FEMA bases SES salary estimates on OPM's Senior Executive Service Report. The latest report available is for 2016. Across all agencies the median SES pay is $173,882 (see table 13 at the following link) *https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/ses-summary-2016.pdf.* Accessed June 4, 2018.

[12] $173,882 annual wage/2087 annual hours = $83.32 hourly wage rate × 1.46 benefits multiplier = $121.65 fully loaded hourly wage × 1.04115 inflation adjustment = $126.66 fully loaded $2018 hourly wage. We calculated the inflation adjustment by subtracting the July 2016 CPI–U (240.6) from the April 2018 CPI–U (250.5). We divided the result (9.9) by the July 2016 CPI–U (240.0). Calculation: (250.5 − 240.6)/240.6 = 0.04115. BLS CPI–U data is available at *http://data.bls.gov/cgi-bin/surveymost?bls.* Select CPI for All Urban Consumers (CPI–U) 1982–84 = 100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button. Accessed June 8, 2018.

[13] $126.96 * 5 minutes = $10.56.

[14] $136.28 + $160.30 + $10.56 = $307.14.

(b) TABLE 2—PROJECTED COST SAVINGS OF CODIFICATION OF DWELLING POLICY UNDERINSURANCE EXCEPTION—Continued

	Avg frequency of waivers	Total cost per waiver	Annual cost savings	NPV at 3% (m)	NPV at 7% (m)
Year 8	0.67	307	205	166	128
Year 9	0.67	307	205	162	119
Year 10	0.67	307	205	157	111
Total	6.67	3,072	2,048	$1,799	$1,539

Applying this cost to the estimated frequency of occurrence of 0.67 waivers per year and extending the avoided costs over a 10-year period will project a total undiscounted cost savings of $2,048. The 10-year total equates to $1,799 and $1,539, when discounted at 3 percent and 7 percent respectively.

3. Alternatives Considered

Given that this rule has no direct compliance costs, no less burdensome alternatives to the final rule are available. In the absence of this final rule, stakeholders will continue to experience the negative repercussions of inconsistences between the statutes, regulations, and agency policy documents.

4. Summary

For the 10-year period analyzed, FEMA does not anticipate any costs resulting from the selected provisions of BW–12 and HFIAA that the rule is implementing. During that same period analyzed, the estimated quantified benefits total $2,048. The present value, discounted at 7 percent, of the estimated quantified benefits is approximately $1,539 and $1,799 discounted at 3 percent. FEMA's ability to administer the NFIP in a more streamlined manner and the public's enhanced understanding of the terms and conditions of the program justify the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. 29 of the 67 WYO companies participating in the NFIP (43 percent) are small entities.[15] However, this rule will not have a significant economic impact on any company because this rule does not impose burdens on any participating WYO company. The rule makes non-substantive improvements to the language and organization of the NFIP regulations through clarifications and codifications. The rule also codifies certain provisions of BW–12 and HFIAA that FEMA has already implemented via the Flood Insurance Manual and other related guidance documents. Accordingly, FEMA certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

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

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any 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 (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of $100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. This rulemaking does not call for a new collection of information under the PRA. There is an existing collection of information, 1660–0006, the National Flood Insurance Program Policy Forms, Public Law 90–448 (1968) (expanded by Pub. L. 93–234 (1973)) included in this rulemaking. BW–12 and HFIAA require modifications to the NFIP. Program changes resulting from BW–12 and HFIAA necessitated revision of the NFIP Policy Forms to assure proper classification of properties for rating purposes and to rate and issue the policies in accordance with the provisions of BW–12 and HFIAA. However, this rule will not impact this collection because the forms have already been updated as needed.

E. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the

[15] See Initial Regulatory Flexibility Analysis in the Notice of Proposed Rulemaking at 84 FR 32983.

identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. *See* id. section 552a(a)(5). An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this rule. DHS/FEMA has determined that this rulemaking does not affect the 1660–0006 OMB Control Number's current compliance with the E-Government Act of 2002 or the Privacy Act of 1974, as amended. As a result, DHS/FEMA has concluded that the 1660–0006 OMB Control Number is covered by the DHS/FEMA/PIA–011—National Flood Insurance Program Information Technology Systems (NFIP ITS) Privacy Impact Assessment (PIA). Additionally, DHS/FEMA has decided that the 1660–0006 OMB Control Number is covered by the DHS/FEMA–003 National Flood Insurance Program Files, 79 FR 28747, May 19, 2014 System of Records Notice (SORN).

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

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal government, or the agency consults with Tribal officials.

Nor, to the extent practicable by law, may an agency promulgate a regulation that has Tribal implications and preempts Tribal law, unless the agency consults with Tribal officials. This rule involves no policies that have Tribal implications under Executive Order 13175. This rule makes limited changes to the comprehensive, longstanding National Flood Insurance Program regulations applicable to communities, including participating Indian Tribal governments and Tribes, which voluntarily choose to participate in the program. Because these program updates are limited, they will not have substantial direct effects on Indian Tribes, on the relationship between the national government and Indian Tribes, or the distribution of power between the Federal Government and Indian Tribes.

G. Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that 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.'' For the purposes of this Executive Order, the term States also includes local governments or other subdivisions established by the States. Under this Executive Order, Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States. Further, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal Government provides funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation, or the agency consults with State and local officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has federalism implications and preempts State law, unless the agency consults with State and local officials.

FEMA has reviewed this rule under Executive Order 13132 and has determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. This rule makes limited changes to the comprehensive, longstanding National Flood Insurance Program regulations governing the communities' participation in the program. Because these program updates are limited, they will not have substantial direct effects on the States or participating communities, on the relationship between the national government and the States or participating communities, or the distribution of power among the various levels of government.

H. Executive Order 11988, ''Floodplain Management''

Pursuant to Executive Order 11988, each agency must provide leadership and take action to reduce the risk of flood loss and to minimize the impact of floods on human safety, health and welfare. In addition, each agency must restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a

regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The purpose of this rule is to implement insurance-related administrative changes to clarify coverage, rates, and terms and conditions. FEMA included the Federal Insurance actions covered in the purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA determined that these actions will not have a significant effect on land use, floodplain management, or wetlands.

I. Executive Order 11990, ''Protection of Wetlands''

Executive Order 11990, ''Protection of Wetlands,'' 42 FR 26961 (May 24, 1977) sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities. These responsibilities include (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding, the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. These include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources. They also include other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The purpose of this rule is to implement insurance-related administrative changes to clarify coverage, rates, and terms and conditions. FEMA included the Federal Insurance actions covered in the purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA has determined that these actions will not have a significant effect on land use, floodplain management, or wetlands.

J. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts of their proposed actions on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 *et seq.,* require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that have been demonstrated to not typically trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. FEMA included the Federal Insurance actions covered in the purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA has determined that these actions will not have a significant effect on the human environment.

K. Executive Order 12898 Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 59 FR 7629 (Feb. 16, 1994), as amended by Executive Order 12948, 60 FR 6381, (Feb. 1, 1995), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA included the Federal Insurance actions covered in the purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA has determined that these actions will not have a disproportionately high or adverse effect on human health or the environment, nor will it exclude persons from participation in FEMA programs, deny persons the benefits of FEMA programs, or subject persons to discrimination because of race, color, or national origin.

L. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a

copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has sent this final rule to the Congress and to GAO pursuant to the CRA. The rule is not a ''major rule'' within the meaning of the CRA. It will not have an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

List of Subjects

44 CFR Parts 59 and 61

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 62

Claims, Flood insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FEMA amends 44 CFR Chapter I as follows:

PART 59—GENERAL PROVISIONS

■ 1. Revise authority citation for part 59 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* 6 U.S.C. 101 *et seq.*

■ 2. In § 59.1, remove definition for ''Emergency Flood Insurance Program or emergency program,'' and add definitions, in alphabetical order, for ''Condominium Building,'' ''Mixed Use Building,'' ''Multifamily Building,'' ''Non-Residential Building,'' ''Non-Residential Property,'' ''Other Residential Building,'' ''Other Residential Property,'' ''Residential Building,'' ''Residential Property,'' ''Single-Family Dwelling,'' and ''Two-to-Four Family Building'' and revise the definitions for ''Act,'' ''Deductible,'' and ''Emergency Program'' to read as follows:

§ 59.1 Definitions.

* * * * *

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001- *et seq.*

* * * * *

Condominium Building means a type of building in the form of ownership in which each unit owner has an undivided interest in common elements of the building.

* * * * *

Deductible means the amount of an insured loss that is the responsibility of the insured and that is incurred before any amounts are paid for the insured loss under the insurance policy.

* * * * *

Emergency Program means the initial phase of a community's participation in the National Flood Insurance Program, as prescribed by Section 1306 of the Act.

* * * * *

Mixed Use Building means a building that has both residential and non-residential uses.

* * * * *

Multifamily Building means an other residential building that is not a condominium building.

* * * * *

Non-Residential Building means a commercial or mixed-use building where the primary use is commercial or non-habitational.

Non-Residential Property means either a non-residential building, the contents within a non-residential building, or both.

* * * * *

Other Residential Building means a residential building that is designed for use as a residential space for 5 or more families or a mixed use building in which the total floor area devoted to non-residential uses is less than 25 percent of the total floor area within the building.

Other Residential Property means either an other residential building, the contents within an other residential building, or both.

* * * * *

Residential Building means a non-commercial building designed for habitation by one or more families or a mixed use building that qualifies as a single-family, two-to-four family, or other residential building.

Residential Property means either a residential building or the contents within a residential building, or both.

* * * * *

Single-Family Dwelling means either (a) a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, or (b) a single-family residential unit within a two-to-four family building, other-residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

* * * * *

Two-to-Four Family Building means a residential building, including an apartment building, containing two-to-four residential spaces and in which commercial uses are limited to less than 25 percent of the building's total floor area.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

■ 3. Revise the authority citation for part 61 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* 6 U.S.C. 101 *et seq.*

■ 4. Revise § 61.1 to read as follows:

§ 61.1 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds.

■ 5. Revise § 61.3 to read as follows:

§ 61.3 Coverage and benefits provided under the Standard Flood Insurance Policy.

(a) Insurance coverage under the Program is available for buildings and their contents. Coverage for each may be purchased separately.

(b) In addition to building and contents coverage, the Dwelling Form of the Standard Flood Insurance Policy (SFIP) covers debris removal, loss avoidance measures, and condominium loss assessments. The General Property Form of the SFIP covers debris removal, loss avoidance measures, and pollution damage. The Residential Condominium Building Association Policy Form of the SFIP covers debris removal and loss avoidance measures.

(c) With the purchase of building coverage, the Standard Flood Insurance Policy covers the costs associated with bringing the building into compliance with local floodplain ordinances.

■ 6. Revise § 61.4 to read as follows:

§ 61.4 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies will be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any floodplain, mudslide (*i.e.,* mudflow), or flood-related erosion area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, applicants must pay the

full policy premium at the time of application.

■ 7. Revise § 61.5 to read as follows:

§ 61.5 Deductibles.

FEMA must provide policyholders with deductible options in various amounts, up to and including $10,000, subject to the following minimum deductible amounts:

(a) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with building coverage amounts less than or equal to $100,000 is $1,500.

(b) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with building coverage amounts greater than $100,000 is $2,000.

(c) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts equal to or less than $100,000 is $1,000.

(d) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts greater than $100,000 is $1,250.

■ 8. Revise § 61.6 to read as follows:

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

TABLE 1 TO PARAGRAPH (a)—MAXIMUM AMOUNTS OF COVERAGE AVAILABLE [1]

Occupancy	Emergency Program	Regular Program
	Amount	Amount
Bulding Coverage		
Single-Family Dwelling	* $35,000	$250,000.
Two-to-Four Family Building	* 35,000	$250,000.
Other Residential Building (including Multifamily Building)	** 100,000	$500,000.
Residential Condominium Building	N/A	$250,000 times the number of units in the building.
Non-Residential Building	** 100,000	$500,000.
Contents Coverage [2]		
Residential Property [3]	10,000	$100,000.
Non-Residential Property	100,000	$500,000.

[1] This Table provides the maximum coverage amounts available under the Emergency Program and the Regular Program, and the columns cannot be aggregated to exceed the limits in the Regular Program, which are established by statute. The aggregate limits for building coverage are the maximum coverage amounts allowed by statute for each building included in the relevant Occupancy Category.

[2] The policy limits for contents coverage are not per building. Although a single insured may not have more than one policy covering contents in a building, several insureds may have separate policies of up to the policy limits.

[3] The Residential Property occupancy category includes the Single-Family Dwelling, Two-to-Four Family Building, Other Residential Building, and Condominium Building occupancies categories.

* In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is $50,000.

** In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is $150,000.

(b) Coverage and benefits payable under the SFIP pursuant to § 61.3(b) and (c) are included in, not in addition to, the coverage limits provided by the Act or stated in paragraph (a) of this section.

■ 9. Add § 61.10 to read as follows:

§ 61.10 Requirements for issuance or renewal of flood insurance coverage.

FEMA will not issue or renew flood insurance unless FEMA receives:

(a) The full amount due (including applicable premiums, surcharges, and fees); and

(b) A complete application, including the information necessary to establish a premium rate for the policy, or submission of corrected or additional information necessary to calculate the premium for the renewal of the policy.

■ 10. Amend § 61.11 by revising paragraphs (c) through (g) to read as follows:

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New business applications and endorsements.

* * * * *

(c) Where the following conditions are met, the effective date and time of any initial purchase of flood insurance coverage for any privately-owned property will be 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium:

(1) The Administrator has determined that the property is affected by flooding on Federal land that is a result of, or is exacerbated by, post-wildfire conditions, after consultation with an authorized employee of the Federal agency that has jurisdiction of the land on which the wildfire that caused the post-wildfire conditions occurred; and

(2) The flood insurance coverage was purchased not later than 60 calendar days after the fire containment date, as determined by the appropriate Federal employee, relating to the wildfire that caused the post-wildfire conditions described in clause (1).

(d) Except as provided by paragraphs (a), (b), and (c) of this section, the effective date and time of any new policy, added coverage, or increase in the amount of coverage will be 12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 31.

(e) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy, subject to any applicable waiting periods. The additional premium for any new coverage or increase in the amount of coverage will be calculated pro rata in accordance with the rates currently in force.

(f) With respect to any submission of an application in connection with new business, the payment by an insured to an agent or the issuance of premium

payment by the agent does not constitute payment to the NFIP. Therefore, it is important that an application for flood insurance, as well as the full amount due, be mailed to the NFIP promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the full amount due are received at the office of the NFIP within ten (10) calendar days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases where the application and premium payment are mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of application even though the application and full amount due are received at the office of the NFIP after ten (10) calendar days following the date of application. Thus, if the application and premium payment are received after ten (10) calendar days from the date of the application or are not mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of receipt at the office of the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term *endorsement* for the term *application* in this paragraph (f).

(g) The rules set forth in paragraphs (a) through (f) of this section apply to Write Your Own (WYO) companies, except that agents must mail the premium payments and accompanying applications and endorsements to the WYO company and the WYO company must receive the applications and endorsements, rather than the NFIP.

■ 11. Amend § 61.13 by revising paragraphs (e) and (f) and adding paragraphs (g) and (h) to read as follows:

§ 61.13 Standard Flood Insurance Policy.

* * * * *

(e) *Authorized only under terms and conditions established by the Act and Regulation.* The Standard Flood Insurance Policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Federal Insurance Administrator's interpretations, and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage that are not consistent with Federal statute, the program's regulations, the Federal Insurance Administrator's interpretations, and the express terms of the policy itself, are void.

(f) *Agent acts only for policyholder.* The duly licensed property or casualty agent acts for the policyholder and does not act as agent for the Federal Government, the Federal Emergency Management Agency, the Write Your Own (WYO) program participating insurance company authorized by part 62 of this chapter, or the NFIP servicing agent.

(g) *Oral and written binders.* No oral binder or contract will be effective. No written binder will be effective unless issued with express authorization of the Federal Insurance Administrator.

(h) The Standard Flood Insurance Policy and endorsements may be issued by private sector Write Your Own (WYO) property insurance companies, based upon flood insurance applications and renewal forms, all of which instruments of flood insurance may bear the name, as Insurer, of the issuing WYO company. In the case of any Standard Flood Insurance Policy, and its related forms, issued by a WYO company, wherever the names ''Federal Emergency Management Agency'' and ''Federal Insurance and Mitigation Administration'' appear, a WYO company must substitute its own name therefore. Standard Flood Insurance Policies issued by WYO companies may be executed by the issuing WYO company as Insurer, in the place and stead of the Federal Insurance Administrator, but the risk of loss is borne by the National Flood Insurance Fund, not the WYO company.

■ 12. Amend § 61.17 by revising paragraph (g) introductory text and (g)(2) and (3) to read as follows:

§ 61.17 Group Flood Insurance Policy.

* * * * *

(g) The GFIP is the Standard Flood Insurance Policy Dwelling Form (a copy of which is included in Appendix A(1) of this part), except that:

* * * * *

(2) VIII. POLICY NULLIFICATION, CANCELLATION, AND NON-RENEWAL, C. Cancellation of the Policy by You, does not apply to the GFIP.

(3) VII. GENERAL CONDITIONS, E. Policy Renewal, does not apply to the GFIP.

* * * * *

■ 13. Revise Appendix A(1) to part 61 to read as follows:

Appendix A(1) to Part 61

Federal Emergency Management Agency, Federal Insurance and Mitigation Administration

Standard Flood Insurance Policy

Dwelling Form

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. This policy insures the following types of property only:

1. A one to four family residential building, not under a condominium form of ownership;

2. A single-family dwelling unit in a condominium building; and

3. Personal property in a building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if separate policies were issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than $250,000 may be paid in combined benefits for a single unit under the Dwelling Form policy and the RCBAP. We will only pay for damage once. Items of damage paid for under an RCBAP cannot also be claimed under the Dwelling Form policy.

II. Definitions

A. In this policy, ''you'' and ''your'' refer to the named insured(s) shown on the Declarations Page of this policy and the spouse of the named insured, if a resident of the same household. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the

order of precedence. ''We,'' ''us,'' and ''our'' refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood,* as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation or runoff of surface waters from any source;

c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure: Built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building.* A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page.* A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible.* The amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location.* The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Dwelling.* A building designed for use as a residence for no more than four families or a single-family unit in a condominium building.

16. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

17. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

18. *Federal Policy Fee.* A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

19. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the dwelling or apartment in which you reside.

20. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

21. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

22. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one dwelling, which you specifically described in the application, may be insured under this policy.

23. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. ''Waste'' includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

24. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

25. *Principal Residence.* The dwelling in which you or your spouse have lived for at least 80 percent of:

a. The 365 days immediately preceding the time of loss; or

b. The period of ownership of you or your spouse, if either you or your spouse owned the dwelling for less than 365 days immediately preceding the time of loss.

26. *Probation Surcharge.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

27. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

28. *Special Flood Hazard Area (SFHA).* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

29. *Unit.* A single-family residential space you own in a condominium building.

30. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Insured

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The dwelling at the described location, or for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.

2. Additions and extensions attached to and in contact with the dwelling by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the dwelling and cannot be separately insured.

3. A detached garage at the described location. Coverage is limited to no more than 10 percent of the limit of liability on the dwelling. Use of this insurance is at your option but reduces the building limit of

liability. We do not cover any detached garage used or held for use for residential (*i.e.,* dwelling), business, or farming purposes.

4. Materials and supplies to be used for construction, alteration, or repair of the dwelling or a detached garage while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

5. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (*see* II.B.6.a) then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

6. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

7. The following items of property which are insured under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Built-in dishwashers;

d. Built-in microwave ovens;

e. Carpet permanently installed over unfinished flooring;

f. Central air conditioners;

g. Elevator equipment;

h. Fire sprinkler systems;

i. Walk-in freezers;

j. Furnaces and radiators;

k. Garbage disposal units;

l. Hot water heaters, including solar water heaters;

m. Light fixtures;

n. Outdoor antennas and aerials fastened to buildings;

o. Permanently installed cupboards, bookcases, cabinets, paneling, and wallpaper;

p. Plumbing fixtures;

q. Pumps and machinery for operating pumps;

r. Ranges, cooking stoves, and ovens;

s. Refrigerators; and

t. Wall mirrors, permanently installed.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure against direct physical loss by or from flood to personal property inside a building at the described location, if:

a. The property is owned by you or your household family members; and

b. At your option, the property is owned by guests or servants.

2. Personal property is also insured for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.

3. Personal property in a building that is not fully enclosed must be secured to prevent flotation out of the building. If the personal property does float out during a flood, it will be conclusively presumed that it was not reasonably secured. In that case, there is no coverage for such property.

4. Coverage for personal property includes the following property, subject to B.1 above, which is insured under Coverage B only:

a. Air conditioning units, portable or window type;

b. Carpets, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. ''Cook-out'' grills;

f. Food freezers, other than walk-in, and food in any freezer; and

g. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

6. If you are a tenant and have insured personal property under Coverage B in this policy, we will cover such property, including your cooking stove or range and refrigerator. The policy will also cover improvements made or acquired solely at your expense in the dwelling or apartment in which you reside, but for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

7. If you are the owner of a unit and have insured personal property under Coverage B in this policy, we will also cover your interior walls, floor, and ceiling (not otherwise insured under a flood insurance policy purchased by your condominium association) for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

8. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur that represents its principal value; or

e. Personal property used in any business.

9. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;
(ii) Fill for temporary levees;
(iii) Pumps; and
(iv) Plastic sheeting and lumber used in connection with these items.
(b) The value of work, at the Federal minimum wage, that you or a member of your household perform.
(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:
(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or
(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.
This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.
(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.
(3) Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.
(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Condominium Loss Assessments

a. Subject to III.C.3.b below, if this policy insures a condominium unit, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against you by the condominium association in accordance with the condominium association's articles of association, declarations and your deed. The assessment must be made because of direct physical loss by or from flood during the policy term, to the unit or to the common elements of the NFIP insured condominium building in which this unit is located.
b. We will not pay any loss assessment:
(1) Charged against you and the condominium association by any governmental body;
(2) That results from a deductible under the insurance purchased by the condominium association insuring common elements;
(3) That results from a loss to personal property, including contents of a condominium building;
(4) In which the total payment combined under all policies exceeds the maximum amount of coverage available under the Act for a single unit in a condominium building where the unit is insured under both a Dwelling Policy and a RCBAP; or
(5) On any item of damage that has already been paid under a RCBAP where a single unit in a condominium building is insured by both a Dwelling Policy and a RCBAP.
c. Condominium Loss Assessment coverage does not increase the Coverage A Limit of Liability and is subject to the maximum coverage limits available for a single-family dwelling under the Act, payable between all policies issued and covering the unit, under the Act.

D. Coverage D—Increased Cost of Compliance

1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:
a. Non-residential buildings.
b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

2. Limit of Liability

We will pay you up to $30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:
(1) Be a ''repetitive loss building.'' A repetitive loss building is one that meets the following conditions:
(a) The building is insured by a contract of flood insurance issued under the NFIP.
(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.
(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.
(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or
(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.
b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:
(1) 3.a.1 above.
(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.
(3) Elevation or floodproofing above the base flood elevation to meet State or local ''free-board'' requirements, *i.e.,* that a building must be elevated above the base flood elevation.
c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are eligible for Coverage D.
d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Coverage D Exclusion 5.g below.
e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition

activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.,* plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80 percent insurance-to-value requirement for replacement cost coverage as set forth in Art. VII.R (''Loss Settlement'') of this policy.

b. All other conditions and provisions of this policy apply.

IV. Property Not Insured

We do not insure any of the following:

1. Personal property not inside a building.

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.B.6.c) whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building or the building in which the insured unit is located.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these acts.

16. Personal property you own in common with other unit owners comprising the membership of a condominium association.

V. Exclusions

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the full amount due. We will determine the date of application using 44 CFR 61.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (*see* II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by any of the following:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the dwelling; or

b. That is within your control, including but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspire to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures;

2. III.C.3. Condominium Loss Assessments; or

3. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance issued under the Act in the name of your condominium association covering the same property insured by this policy, then this policy will be in excess over the other insurance, except where a condominium loss assessment to the unit owner results from a loss sustained by the condominium association that was not reimbursed under a flood insurance policy written in the name of the association under the Act because the building was not, at the time of loss, insured for an amount equal to the lesser of:

a. 80 percent or more of its full replacement cost; or

b. The maximum amount of insurance permitted under the Act.

The combined coverage payment under the other NFIP insurance and this policy cannot exceed the maximum coverage available under the Act, of $250,000 per single unit.

C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

a. When this policy insures only personal property; or

b. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VII.D.1, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pays the additional premium amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term, and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is

provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.,* we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, ''owner'') and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in G.3 above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

a. Quantities and costs;

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed;

d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and

e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VII.M.

2. If we reject your proof of loss in whole or in part you may:

a. Accept our denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon to us damaged or undamaged property insured under this policy.

L. Salvage

We may permit you to keep damaged property insured under this policy after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is

located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word ''mortgagee'' includes trustee.

2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

4. All of the terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Q. Continuous Lake Flooding

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A ''closed basin lake'' is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's ''Policy Guidance for Closed Basin Lakes'' to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's ''Policy Guidance for Closed Basin Lakes.''

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title,

any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any in-creased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above; and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in paragraphs a–c below.

a. Replacement Cost Loss Settlement, described in R.2 below, applies to a single-family dwelling provided:

(1) It is your principal residence; and

(2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80 percent or more of its full replacement cost immediately before the loss, or is the maximum amount of insurance available under the NFIP.

b. Special Loss Settlement, described in R.3 below, applies to a single-family dwelling that is a manufactured or mobile home or a travel trailer.

c. Actual Cash Value Loss Settlement applies to a single-family dwelling not subject to replacement cost or special loss settlement, and to the property listed in R.4 below.

2. Replacement Cost Loss Settlement

The following loss settlement conditions apply to a single-family dwelling described in R.1.a above:

a. We will pay to repair or replace the damaged dwelling after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The building limit of liability shown on your Declarations Page;

(2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

b. If the dwelling is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the dwelling had been rebuilt at its former location.

c. When the full cost of repair or replacement is more than $1,000, or more than 5 percent of the whole amount of insurance that applies to the dwelling, we will not be liable for any loss under R.2.a above or R.4.a.2 below unless and until actual repair or replacement is completed.

d. You may disregard the replacement cost conditions above and make claim under this policy for loss to dwellings on an actual cash value basis. You may then make claim for any additional liability according to R.2.a, b, and c above, provided you notify us of your intent to do so within 180 days after the date of loss.

e. If the community in which your dwelling is located has been converted from the Emergency Program to the Regular Program during the current policy term, then we will consider the maximum amount of available NFIP insurance to be the amount that was available at the beginning of the current policy term.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a single-family dwelling that:

(1) is a manufactured or mobile home or a travel trailer, as defined in II.C.6.b and c;

(2) is at least 16 feet wide when fully assembled and has an area of at least 600 square feet within its perimeter walls when fully assembled; and

(3) is your principal residence as specified in R.1.a.1 above.

b. If such a dwelling is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damage condition, we will, at our discretion pay the least of the following amounts:

(1) The lesser of the replacement cost of the dwelling or 1.5 times the actual cash value; or

(2) The building limit of liability shown on your Declarations Page.

c. If such a dwelling is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damage condition, we will settle the loss according to the Replacement Cost conditions in R.2 above.

4. Actual Cash Value Loss Settlement

The types of property noted below are subject to actual cash value (or in the case of R.4.a.2., below, proportional) loss settlement.

a. A dwelling, at the time of loss, when the amount of insurance on the dwelling is both less than 80 percent of its full replacement cost immediately before the loss and less than the maximum amount of insurance available under the NFIP. In that case, we will pay the greater of the following amounts, but not more than the amount of insurance that applies to that dwelling:

(1) The actual cash value, as defined in II.C.2, of the damaged part of the dwelling; or

(2) A proportion of the cost to repair or replace the damaged part of the dwelling, without deduction for physical depreciation and after application of the deductible.

This proportion is determined as follows: If 80 percent of the full replacement cost of the dwelling is less than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the amount of insurance that represents 80 percent of its full replacement cost. But if 80 percent of the full replacement cost of the dwelling is greater than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the maximum amount of insurance available under the NFIP.

b. A two-, three-, or four-family dwelling.

c. A unit that is not used exclusively for single-family dwelling purposes.

d. Detached garages.

e. Personal property.

f. Appliances, carpets, and carpet pads.

g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.

h. Any property insured under this policy that is abandoned after a loss and remains as debris anywhere on the described location.

i. A dwelling that is not your principal residence.

5. Amount of Insurance Required

To determine the amount of insurance required for a dwelling immediately before the loss, we do not include the value of:

a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the dwelling;

b. Those supports listed in R.5.a above, that are below the surface of the ground inside the foundation walls if there is no basement; and

c. Excavations and underground flues, pipes, wiring, and drains.

Note: The Coverage D—Increased Cost of Compliance limit of liability is not included in the determination of the amount of insurance required.

VIII. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

a. Concealed or misrepresented any material fact or circumstance;

b. Engaged in fraudulent conduct; or

c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies

a. Except as allowed under Article I.G, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.4.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

IX. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

■ 14. Revise Appendix A(2) to Part 61 to read as follows:

Appendix A(2) to Part 61

Federal Emergency Management Agency, Federal Insurance and Mitigation Administration

Standard Flood Insurance Policy

General Property Form

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. Coverage Under This Policy

1. Except as provided in I.A.2, this policy provides coverage for multifamily buildings (residential buildings designed for use by 5 or more families that are not condominium buildings), non-residential buildings, and their contents.

2. There is no coverage for a residential condominium building in a regular program community, except for personal property coverage for a unit in a condominium building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

II. Definitions

A. In this policy, ''you'' and ''your'' refer to the named insured(s) shown on the Declarations Page of this policy. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the order of precedence. ''We,'' ''us,'' and ''our'' refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood,* as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation or runoff of surface waters from any source;

c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the

eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights where membership in the entity is a required condition of unit ownership.

10. *Condominium Building.* A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page.* A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible.* The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location.* The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee.* A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the dwelling or apartment in which you reside.

19. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. ''Waste'' includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building.* A condominium building, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA).* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

28. *Stock* means merchandise held in storage or for sale, raw materials, and in-process or finished goods, including supplies used in their packing or shipping. Stock does not include any property not insured under Section IV. Property Not Insured, except the following:

a. Parts and equipment for self-propelled vehicles;

b. Furnishings and equipment for watercraft;

c. Spas and hot-tubs, including their equipment; and

d. Swimming pool equipment.

29. *Unit.* A single-family residential or non-residential space you own in a condominium building.

30. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Insured

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The building described on the Declarations Page at the described location. If the building is a condominium building and the named insured is the condominium association, Coverage A includes all units within the building and the improvements within the units, provided the units are owned in common by all unit owners.

2. Building property located at another location for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery, and equipment, which are insured under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Walk-in freezers;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials attached to buildings;

l. Permanently installed cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment;

o. Wall mirrors, permanently installed; and

p. In the units within the building, installed:

(1) Built-in dishwashers;
(2) Built-in microwave ovens;
(3) Garbage disposal units;
(4) Hot water heaters, including solar water heaters;
(5) Kitchen cabinets;
(6) Plumbing fixtures;
(7) Radiators;
(8) Ranges;
(9) Refrigerators; and
(10) Stoves.

5. Materials and supplies to be used for construction, alteration, or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (*see* II.B.6.a.) then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;
(2) Cisterns and the water in them;
(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
(4) Electrical junction and circuit breaker boxes;
(5) Electrical outlets and switches;
(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;
(7) Fuel tanks and the fuel in them;
(8) Furnaces and hot water heaters;
(9) Heat pumps;
(10) Nonflammable insulation in a basement;
(11) Pumps and tanks used in solar energy systems;
(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;
(13) Sump pumps;
(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
(15) Well water tanks and pumps;
(16) Required utility connections for any item in this list; and
(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B.2–4 below, against direct physical loss by or from flood to personal property inside the fully enclosed insured building:

a. Owned solely by you, or in the case of a condominium, owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association; or

b. Owned in common by the unit owners of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. When this policy insures personal property, coverage will be either for household personal property or other than household personal property, while within the insured building, but not both.

a. If this policy insures household personal property, it will insure household personal property usual to a living quarters, that:

(1) Belongs to you, or a member of your household, or at your option:
(a) Your domestic worker;
(b) Your guest; or
(2) You may be legally liable for.

b. If this policy insures other than household personal property, it will insure your:

(1) Furniture and fixtures;
(2) Machinery and equipment;
(3) Stock; and
(4) Other personal property owned by you and used in your business, subject to IV, Property Not Insured.

4. Coverage for personal property includes the following property, subject to B.1.a and B.1.b above, which is insured under Coverage B, only:

a. Air conditioning units, portable or window type;

b. Carpets, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. ''Cook-out'' grills;

f. Food freezers, other than walk-in, and food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

6. Special Limits. We will pay no more than $2,500 for any loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards.

b. Rare books or autographed items.

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum.

d. Furs or any article containing fur that represents its principal value.

7. We will pay only for the functional value of antiques.

8. If you are a tenant, you may apply up to 10 percent of the Coverage B limit to improvements:

a. Made a part of the building you occupy; and

b. You acquired, or made at your expense, even though you cannot legally remove.

This coverage does not increase the amount of insurance that applies to insured personal property.

9. If you are a condominium unit owner, you may apply up to 10 percent of the Coverage B limit to cover loss to interior:

a. walls,
b. floors, and
c. ceilings,

that are not insured under a policy issued to the condominium association insuring the condominium building.

This coverage does not increase the amount of insurance that applies to insured personal property.

10. If you are a tenant, personal property must be inside the fully enclosed building.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:
(i) Sandbags, including sand to fill them;
(ii) Fill for temporary levees;
(iii) Pumps; and
(iv) Plastic sheeting and lumber used in connection with these items.
(b) The value of work, at the Federal minimum wage, that you perform.
(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:
(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or
(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.
This coverage does not increase the Coverage A or Coverage B limit of liability.
b. Property Removed to Safety
(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.
(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.
(3) Any property removed, including a moveable home described in II.6, must be placed above ground level or outside of the special flood hazard area.
(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Pollution Damage

We will pay for damage caused by pollutants to insured property if the discharge, seepage, migration, release, or escape of the pollutants is caused by or results from flood. The most we will pay under this coverage is $10,000. This coverage does not increase the Coverage A or Coverage B limits of liability. Any payment under this provision when combined with all other payments for the same loss cannot exceed the replacement cost or actual cash value, as appropriate, of the insured property. This coverage does not include the testing for or monitoring of pollutants unless required by law or ordinance.

D. Coverage D—Increased Cost of Compliance

1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:
a. Non-residential buildings.
b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

2. Limits of Liability

We will pay you up to $30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. However, the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:
(1) Be a ''repetitive loss building.'' A repetitive loss building is one that meets the following conditions:
(a) The building is insured by a contract of flood insurance issued under the NFIP.
(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.
(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.
(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or
(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.
b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:
(1) 3.a.1 above.
(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.
(3) Elevation or floodproofing above the base flood elevation to meet State or local ''free-board'' requirements, *i.e.,* that a building must be elevated above the base flood elevation.
c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.
d. This coverage will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to the exclusion at III.D.5.g.
e. This coverage will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.
b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:
a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.
b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.,* plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

All other conditions and provisions of the policy apply.

IV. Property Not Insured

We do not insure any of the following property:

1. Personal property not inside the fully enclosed building.

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the II.C.6.c, whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads and are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts.

16. Personal property owned by or in the care, custody or control of a unit owner, except for property of the type and under the circumstances set forth under III. Coverage B—Personal Property of this policy.

17. A residential condominium building located in a Regular Program community.

V. Exclusions

A. We only pay for ''direct physical loss by or from flood,'' which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the correct premium. We will determine the date of application using 44 CFR 611.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (*see* II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspires to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures; or

2. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. Where this policy insures a condominium association and there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that insures the same loss as this policy, then this policy will be primary.

C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy can constitute a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy insures only personal property; or

2. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VII.D.1 and VII.D.4, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b is provided.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.,* we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an

expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, ''owner'') and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in G.3 above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

a. Quantities and costs;

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed;

d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and

e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VII.M.

2. If we reject your proof of loss in whole or in part you may:

a. Accept our denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon damaged or undamaged insured property to us.

L. Salvage

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. Appraisal

If you and we fail to agree on the actual cash value of the damaged property so as to determine the amount of loss, either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word ''mortgagee'' includes trustee.

2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Q. Continuous Lake Flood

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A ''closed basin lake'' is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's ''Policy Guidance for Closed Basin Lakes'' to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's ''Policy Guidance for Closed Basin Lakes.''

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above; and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

We will pay the least of the following amounts after application of the deductible:

1. The applicable amount of insurance under this policy;

2. The actual cash value; or

3. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

VIII. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

a. Concealed or misrepresented any material fact or circumstance;

b. Engaged in fraudulent conduct; or

c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. If the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.4.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

IX. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

■ 15. Revise Appendix A(3) to Part 61 to read as follows:

Appendix A(3) to Part 61

Federal Emergency Management Agency, Federal Insurance and Mitigation Administration

Standard Flood Insurance Policy

Residential Condominium Building Association Policy

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. This policy insures only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in Section I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than $250,000 may be paid in combined benefits for a single unit under the Dwelling Form and the RCBAP. We will only pay for damage once. Items of damage paid for under a RCBAP cannot also be claimed under the Dwelling Form policy.

II. Definitions

A. In this policy, ''you'' and ''your'' refer to the named insured(s) shown on the Declarations Page of this policy. The named insured must also include the building owner if building coverage is purchased. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to have an existing interest

at the time of loss, in the order of precedence. ''We,'' ''us,'' and ''our'' refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood,* as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation or runoff of surface waters from any source;

c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building.* A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page.* A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible.* The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location.* The location where the insured building or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee.* A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

19. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. ''Waste'' includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building.* A building, condominium, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA).* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

28. *Unit.* A single-family residential space in a residential condominium building.

29. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Insured

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The residential condominium building described on the Declarations Page at the described location, including all units within the building and the improvements within the units.

2. We also insure such building property for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery and equipment, including its units, which are insured under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;
e. Elevator equipment;
f. Fire extinguishing apparatus;
g. Fire sprinkler systems;
h. Walk-in freezers;
i. Furnaces;
j. Light fixtures;
k. Outdoor antennas and aerials fastened to buildings;
l. Permanently installed cupboards, bookcases, paneling, and wallpaper;
m. Pumps and machinery for operating pumps;
n. Ventilating equipment;
o. Wall mirrors, permanently installed; and
p. In the units within the building, installed:
(1) Built-in dishwashers;
(2) Built-in microwave ovens;
(3) Garbage disposal units;
(4) Hot water heaters, including solar water heaters;
(5) Kitchen cabinets;
(6) Plumbing fixtures;
(7) Radiators;
(8) Ranges;
(9) Refrigerators; and
(10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (*see* II.B.6.a.) then coverage applies:
(1) Only while such work is in progress; or
(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:
(1) Below the base flood elevation in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO; or
(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:
(1) Central air conditioners;
(2) Cisterns and the water in them;
(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
(4) Electrical junction and circuit breaker boxes;
(5) Electrical outlets and switches;
(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;
(7) Fuel tanks and the fuel in them;
(8) Furnaces and hot water heaters;
(9) Heat pumps;
(10) Nonflammable insulation in a basement;
(11) Pumps and tanks used in solar energy systems;
(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;
(13) Sump pumps;
(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
(15) Well water tanks and pumps;
(16) Required utility connections for any item in this list; and
(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B.2 and B.3 below, against direct physical loss by or from flood to personal property that is inside the fully enclosed insured building and is:

a. Owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest; or

b. Owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. Coverage for personal property includes the following property, subject to B.1. above, which is insured under Coverage B only:

a. Air conditioning units, portable or window type;

b. Carpets, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. ''Cook-out'' grills;

f. Food freezers, other than walk-in, and food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

4. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

5. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards.

b. Rare books or autographed items.

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum.

d. Furs or any article containing fur which represents its principal value.

6. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:
(a) Your reasonable expenses to buy:
(i) Sandbags, including sand to fill them;
(ii) Fill for temporary levees;
(iii) Pumps; and
(iv) Plastic sheeting and lumber used in connection with these items.
(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:
(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or
(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there.

(3) The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements. Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

D. Coverage D—Increased Cost of Compliance

1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

a. Non-residential buildings.

b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. Limit of Liability

We will pay you up to $30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But, the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:

(1) Be a ''repetitive loss building.'' A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local ''freeboard'' requirements, *i.e.,* that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g below relating to improvements.

e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.,* plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the coinsurance requirement for replacement cost coverage under Art. VIII.R. (''Loss Settlement'').

b. All other conditions and provisions of this policy apply.

IV. Property Not Insured

We do not insure any of the following:

1. Personal property not inside a building.

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.C.6.c) whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvements Act of 1990 and amendments to these Acts.

16. Personal property used in connection with any incidental commercial occupancy or use of the building.

V. Exclusions

A. We only pay for ''direct physical loss by or from flood,'' which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the correct premium. We will determine the date of application using 44 CFR 611.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (*see* II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the insured property; unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or your agents do or conspire to do to cause loss by flood deliberately; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or

2. III.D. Increased Cost of Compliance.

VII. Coinsurance

A. This Coinsurance Section applies only to coverage on the building.

B. We will impose a penalty on loss payment unless the amount of insurance applicable to the damaged building is:

1. At least 80 percent of its replacement cost; or

2. The maximum amount of insurance available for that building under the NFIP, whichever is less.

C. If the actual amount of insurance on the building is less than the required amount in accordance with the terms of VII.B above, then loss payment is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.

2. Multiply the amount of loss, before application of the deductible, by the figure determined in C.1 above.

3. Subtract the deductible from the figure determined in C.2 above.

We will pay the amount determined in C.3 above, or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

Examples

Example #1 (Inadequate Insurance)
Replacement value of the building—$250,000
Required amount of insurance—$200,000
(80 percent of replacement value of $250,000)
Actual amount of insurance carried—
$180,000
Amount of the loss—$150,000
Deductible—$500
Step 1: 180,000/200,000 = .90
(90 percent of what should be carried.)
Step 2: 150,000 × .90 = 135,000
Step 3: 135,000 − 500 = 134,500

We will pay no more than $134,500. The remaining $15,500 is not covered due to the coinsurance penalty ($15,000) and application of the deductible ($500).

Example #2 (Adequate Insurance)
Replacement value of the building—$500,000
Required amount of insurance—$400,000
(80 percent of replacement value of $500,000)
Actual amount of insurance carried—
$400,000
Amount of the loss—$200,000
Deductible—$500

In this example there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. We will pay no more than $199,500 ($200,000 amount of loss minus the $500 deductible).

D. In calculating the full replacement cost of a building:

1. The replacement cost value of any insured building property will be included;

2. The replacement cost value of any building property not insured under this policy will not be included; and

3. Only the replacement cost value of improvements installed by the condominium association will be included.

VIII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VIII.B.1.b or c immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VIII.B.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy insures only personal property; or

2. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VIII.D.1 and VIII.D.4, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VIII.E.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VIII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VIII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amount requested in VIII.D.3.a or VIII.D.4.a, or the additional information requested in VIII.D.3.b or VIII.D.4.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VIII.D.3.b or VIII.D.4.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did

not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of IX.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.,* we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

c. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire that we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, ''owner'') and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in G.3 above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:

a. Quantities and costs;

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed;

d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and

e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VIII.M.

2. If we reject your proof of loss in whole or in part you may:

a. Accept our denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon damaged or undamaged insured property to us.

L. Salvage

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word ''mortgagee'' includes trustee.

2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Q. Continuous Lake Flood

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or this paragraph Q.2 (A ''closed basin lake'' is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in FEMA's ''Policy Guidance for Closed Basin Lakes,'' to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's ''Policy Guidance for Closed Basin Lakes.''

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q2.e and Q.2.f above; and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a–c below.

a. Replacement Cost Loss Settlement, described in R.2 below applies to buildings other than manufactured homes or travel trailers.

b. Special Loss Settlement, described in R.3 below applies to a residential condominium building that is a travel trailer or a manufactured home.

c. Actual Cash Value Loss Settlement applies to all other property insured under this policy, as outlined in R.4. below.

2. Replacement Cost Loss Settlement

a. We will pay to repair or replace a damaged or destroyed building, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The amount of insurance in this policy that applies to the building;

(2) The replacement cost of that part of the building damaged, with materials of like kind and quality, and for like occupancy and use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the building for like occupancy and use.

b. We will not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged building or parts thereof, is completed.

c. If a building is rebuilt at a location other than the described location, we will pay no more than it would have cost to repair or rebuild at the described location, subject to all other terms of Replacement Cost Loss Settlement.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a residential condominium building that is:

(1) A manufactured home or travel trailer, as defined in II.C.6.b and c; and

(2) at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled.

b. If such a building is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion, pay the least of the following amounts:

(1) The lesser of the replacement cost of the manufactured home or travel trailer or 1.5 times the actual cash value; or

(2) The building limit of liability shown on your Declarations Page.

c. If such a manufactured home or travel trailer is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost Loss Settlement conditions in R.2 above.

4. Actual Cash Value Loss Settlement

a. The types of property noted below are subject to actual cash value loss settlement:

(1) Personal property;

(2) Insured property abandoned after a loss and that remains as debris at the described location;

(3) Outside antennas and aerials, awnings, and other outdoor equipment;

(4) Carpeting and pads;

(5) Appliances; and

(6) A manufactured home or mobile home or a travel trailer as defined in II.C.6.b or c that does not meet the conditions for special loss settlement in R.3 above.

b. We will pay the least of the following amounts:

(1) The applicable amount of insurance under this policy;

(2) The actual cash value, as defined in II.C.2; or

(3) The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

IX. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

a. Concealed or misrepresented any material fact or circumstance;

b. Engaged in fraudulent conduct; or

c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1.above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on This Policy. This policy will be cancelled, pursuant to VIII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Except as allowed under Article I.F, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.3.a, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property.

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;
2. Your building is otherwise ineligible for flood insurance under the Act;
3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

X. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

XI. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

■ 16. Revise the authority citation for Part 62 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* 6 U.S.C. 101 *et seq.*

■ 17. Revise § 62.3 to read as follows:

§ 62.3 Servicing agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Federal Insurance Administrator may enter into an agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Federal Insurance Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Federal Insurance Administrator.

(b) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

■ 18. Revise § 62.5 to read as follows:

§ 62.5 Nullifications, cancellations, and premium refunds.

(a) *Nullification*—(1) *Property ineligible at time of application.* FEMA will void a policy for a property that was not eligible for coverage at the time of the initial application from the commencement of the policy. FEMA must pay the policyholder a refund of all premium, fees, and surcharges paid from the date of commencement of the policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was ineligible for coverage at the time of the initial application. If FEMA paid a claim for an ineligible property, the policyholder must return the claim payment to FEMA, or offset the payment from the premiums to be refunded, before FEMA will process the refund.

(2) *Property later becomes ineligible.* FEMA may not renew a policy for a property that was eligible for coverage at the time of the initial application, but later became ineligible for coverage. In such instances, FEMA must nullify the policy from the first renewal date after the property became ineligible. FEMA must refund all premium, fees, and surcharges paid from the first renewal date after the property became ineligible, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was eligible for coverage at the time of the initial application, but later became ineligible for coverage. If FEMA paid a claim for a property after it became ineligible for coverage, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the premiums to be refunded before FEMA may process the refund.

(3) *Nullification prior to policy effective date.* If FEMA nullifies a policy prior to the policy effective date, that policy will be void from the commencement of the nullified policy term. In such case, FEMA will refund all premium, fees, and surcharges paid for the current policy term only. If FEMA paid a claim for a policy that was improperly issued, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the premiums to be refunded before the NFIP may process the refund.

(b) *Cancellation due to lack of an insurable interest.* If the policyholder had an insurable interest, but no longer has an insurable interest, in the insured property, FEMA must cancel the policy on the insured property. If FEMA cancels a policy for this reason, FEMA must refund the policyholder a pro rata share of the premium from the date the policyholder lost an insurable interest in the property, but no more than 5 years prior to the date of the cancellation request. FEMA must pay the policyholder a refund of all fees or surcharges for any full policy term during which the policyholder had no insurable interest in the insured property, but no more than 5 years prior to the date of the cancellation request. A policyholder ceases to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred, or the contents were completely removed from the described location.

(c) *No insurance coverage requirement.* A policyholder may cancel a policy if the policyholder was subject to a requirement by a lender, loss payee, or other Federal agency to obtain and maintain flood insurance pursuant to statute, regulation, or contract, but there is no longer such a requirement. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, calculated from the date of the cancellation request, but will not receive a refund of any fees or surcharges.

(d) *Establishment of a common expiration date.* A policyholder may purchase a new policy and cancel an existing policy in order to establish a common expiration date between flood insurance coverage and other coverage. The policyholder will receive a refund of a pro rata share of the premium calculated from the effective date of the new policy to the end date of the previous policy. The policyholder will not receive a refund of any fees or surcharges. In order to rewrite and cancel the policy, the following conditions must apply:

(1) The new policy must be written with the same company for the same or higher amount of coverage. If the policy is written for a higher amount or different type of coverage, the waiting period in § 61.11 will apply.

(2) The other insurance coverage for which the common expiration date is being established must be for coverage on the same building that is insured by the flood policy being cancelled and rewritten.

(3) The coverage for the new policy must be effective prior to cancelling the existing policy.

(e) *Cancelation or nullification of duplicate NFIP policies*—(1) *Generally.*

(i) Except as described in 44 CFR 62.5(e)(2), if an insured property is insured by more than one NFIP policy not in accordance with applicable regulations and the Standard Flood Insurance Policy, FEMA must nullify the policy with the later effective date. The policy with the earlier effective date will continue. The policyholder will

receive a pro rata refund of all premium for the nullified policy from the effective date of the nullified policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy. The policyholder will receive a refund of all fees or surcharges for any full policy term during which the policyholder was insured by more than one policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy.

(ii) If both polices have the same policy effective date, the policyholder may choose which policy will remain in effect, and the policyholder will receive a refund of all premium, fees, and surcharges for the cancelled policy from the effective date of the cancelled policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy.

(2) *Exceptions.* In the following cases, the policyholder may maintain the policy with the later policy effective date while cancelling the policy with the earlier policy effective date:

(i) The policy with the earlier effective date has expired for more than 30 days. In such cases, the policyholder will receive a refund of a pro rata share of the premium, calculated from the effective date of the policy with the later effective date to the end date of the policy with the earlier effective date, but no more than 5 years prior to the date of cancellation. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the insured property is insured by both policies, but no more than 5 years prior to the date of the cancellation request.

(ii) The policy with the earlier policy effective date is a Group Flood Insurance Policy. In such cases, there will be no refund of any premium, fees, or surcharges.

(iii) The policy with the earlier effective date is cancelled to establish a common policy expiration date pursuant to paragraph (d) of this section. In such cases, refunds will be provided in accordance with paragraph (d) of this section.

(iv) The policy with the earlier effective date was force placed pursuant to 42 U.S.C. 4012a using the NFIP's Mortgage Portfolio Protection Program. In such cases, the policyholder will receive a refund of the pro rata share of the premium calculated from the policy effective date of the new policy to the expiration date of the cancelled policy. There will be no refund of any fees or surcharges.

(v) The policy with the earlier effective date is a Dwelling Form policy with building coverage on a condominium unit that is also insured by a Residential Condominium Building Association Policy (RCBAP) that is issued at the statutory maximum coverage limit for buildings. In such cases, the policyholder will receive a refund of a pro rata share of the premium for the building coverage issued under the Dwelling Form policy, as calculated from the effective date of the RCBAP policy to the end date of the Dwelling Form policy. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the condominium unit is insured by both a Dwelling Form policy and an RCBAP in which the coverage equals the statutory maximum coverage limits for buildings, but no more than 5 years prior to the date of the cancellation request.

(f) *Other cancellations and nullifications.* Except as indicated below, FEMA will not refund premiums, assessments, fees, or surcharges if FEMA cancels a policy for any of the following reasons:

(1) *Fraud.* FEMA will cancel a policy for fraud committed by the policyholder or the agent. FEMA may cancel a policy for misrepresentation of a material fact by the policyholder or agent. Such cancellations will take effect as of the date of the fraudulent act or material misrepresentation of fact.

(2) *Administrative cancellation.* FEMA may cancel and rewrite a policy to correct an administrative error, such as when the policy is written with the wrong policy effective date. In such cases, FEMA will apply any premium, assessments, fees, or surcharges to the new policy. FEMA will refund any excess premium, fees, surcharges, or assessments paid.

(3) *Nullification for properties ineligible due to physical alteration of property.* A policy insuring a building or its contents, or both, may be cancelled if the building has been physically altered in such a manner that the building and its contents are no longer eligible for flood insurance coverage. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, but the policyholder will not receive a refund of any fees or surcharges.

■ 18. Revise § 62.6 to read as follows:

§ 62.6 Brokers and agents writing NFIP policies through the NFIP direct servicing agent.

(a) A broker or agent selling policies of flood insurance placed with the NFIP at the offices of its servicing agent must be duly licensed by the state insurance regulatory authority in the state in which the property is located.

(b) The earned commission which will be paid to any property or casualty insurance agent or broker, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to subpart C of this part, will not be less than $10 and is computed as follows:

§ 62.22 [Amended]

■ 19. In § 62.22, amend paragraph (a) by removing ''Federal Insurance Administration'' wherever it appears and adding in their place ''Federal Insurance and Mitigation Administration.''

Peter T. Gaynor,

Administrator, Federal Emergency Management Agency.

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