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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2606–17; DHS Docket No. USCIS–2012–0010]

RIN 1615–ZB43

Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Years 2018 Through 2020

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notification of numerical limitations.

SUMMARY: The Secretary of Homeland Security announces the annual fiscal year numerical limitations for the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW–1) nonimmigrant classification for the remainder of the transition period, which is scheduled to end on December 31, 2019. This document announces the mandated annual reduction of the CW–1 numerical limitation (also known as the CW–1 cap) and ensures that CNMI employers and employees have sufficient information regarding the maximum number of CW–1 transitional workers who may be granted status during the remainder of the transition period, which includes Fiscal Years (FYs) 2018–2019 and the first 3 months of FY 2020. For FY 2018, the cap is set at 9,998. For FY 2019, the cap is set at 4,999. For FY 2020, the cap is set at 2,499 and will be in effect until the end of the transition period on December 31, 2019.

DATES: Effective November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060. Contact telephone 202–272–8377.

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) extended U.S. immigration law, with limited exceptions, to the CNMI and provided CNMI-specific provisions affecting foreign workers. *See* Public Law 110–229, 122 Stat. 754, 853–854. The CNRA provided for a transition period to phase out the CNMI's nonresident contract worker program and phase in the U.S. Federal immigration system in a manner that minimizes adverse economic and fiscal effects and maximizes the CNMI's potential for future economic and business growth. *See* sections 701 and 702(a) of the CNRA.

The CNRA authorized the Secretary of Homeland Security to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period. *See* section 702(a) of the CNRA; 48 U.S.C. 1806(d). The Department of Homeland Security (DHS) published a final rule on September 7, 2011, amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only transitional worker nonimmigrant classification (CW classification, which includes CW–1 for principal workers and CW–2 for spouses and minor children). *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification,* 76 FR 55502 (Sept. 7, 2011).

The CNRA mandated an annual reduction in the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. *See* 48 U.S.C. 1806(d)(2). At the outset of the transitional worker program, DHS set the CW–1 numerical limitation (also known as the CW–1 cap) for FY 2011 at 22,417 and for FY 2012 at 22,416. DHS announced these annual caps in DHS regulations at 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS subsequently published annual caps by **Federal Register** notice. *See* 8 CFR 214.2(w)(1)(viii)(C).

The CNRA directed the U.S. Secretary of Labor to determine whether an extension of the CW program for an additional period of up to 5 years beyond the expiration of the initial transition period on December 31, 2014, was necessary to ensure that an adequate number of workers will be available for legitimate businesses in the CNMI. The CNRA further provided the Secretary of Labor with the authority to provide for such an extension through notice in the **Federal Register**. On June 3, 2014, the Secretary of Labor extended the CW program for an additional 5 years, through December 31, 2019. *See Secretary of Labor Extends the Transition Period of the Commonwealth of the Northern Mariana Islands-Only Transitional Worker Program,* 79 FR 31988 (June 3, 2014). Since the Secretary of Labor extended the CW program at least until December 31, 2019, DHS decided to preserve the status quo, or current conditions, rather than aggressively reduce CW–1 numbers for FY 2015. DHS therefore reduced the CW–1 cap nominally by one, resulting in an FY 2015 limit of 13,999. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2015,* 79 FR 58241 (Sept. 29, 2014).

On December 16, 2014, Congress amended the law to extend the transition period until December 31, 2019. *See* Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, sec. 10, 128 Stat. 2130, 2134 (codified at 48 U.S.C. 1806(d)). Congress also eliminated the Secretary of Labor's authority to provide for future extensions of the CW–1 program, requiring the CW–1 program to end (or sunset) on December 31, 2019. *See id.*

For FY 2016, DHS reduced the cap by 1,000 to a limit of 12,999. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2016,* 80 FR 63911 (Oct. 22, 2015). The CW–1 cap was met for the first time in FY 2016.[1] As a result, DHS preserved the status quo and reduced the cap for FY 2017 by only one to 12,998. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2017,* 81 FR 60581 (Sept. 2, 2016). In the **Federal Register** notice announcing the CW–1 cap for FY 2017, DHS explained that the nominal

[1] *See* ''USCIS Reaches CW–1 Cap for Fiscal Year 2016,'' *available at https://www.uscis.gov/news/alerts/uscis-reaches-cw-1-cap-fiscal-year-2016.*

reduction would help preserve access to foreign labor in the CNMI, and emphasized the statutory requirement to reduce the annual cap to zero no later than the end of calendar year 2019. DHS also provided notice to CNMI employers and CW–1 workers warning of potential significant reductions in the number in the annual cap in the years ahead. Shortly thereafter, on October 14, 2016, the CW cap was met for FY 2017, only 2 weeks into the fiscal year.[2]

II. Maximum Number of CW–1 Nonimmigrant Workers for Fiscal Years 2018 Through 2020

The CNRA requires an annual reduction in the number of transitional workers but does not mandate a specific numerical reduction. *See* 48 U.S.C. 1806(d)(2). In addition, DHS regulations provide that the CW–1 cap for any fiscal year will be less than the number established for the previous fiscal year, and that the adjusted number will be reasonably calculated in DHS's discretion to reduce the number of CW–1 nonimmigrant workers to zero by the end of the program. 8 CFR 214.2(w)(1)(viii)(C). DHS may adjust the cap for a fiscal year or any other period, at any time by publishing a document in the **Federal Register**, as long as the number is less than the cap for the previous fiscal year. *See* 8 CFR 214.2(w)(1)(viii)(D).

As noted previously, Congress has mandated that the transition period end on December 31, 2019, without the possibility of an administrative extension. *See* Public Law 113–235, sec. 10 (codified at 48 U.S.C. 1806(a)(2), (d)). Given this firm sunset date and the CNRA's requirement to reduce the number of transitional workers to zero by the end of the transition period, DHS believes it is now appropriate to publish a reduction plan to inform the public of the number of CW–1 workers available during each of the fiscal years for the remainder of the transition period. *See* 48 U.S.C. 1806(d)(2). DHS believes that publishing a reduction plan of the CW–1 cap over the remaining two and one-quarter fiscal years will provide employers with knowledge of the availability of CW workers and help them adjust their workforce needs before the transition period ends.

DHS has set the CW–1 cap for FY 2018 at 9,998. For FY 2019, the cap is set at 4,999. For FY 2020, the cap is set at 2,499 and will be in effect until the transition period ends on December 31, 2019. DHS considered an approach similar to FY 2017 of a nominal reduction only for the next fiscal year, consistent with DHS's prior goal of best ensuring that there are enough CW–1 workers for future fiscal years until the end of the program. However, at this point in time, with little over two years remaining in the transition period, DHS has decided that an orderly reduction over the remaining years of the transition period is the most appropriate course of action. DHS made this decision based on the need to reduce the number of CW–1 nonimmigrant workers to zero by the end of the transition period, and consistent with the warning DHS provided in the September 2016 **Federal Register** document that CNMI employers and CW–1 workers should plan for more significant reductions in the annual numerical limitation in the years ahead. DHS believes that this approach will further encourage the recruitment of U.S. workers and the transition into the U.S. immigration system, consistent with the goals of the CNRA and the general policy in Executive Order 13,788, Buy American and Hire American, 82 FR 18837, 18838 (Apr. 21, 2017), ''to protect the interests of United States workers in the administration of our immigration system.''

DHS also notes that Congress recently revised the CW–1 statute without extending the transition period. The Northern Mariana Islands Economic Expansion Act[3] (the NMIEEA), which was enacted into law on August 22, 2017, revised the CW–1 visa classification to, among other things, (1) add 350 CW–1 visas to the fiscal year (FY) 2017 CW–1 cap for purposes of extending certain existing CW–1 permits, thus raising the total number of visas that may be issued from 12,998 to 13,348;[4] and (2) prohibit the CW–1 classification from being available to workers who will be performing jobs classified as ''construction and extraction occupations'' as defined in the U.S. Department of Labor's Standard Occupational Classification (SOC) system other than to extend CW–1 permits of such workers first issued before October 1, 2015.

DHS reviewed this new legislation to consider its effect, if any, on the CW–1 FY 2018 cap. Congress added CW–1 visas to the FY 2017 cap, creating a new baseline of 13,448, yet it did not extend the transition period beyond the current sunset of December 31, 2019. Although the increase in the FY 2017 cap meant that DHS could have set the FY 2018 cap as high as 13,347, DHS did not do so for the reasons set forth above.

Notably, Congress also banned employers of new construction and extraction occupation workers from using the CW–1 classification. As described by the NMIEEA's sponsor in the Congressional Record, the bar on construction and extraction workers intends to require construction companies to fill new positions (including those filled by CW–1 workers after October 1, 2015) with non-CW–1 workers.[5] As the construction worker bar will significantly reduce demand for the program compared to what it would be absent enactment of the NMIEEA, the new law will help mitigate potential harmful effects on CNMI employers resulting from the cap reductions for FY 2018 and subsequent years provided in this document. In setting the FY 2018 at 9,998, DHS is reducing the CW–1 cap by 3,000, which represents a reduction of about a quarter of the number for FY 2017. The FY 2019 cap, set to 4,999, reduces the FY 2018 cap by half. The final allocation for the first quarter of FY 2020 reduces the FY 2019 cap by half and is set to 2,499. A cap reduction in this manner complies with the regulatory requirement that the number in each fiscal year be reasonably calculated in DHS's discretion to reduce the number of CW–1 nonimmigrants to zero by the end of the transition period.

The FY 2018 cap for CW–1 nonimmigrant workers will be in effect beginning on October 1, 2017. DHS retains the ability to use its discretion to adjust the cap for a fiscal year or other period at any time by notice in the **Federal Register**, as long as the new cap is less than the one established for the previous fiscal year, and is a number reasonably calculated to reduce the number of CW–1 nonimmigrants to zero by the end of the transition period. *See* 8 CFR 214.2(w)(1)(viii)(C) and (D). Consistent with the rules that apply to other nonimmigrant worker visa classifications, if the cap for the fiscal year is not reached, the unused numbers do not carry over to the next fiscal year. *See* 8 CFR 214.2(w)(1)(viii)(E).

Generally, each CW–1 nonimmigrant worker with an approved employment

[2] *See* ''USCIS Reaches CW–1 Cap for Fiscal Year 2017,'' *available at https://www.uscis.gov/news/alerts/uscis-reaches-cw-1-cap-fiscal-year-2017.*

[3] *See* Northern Mariana Islands Economic Expansion Act, H.R. 339, 115th Cong. (1st Sess. 2017) (amending Section 6 of Public Law 94–241, 48 U.S.C. 1806) (Aug. 22, 2017).

[4] The additional 350 visas are immediately and exclusively available to current CW–1 workers who are applying to extend their status and whose petition validity period expires between August 23 and September 30, 2017. Of these additional visas, 60 are reserved for ''healthcare practitioners and technical occupations'' and 10 are reserved for ''plant and system operators'' as those terms are defined in the SOC system.

[5] 163 Cong. Rec. E1132 (daily ed. Aug. 15, 2017) (statement of Delegate Sablan).

start date that falls within FY 2018 (October 1, 2017–September 30, 2018) will be counted against the new cap of 9,998. Counting each CW–1 nonimmigrant worker in this manner will help ensure that USCIS does not approve requests that would exceed the cap of 9,998 CW–1 nonimmigrant workers granted such status in FY 2018.

This document does not affect the current immigration status of foreign workers who have CW–1 nonimmigrant status. Such foreign workers, however, will be affected by this document when their CNMI employers file:

- For an extension of their CW–1 nonimmigrant classification; or
- A change of status from another nonimmigrant status to that of CW–1 nonimmigrant status.

This document does not affect the status of any individual currently holding CW–2 nonimmigrant status as the spouse or minor child of a CW–1 nonimmigrant worker. This document also does not directly affect the ability of any individual to extend or otherwise obtain CW–2 status, as the cap applies to CW–1 principals only. This document, however, may indirectly affect individuals seeking CW–2 status since their status depends on the CW–1 principal's ability to obtain or retain CW–1 status.

Elaine C. Duke,

Acting Secretary of Homeland Security.

[FR Doc. 2017–25306 Filed 11–21–17; 8:45 am]

BILLING CODE 9111–97–P

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–1578]

RIN 7100 AE–85

Rules Regarding Delegation of Authority

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

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority, in connection with the amendment to the Board's Rules of Organization (published elsewhere in this issue of the **Federal Register**), to provide a modified quorum procedure during exigent circumstances.

DATES: The rule is effective November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452–2272, or Daniel Hickman, Counsel, (202) 973–7432, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board consists of up to seven members appointed by the President, by and with the advice and consent of the Senate, as provided in the Federal Reserve Act (Act).[1] The Act does not define a quorum of the Board, and authorizes the Board to make all rules and regulations necessary to enable the Board effectively to perform its duties and functions.[2] For many years, the Board defined a quorum to be a majority (four members) of its authorized strength of seven members. In 2003, the Board revised its definition of quorum of the Board to be a majority of the Board members currently in office, unless there are five members in office, in which case a quorum would be four members.[3] This modification allowed the Board to function with fewer than four members in office and enhanced the Board's ability to function during emergencies.

Over the past decade, the Board has had to operate with fewer than five members on several occasions.[4] Based on this experience, the Board has determined that substantial vacancies present administrative and logistical challenges that make it difficult to conduct routine business and efficiently manage operations, particularly with the Board's traditional reliance on a 3-member committee structure. In light of these considerations, the Board has reconsidered its quorum practice and decided to amend its definition of a quorum [5] to provide that a quorum of the Board is four members, unless there are three or fewer members in office, in which case a quorum would be all members in office. This revised definition will facilitate the Board's ability to continue to function efficiently during periods of substantial vacancies on the Board. This revision does not alter the number of Board members required to constitute a quorum or the functioning of the Board's committee structure in normal operating environments (that is, when five or more members are in office).

Since this revision may make it more difficult to convene a quorum of the Board under exigent circumstances, the Board also has added a modified definition of quorum providing that, in an emergency situation, a quorum of the Board consists of a majority of the Board members in office.[6] An emergency situation is defined as a situation when action on a matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system, and action is required before the full Board can convene. As part of this final rule, the Board is adding a provision to its regulations specifying that the Chair (or the Vice Chair, if the Chair is unavailable) would be authorized to determine when an emergency situation exists.

The revised rule relates solely to the internal procedure of the Board, and, accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to this action.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 265 as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

■ 1. The authority citation of part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

■ 2. Section 265.4(c) is added to read as follows:

§ 265.4 Functions delegated to Board members.

* * * * *

(c) *Exigent circumstances.* The Chairman is authorized to determine when an emergency situation exists for purposes of section 2(b)(2) of the Board's Rules of Organization. If the Chairman is unavailable or unable to determine that an emergency situation exists, then the Vice Chairman is authorized to determine when an emergency situation exists.

[1] *See* 12 U.S.C. 241.

[2] *See* 12 U.S.C. 248(i).

[3] 66 FR 37686 (Jul 19, 2001), as amended at 68 FR 24743 (May 8, 2003).

[4] Since the current structure of the Board was established in 1936, the Board has had fewer than five members on only a few occasions for a short period of time and the Board has never had fewer than four members.

[5] In a document published elsewhere in this issue of the **Federal Register**.

[6] In a document published elsewhere in this issue of the **Federal Register**.

By order of the Board of Governors of the Federal Reserve System, October 31, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–24052 Filed 11–21–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. OP–1578]

Rules of Organization

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

ACTION: Amendment to Rules of Organization.

SUMMARY: The Board has amended its definition of a quorum of the Board in the Board's Rules of Organization. The amendment is designed to facilitate the Board's ability to continue to function efficiently during periods of substantial vacancies on the Board. The amendment does not alter the number of Board members required to constitute a quorum in normal operating environments. The amendment also addresses Board member recusals and disqualifications. In addition, the Board has provided a modified definition of a quorum during exigent circumstances. In connection with this modification, the Board is amending its Rules Regarding Delegation of Authority, published elsewhere in this **Federal Register**, to authorize the Chair (or Vice Chair, if the Chair is unavailable) to determine when an emergency situation exists.

DATES: The amendment to the Board's Rules of Organization became effective on October 25, 2017.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel (202) 452–2272, or Daniel Hickman, Counsel (202) 973–7432, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board consists of up to seven members appointed by the President, by and with the advice and consent of the Senate, as provided in the Federal Reserve Act (Act).[1] The Act does not define a quorum of the Board, and authorizes the Board to make all rules and regulations necessary to enable the Board effectively to perform its duties and functions.[2] For many years, the Board defined a quorum to be a majority (four members) of its authorized strength of seven members. In 2003, the Board revised its definition of a quorum of the Board to be a majority of the Board members currently in office, unless there are five members in office, in which case a quorum would be four members.[3] This modification allowed the Board to function with fewer than four members in office and enhanced the Board's ability to function during emergencies.

Over the past decade, the Board has had to operate with fewer than five members on several occasions.[4] Based on this experience, the Board has determined that substantial vacancies present administrative and logistical challenges that make it difficult to conduct routine business and efficiently manage operations, particularly with the Board's traditional reliance on a 3-member committee structure. In light of these considerations, the Board has reconsidered its quorum practice and decided to amend its definition of a quorum to provide that a quorum of the Board is four members, unless there are three or fewer members in office, in which case a quorum would be all members in office. This revised definition will facilitate the Board's ability to continue to function efficiently during periods of substantial vacancies on the Board. This revision does not alter the number of Board members required to constitute a quorum or the functioning of the Board's committee structure in normal operating environments (that is, when five or more members are in office).

Increasing the quorum requirement for a four-member and three-member Board may make it more difficult to convene a quorum if a member of the Board is recused or disqualified from a particular matter. To address this concern, the Board also has amended its Rules of Organization to clarify that Board members who are recused or disqualified from participating in a particular matter will be excluded from calculations of the quorum requirement for that matter.

Since the revisions may make it more difficult to convene a quorum of the Board under exigent circumstances, the Board also has added a modified definition of quorum providing that, in an emergency situation, a quorum of the Board consists of a majority of the Board members in office. An emergency situation is defined as a situation when action on a matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system, and action is required before the full Board can convene. The Board is amending its Rules Regarding Delegation of Authority (12 CFR part 265), published elsewhere in this **Federal Register**, to authorize the Chair (or the Vice Chair, if the Chair is unavailable) to determine when an emergency situation exists.

The Board has incorporated these revisions into its Rules of Organization and Rules Regarding Delegation of Authority,[5] published elsewhere in this **Federal Register**. The revisions relate solely to the internal procedure of the Board, and, accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to this action.

Board of Governors—Rules of Organization

■ Section 2 paragraph (b) is revised to read as follows:

Section 2 Composition, Location, and Public Information

* * * * *

(b)(1) *Quorum.* Four Board members constitutes a quorum of the Board for purposes of transacting business *except* that, if there are three or fewer Board members in office, then a quorum consists of all Board members currently in office. If a Board member is recused or disqualified from participating in a matter, the member shall not be counted for purposes of calculating the quorum for that matter.

(b)(2) *Exigent Circumstances.* In an emergency situation, a quorum of the Board consists of a majority of the Board members in office. An emergency situation exists when action on a matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system, and action is required before the full Board can convene.

[1] *See* 12 U.S.C. 241.

[2] *See* 12 U.S.C. 248(i).

[3] 66 FR 37686 (Jul 19, 2001), as amended at 68 FR 24743 (May 8, 2003).

[4] Since the current structure of the Board was established in 1936, the Board has had fewer than five members on only a few occasions for a short period of time and the Board has never had fewer than four members.

[5] The Board's Rules Regarding Delegation of Authority are codified at 12 CFR part 265.

By order of the Board of Governors of the Federal Reserve System, November 15, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–25122 Filed 11–21–17; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

RIN 3133–AE75

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations governing corporate credit unions (corporates) and the scope of their activities. Specifically, the amendments revise provisions on retained earnings and Tier 1 capital.

DATES: The rule is effective December 22, 2017.

FOR FURTHER INFORMATION CONTACT: Yvonne Applonie, Director of Supervision, Office of National Examinations and Supervision, at 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6595; or Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6553.

SUPPLEMENTARY INFORMATION:

I. Background

The Financial Crisis of 2007–2009

The financial crisis of 2007–2009 took a heavy toll on the corporate credit union system. The crisis, largely mortgage related, greatly affected the investment portfolios of many corporates, causing widespread liquidity problems, instability in the system, and failures. During this period, the NCUA took extraordinary short and mid-term measures to stabilize the corporate system. Among other things, it: (1) Made capital injections; (2) approved the Temporary Corporate Credit Union Share Guarantee Program, which guaranteed uninsured shares at participating corporates; (3) retained an independent third party to analyze expected non-recoverable credit losses for distressed securities held by corporates; (4) conserved five corporates; and (5) created the NCUA Guaranteed Note Program.[1]

The 2010 Amendments

In 2010, the Board comprehensively revised the regulations governing corporates and their activities to provide longer term structural enhancements to the corporate system.[2] The 2010 rule established a regulatory framework that provides a foundation for a healthy corporate system that: (1) Delivers important services to the corporates' natural person credit union members, such as payment systems and liquidity; and (2) builds and attracts sufficient capital.[3] The 2010 rule also sought to prevent the recurrence of financial losses similar to those that led to the failure of the referenced five corporates and weakened the financial condition of others.

The 2010 rule curtailed several practices that contributed to the corporate failures. Specifically, it established investment concentration limits, limited asset maturities, and prohibited investments in subordinated and private label mortgage-backed securities. The 2010 rule also implemented a prompt corrective action (PCA) regime stipulating capital adequacy for corporates. Largely based on the Basel I requirements, the capital requirements of the 2010 rule emphasized corporates holding tangible and durable capital.

The Current Environment

The provisions of the 2010 rule have successfully stabilized the corporate system and improved the corporates' ability to function and provide services to natural person credit unions. Additionally, since 2010, the overall economy has improved greatly, thereby improving the economic landscape in which corporates operate. Further, the large concentration of troubled assets within the corporate system has been reduced through portfolio repositioning or the NCUA's intervention. The corporate system has significantly contracted and consolidated, with assets declining from approximately $81.7 billion prior to the 2010 rule to approximately $24.9 billion today. In that same time period, the number of corporates has decreased from 26 to 11. Given these developments, the Board decided to revisit the 2010 rule's capital standards.

II. July 2017 Proposal

As a result of its review of the corporate capital standards, in July 2017, the Board published amendments to the corporate rule, which primarily affect the calculation of capital after corporates consolidate and set a retained earnings ratio target in meeting PCA standards.[4]

Specifically, the Board proposed incorporating ''GAAP equity acquired in a merger'' as a component of retained earnings. This amendment to the definition of ''retained earnings'' in turn affects the definition of ''Tier 1 capital,'' which includes retained earnings as one component of Tier 1 capital. In the proposal, the Board stated that expressly including such equity acquired in a merger as retained earnings and referencing GAAP clarifies that this capital is available to cover losses, enhances transparency, and reduces ambiguity.[5] The Board also proposed deleting the phrase ''the retained earnings of any acquired credit union, or an integrated set of activities and assets, calculated at the point of acquisition, if the acquisition is a mutual combination'' from the current definition of ''Tier 1 capital,'' given that it would be redundant as a result of the proposal.

In the 2010 rule, the Board encouraged corporates to build retained earnings, which has generally yielded positive results. Nevertheless, in the July 2017 proposal, the Board proposed amending this aspect of the regulation for three reasons: (1) The 2010 rule's language did not expressly reference ''GAAP equity acquired in mergers'' as a component of retained earnings; (2) the 2010 rule's language limited perpetual contributed capital (PCC) for regulatory capital purposes; and (3) the 2010 rule's language was inconsistent with other capital regulations. Specifically, the Board proposed removing the requirement[6] to limit PCC counted as Tier 1 capital to the amount of retained earnings. Further, the Board proposed permitting a corporate to include in its Tier 1 capital all PCC that is sourced from an entity not covered by federal share insurance.

Further, as discussed in greater detail below, the Board proposed adding a definition of ''retained earnings ratio'' to the regulation. Under the proposal, that term would mean ''the corporate credit union's retained earnings divided by its moving daily average net assets.'' The Board proposed requiring all corporates

[1] As part of the corporate system resolution, the NCUA created the NCUA Guaranteed Note Program to provide long-term funding for distressed investment securities (Legacy Assets) from the five failed corporates. Legacy Assets consisted of over 2,000 investment securities secured by approximately 1.6 million residential mortgages, as well as commercial mortgages and other securitized assets.

[2] 12 CFR part 704; 75 FR 64786 (Oct. 20, 2010).

[3] 75 FR 64787, 64787 (Oct. 20, 2010).

[4] 82 FR 30774 (July 3, 2017).

[5] *Id.*

[6] This requirement would not have gone into effect until October 2020.

to achieve an eventual retained earnings ratio of 250 basis points, recognizing the importance of retained earnings to the corporate system and the National Credit Union Share Insurance Fund. Under the proposal, upon attaining this benchmark, a corporate would be permitted to include all PCC in its Tier 1 capital, regardless of source. Until a corporate achieved that benchmark, it would be required to deduct PCC exceeding retained earnings by 200 basis points from its Tier 1 capital. As noted in the proposal, the Board believes this requirement provides an inducement to build retained earnings and promotes clarity as to the minimum amount of retained earnings held by a corporate to account for potential losses.

Lastly, in Appendix B to part 704, the Board proposed adding a ''retained earnings ratio'' requirement to the Part I expanded investment authorities. The Board believed that by doing so, the retained earnings ratio requirement would limit the risk of the expanded investment portfolios. Specifically, the Board proposed to employ an indexed retained earnings requirement, thereby correlating with actual risk taking.

III. Summary of Comments on the July 2017 Proposal

The NCUA received 38 comments on the proposal, including those from corporates, individual credit unions, trade associations, and credit union leagues. These commenters uniformly supported the proposed rule. No commenter opposed the proposal.

As an overview, commenters stated that the proposed rule: (1) Enhances transparency; reduces ambiguity; and better aligns capital regulations with the financial marketplace, GAAP accounting standards, and treatment by other financial institutions and their regulators; (2) provides greater flexibility in calculating and treating capital and promotes increased certainty and stability in the credit union system; (3) enhances the safety and soundness of corporate credit unions, which are essential for the credit union system; (4) provides greater liquidity to the benefit of natural person credit unions; and (5) reflects the improved health of the economy, the credit union system, and the corporates since 2010.

Each specific proposal and the corresponding public comments are discussed below in more detail.

A. Corporate Consolidations and Capital in Mergers—Definition of Retained Earnings

As noted above, the Board proposed amending the definition of ''retained earnings.'' The definition of ''retained earnings'' prior to the proposal included undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for leases, and other appropriations from undivided earnings as designated by management or the NCUA. The proposal added ''GAAP equity acquired in a merger'' to that list. The Board stated that expressly including equity acquired in a merger as retained earnings and referencing GAAP would clarify that this capital is available to cover losses, enhances transparency, and reduce ambiguity.

No commenter objected to this proposal. Approximately 30 commenters specifically supported it. These commenters stated that including such equity acquired in a merger as retained earnings and referencing GAAP provides consistency with other regulators and will help match regulatory principles with GAAP and other financial measurements within the industry. In turn, this enhances transparency of capital adequacy and eliminates confusion for users of financial statements. A few commenters stated that the change would not increase risk to the corporate system.

Consistent with the proposal and the comments, the Board amends the definition of ''retained earnings'' to incorporate ''GAAP equity acquired in a merger'' as proposed.

B. Retained Earnings Ratio

As mentioned above, in 2010, the Board comprehensively modified Part 704, with particular focus on providing incentives to increase retained earnings. The 2010 rule's PCA provisions require corporates to meet a leverage ratio. This leverage ratio consists of retained earnings and PCC.[7] While noting that this effort to increase retained earnings has been successful, the Board also stated that the language in the current rule is indirect and may disadvantage corporates working with third parties. Specifically, the limitation on PCC for regulatory capital purposes does not recognize the full value of PCC that stands to absorb losses and protect counterparties. Accordingly, in the 2017 proposal, the Board proposed modifying the manner in which PCC is treated during a ten-year phase-in period. The phase-in period for PCC is intended to provide an incentive to corporates to increase retained earnings.

In the 2017 proposal, the Board proposed to remove the current requirement[8] to limit PCC counted as Tier 1 capital to the amount of retained earnings. Further, the Board proposed to permit a corporate to include in its Tier 1 capital all PCC that is sourced from an entity not covered by federal share insurance. Recognizing that retained earnings is critical to the health of the corporate system and the share insurance fund, the Board proposed adding a provision to part 704 requiring all corporates to achieve eventual retained earnings of 250 basis points. To this end, the Board proposed adding a definition of *retained earnings ratio* to mean ''the corporate credit union's retained earnings divided by its moving daily average of net assets.'' Upon attaining the benchmark of 250 basis points, a corporate would be permitted to include all PCC, regardless of its source, in its Tier 1 capital. Prior to attaining the benchmark, the corporate would be required to deduct the amount of PCC exceeding retained earnings by 200 basis points as an inducement to build retained earnings.

No commenter objected to this proposal. Approximately 30 commenters expressly supported it. These commenters stated that the 2010 amendments resulted in corporates accumulating sufficient retained earnings to meet or exceed adequate capitalization under PCA through the 2016 phase-in adjustment. Thus, they agreed with the NCUA's proposal to remove the requirement to limit PCC counted as Tier 1 capital, stating that the amendment enhances clarity, helps ensure capital adequacy, and provides the first layer of insulation to protect the share insurance fund. They stated that the change would better align a corporate's use of capital with the expectations of member credit unions.

One commenter requested modifying the proposed definition of Tier 1 capital as follows: ''If a corporate credit union's retained earnings ratio is less than two and a half percent, deduct the amount of PCC received from federally insured credit unions less retained earnings that exceeds two percent of moving daily average net assets (MDANA).'' It believed that this change would clarify the NCUA's acceptance of capital received by corporates from members. The Board has compared this recommended language with the proposed regulatory text and has determined that the Board's proposed language is more direct and more readily understandable. Accordingly, the Board is adopting the proposed

[7] Perpetual Contributed Capital means accounts or other interests of a corporate credit union that are perpetual, non-cumulative dividend accounts; are available to cover losses that exceed retained earnings, and are not insured by the National Credit Union Share Insurance Fund.

[8] This requirement would not have gone into effect until 2020.

language in the final rule without change.

Another commenter suggested that the corporate call report continue to clearly reflect the amount of PCC that is not being counted in the leverage ratio, as it currently does in the ''PCC calculation'' section of the call report. The Board notes that it will continue to require this information in the call report.

C. Appendix B to Part 704—Expanded Authorities

Appendix B to part 704 enumerates the expanded authorities available to corporates and procedures that a corporate must follow to be granted such authorities. Specifically, the Board proposed adding a *retained earnings ratio* requirement to the expanded investment authorities. The Board believed such an addition would limit the risk of the expanded investment portfolios.

No commenters addressed this issue. The Board is adopting this amendment as proposed.

D. Miscellaneous Comments Beyond the Scope of the Final Rule

Several commenters requested that the NCUA conduct a comprehensive review of Part 704 in 2018. The commenters stated that such a review is overdue considering the last comprehensive review of the corporate rule occurred in 2010. The commenters stated that such a review would allow stakeholders to explore other rule modernization opportunities. One commenter suggested such a review might result in ''thoughtful loosening'' of the corporate rules. One commenter requested that the NCUA improve coordination with state credit union regulators and reinforce the dual chartering system and joint supervision.

IV. Regulatory Procedures

1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[9] This rule only affects corporate credit unions, all of which have more than $100 million in assets. Accordingly, the NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

2. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden or modifies the existing burden.[10] For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping or third party disclosure requirement, both referred to as information collections. The rule does not contain information collection requirements that require approval by OMB under the PRA (44 U.S.C. 3501).

3. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. After reviewing the rule and its likely impacts, NCUA believes that the rule is mostly technical and will not lead to a measurable change to (1) credit union lending to consumers or businesses, (2) net worth of natural person credit unions, or (3) interest rates paid or received by natural person credit unions. Accordingly, NCUA believes this final rule is a not ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, NCUA has filed the appropriate reports so that this final rule may be reviewed.

4. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has, therefore, determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

5. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 704

Credit unions, Corporate credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 16, 2017.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the National Credit Union Administration Board amends 12 CFR part 704 as follows:

PART 704—CORPORATE CREDIT UNIONS

■ 1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, and 1789.

■ 2. Amend § 704.2 by:
■ a. Revising the definition of ''Retained earnings'';
■ b. Adding in alphabetical order a definition for ''Retained earnings ratio''; and
■ c. Revising the definition of ''Tier 1 capital''.

The revisions and addition read as follows:

§ 704.2 Definitions.

* * * * *

Retained earnings means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, GAAP equity acquired in a merger, and other appropriations from undivided earnings as designated by management or the NCUA.

Retained earnings ratio means the corporate credit union's retained earnings divided by its moving daily average net assets.

* * * * *

Tier 1 capital means the sum of items in paragraphs (1) and (2) of this definition from which items in paragraphs (3) through (6) are deducted:

(1) Retained earnings;

(2) Perpetual contributed capital;

(3) Deduct the amount of the corporate credit union's intangible assets that exceed one half percent of its moving daily average net assets (however, the NCUA may direct the corporate credit union to add back some of these assets on the NCUA's own initiative, or the NCUA's approval of petition from the applicable state regulator or application from the corporate credit union);

(4) Deduct investments, both equity and debt, in unconsolidated CUSOs;

[9] 5 U.S.C. 603(a).

[10] 44 U.S.C. 3507(d); 5 CFR part 1320.

(5) Deduct an amount equal to any PCC or NCA that the corporate credit union maintains at another corporate credit union;

(6) Deduct any amount of PCC received from federally insured credit unions that causes PCC minus retained earnings, all divided by moving daily average net assets, to exceed two percent when a corporate credit union's retained earnings ratio is less than two and a half percent.

* * * * *

■ 3. In Appendix B to part 704, in part I, revise paragraphs (b)(2) and (3) to read as follows:

Appendix B to Part 704—Expanded Authorities and Requirements

* * * * *

Part I

* * * * *

(b) * * *

(2) 28 percent if the corporate credit union has a seven percent minimum leverage ratio and a two and a half percent retained earnings ratio, and is specifically approved by the NCUA; or

(3) 35 percent if the corporate credit union has an eight percent minimum leverage ratio and a three percent retained earnings ratio and is specifically approved by the NCUA.

* * * * *

[FR Doc. 2017–25223 Filed 11–21–17; 8:45 am]

BILLING CODE 7535–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1040

[Docket No. CFPB–2016–0020]

RIN 3170–AA51

Arbitration Agreements

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; CRA revocation.

SUMMARY: Under the Congressional Review Act, Congress has passed and the president has signed a joint resolution disapproving a final rule published by the Bureau of Consumer Financial Protection (Bureau) on July 19, 2017, to regulate arbitration agreements in contracts for specified consumer financial products and services. Under the joint resolution and by operation of the Congressional Review Act, the arbitration agreements rule has no force or effect. The Bureau is hereby removing it from the Code of Federal Regulations (CFR).

DATES: This action is effective November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Owen Bonheimer and Nora Rigby, Senior Counsels, Office of Regulations, Consumer Financial Protection Bureau, at 202–435–7700 or *cfpb_reginquiries@cfpb.gov.* Press inquiries should be directed to the Office of Communications, at 202–435–7170 or *press@consumerfinance.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 1028(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203), on July 10, 2017, the Bureau issued a final rule titled Arbitration Agreements to regulate pre-dispute arbitration agreements in contracts for specified consumer financial products and services. The Bureau published the arbitration agreements rule in the **Federal Register** on July 19, 2017 (82 FR 33210), establishing 12 CFR part 1040. As required by section 1028(a) of the Dodd-Frank Act, the arbitration agreements rule followed the publication and delivery to Congress of the Bureau's March 2015 study concerning the use of pre-dispute arbitration agreements. The arbitration agreements rule would have imposed two sets of limitations on the use of pre-dispute arbitration agreements by providers of certain consumer financial products and services. First, the arbitration agreements rule would have prohibited providers from using a pre-dispute arbitration agreement to block consumer class actions in court and would have required providers to include a provision reflecting this limitation in arbitration agreements they entered into. Second, the arbitration agreements rule would have required providers to redact and submit to the Bureau certain records relating to arbitral proceedings and relating to the use of pre-dispute arbitration agreements in court, and would have required the Bureau to publish these records on its Web site. While the arbitration agreements rule became effective on September 18, 2017, the arbitration agreements rule would have applied only to pre-dispute arbitration agreements entered into after March 19, 2018.

The United States House of Representative passed House Joint Resolution 111 disapproving the arbitration agreements rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*) on July 25, 2017. The United States Senate passed the joint resolution on October 24, 2017. President Donald J. Trump signed the joint resolution into law as Public Law 115–74 on November 1, 2017. Under the joint resolution and by operation of the Congressional Review Act, the arbitration agreements rule has no force or effect. Accordingly, the Bureau is hereby removing the final rule titled Arbitration Agreements from the CFR.

II. Procedural Requirements

This action is not an exercise of the Bureau's rulemaking authority under the Administrative Procedure Act (APA) because the Bureau is not ''formulating, amending, or repealing a rule'' under 5 U.S.C. 551(5). Rather, the Bureau is effectuating changes to the CFR to reflect what congressional action has already accomplished. Accordingly, the Bureau is not soliciting comments on this action.

List of Subjects in 12 CFR Part 1040

Banks, Banking, Business and industry, Claims, Consumer protection, Contracts, Credit, Credit unions, Finance, National banks, Reporting and recordkeeping requirements, Savings associations.

PART 1040—[REMOVED]

For the reasons set forth above, and pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*) and Public Law 115–74 (131 Stat. 1243), the Bureau amends 12 CFR chapter X by removing part 1040.

Dated: November 15, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–25324 Filed 11–21–17; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0951; Special Conditions No. 25–706–SC]

Special Conditions: Mitsubishi Aircraft Corporation Model MRJ–200 airplane; Design Roll Maneuver for Electronic Flight Controls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Mitsubishi Aircraft Corporation (Mitsubishi) Model MRJ–200 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology

envisioned in the airworthiness standards for transport category airplanes. This design feature is an electronic flight-control system (EFCS) that provides control of the airplane through pilot inputs to the flight computer. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Mitsubishi on November 22, 2017. We must receive your comments January 8, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–0951 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe and Cabin Safety Section, AIR–675, Policy and Innovation Division, Transport Standards Branch, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1178; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is unnecessary because the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA finds good cause that prior notice and comment are unnecessary, and for the same reason finds that good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above. We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On August 19, 2009, Mitsubishi applied for a type certificate for their new Model MRJ–200 airplane. The Model MRJ–200 airplane is a low-wing, conventional-tail design with two wing-mounted turbofan engines. The airplane is equipped with an electronic flight-control system, has seating for 96 passengers and a maximum takeoff weight of 98,800 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.17, Mitsubishi must show that the Model MRJ–200 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–141; part 36, as amended by Amendments 36–1 through 36–30; and part 34, as amended by Amendments 34–1 through the amendment effective at the time of design approval.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model MRJ–200 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the Model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the model MRJ–200 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model MRJ–200 airplane will incorporate the following novel or unusual design feature:

An electronic flight-control system that provides control of the airplane through pilot inputs to the flight computer. Current part 25 airworthiness regulations account for control laws where aileron deflection is proportional to control-stick deflection. They do not address any nonlinearities, *i.e.,* situations where output does not change in the same proportion as input, or other effects on aileron actuation that may be caused by electronic flight controls.

Discussion

The flight-control system for the Model MRJ–200 airplane does not have a direct mechanical link, nor a linear gain, between the airplane flight-control surface and the pilot's flight-deck control device, which is not accounted for in § 25.349(a). Instead, a flight-control computer commands the airplane flight-control surfaces, based on input received from the flight-deck control device. The flight-control computer modifies pilot input before the command is given to the flight-control surface.

These special conditions differ from current regulatory requirements in that they require that the roll maneuvers result from defined movements of the flight-deck roll control as opposed to defined aileron deflections. Also, these special conditions require an additional load condition at design maneuvering speed (V_A), in which the flight-deck roll

control is returned to neutral following the initial roll input.

These special conditions differ from similar special conditions previously issued on this topic. These special conditions are limited to the roll axis only, whereas other special conditions also included pitch and yaw axes. Special conditions are no longer needed for the yaw axis because § 25.351 was revised at Amendment 25–91 to take into account effects of an electronic flight-control system. No special conditions are needed for the pitch axis because the method that Mitsubishi proposed for the pitch maneuver takes into account effects of an electronic flight-control system.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model MRJ–200 airplanes. Should Mitsubishi apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Mitsubishi Model MRJ–200 airplanes.

In lieu of compliance to 14 CFR 25.349(a), the following conditions, speeds, and flight-deck roll-control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero, and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control-surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

(a) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time-history investigation of the maneuver.

(b) At V_A, sudden movement of the flight-deck roll control up to the limit is assumed. The position of the flight-deck roll control must be maintained until a steady roll rate is achieved, and then must be returned suddenly to the neutral position.

(c) At V_C, the flight-deck roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in special condition (b).

(d) At V_D, the flight-deck roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in special condition (b).

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–25019 Filed 11–21–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 160413330–6330–01]

RIN 0648–BF99

Delay of Discharge Requirements for U.S. Coast Guard Activities in Greater Farallones and Cordell Bank National Marine Sanctuaries

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; notification of delay of effectiveness for discharge requirements with regard to U.S. Coast Guard activities.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) expanded the boundaries of Gulf of the Farallones National Marine Sanctuary (now renamed Greater Farallones National Marine Sanctuary or GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their previous boundaries with a final rule published on March 12, 2015. The final rule entered into effect on June 9, 2015. At that time, NOAA postponed, with regard to U.S. Coast Guard (USCG) activities, the effectiveness of the discharge requirements for six months in the regulations for both sanctuaries in the newly added areas. Since then, NOAA published four documents to extend the postponement of the discharge requirements to provide adequate time for completion of an environmental assessment, and subsequent rulemaking regarding USCG activities, as appropriate. The current extension would end on December 9, 2017. This document, published concurrently with a proposed rule to address discharges by the USCG and an environmental assessment, will extend the postponement of the discharge requirements for USCG activities in the expansion areas of GFNMS and CBNMS for one year beyond the end of the current extension to provide adequate time for completion, if appropriate, of a final environmental assessment and final rule. This extension will end on December 9, 2018, or 30 days after publication of a final rule, whichever comes first.

DATES: The effectiveness for the discharge requirements in both CBNMS and GFNMS expansion areas with regard to USCG activities is December 9, 2018.

ADDRESSES: Copies of documents relating to the expansion, including the Final Environmental Impact Statement (FEIS), final management plans, and the final rule published on March 12, 2015, can be viewed or downloaded at *https://farallones.noaa.gov/manage/expansion_cbgf.html.*

FOR FURTHER INFORMATION CONTACT: Maria Brown, Greater Farallones National Marine Sanctuary Superintendent, at *Maria.Brown@noaa.gov* or 415–561–6622.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2015, NOAA expanded the boundaries of Gulf of the Farallones National Marine Sanctuary (now renamed Greater Farallones National Marine Sanctuary or GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their previous boundaries with a final rule (80 FR 13078). The final rule entered into effect on June 9, 2015 (80 FR 34047). In the course of the rulemaking to expand GFNMS and

CBNMS, NOAA learned from U.S. Coast Guard (USCG) that the discharge regulations had the potential to impair the operations of USCG vessels and aircraft conducting law enforcement and on-water training exercises in GFNMS and CBNMS expansion areas. The USCG supports national marine sanctuary management by providing routine surveillance and dedicated law enforcement of the National Marine Sanctuaries Act (NMSA) and sanctuary regulations. To ensure that the March 12, 2015, rule did not undermine USCG's ability to perform its duties, at that time, NOAA postponed the effectiveness of the discharge requirements in both sanctuaries' regulations with regard to USCG activities in the expansion areas for six months. Four additional six-month postponements of the effectiveness of the discharge requirements were published in the **Federal Register** on December 1, 2015 (80 FR 74985), May 31, 2016 (81 FR 34268), December 6, 2016 (81 FR 87803), and June 7, 2017 (82 FR 26339) to provide adequate time for completion of an environmental assessment and to determine NOAA's next steps. Without further NOAA action, the discharge regulations will become effective, with regard to USCG activities, on December 9, 2017.

However, NOAA is currently considering whether, among other things, to exempt certain USCG activities in sanctuary regulations and is concurrently publishing a proposed rule and draft environmental analysis to seek comment on the potential exemption. NOAA is therefore postponing the effectiveness of the discharge requirements in the expansion areas of both sanctuaries with regard to USCG activities for one year until December 9, 2018, or 30 days after publication of a final rule, whichever comes first, to provide adequate time for completion of a final environmental assessment and final rule, as appropriate. The proposed rule and related environmental analysis associated with this action will give the public, other federal agencies, and interested stakeholders an opportunity to comment on various alternatives that are being considered.

II. Classification

A. National Environmental Policy Act

NOAA previously conducted an environmental analysis under the National Environmental Policy Act (NEPA) as part of the rulemaking process leading to the expansion of CBNMS and GFNMS, which addressed regulations regarding the discharge of any matter or material in the sanctuaries. Potential environmental impacts of the decision to postpone effectiveness are sufficiently encompassed within the impacts analysis of the environmental baseline and the no action alternative presented in that analysis. Should NOAA decide to amend the regulations governing discharges for USGS activities in CBNMS and GFNMS, any additional environmental analysis required under NEPA would be prepared and released for public comment.

B. Executive Order 12866: Regulatory Impact

This action has been determined to be not significant under Executive Order 12866.

C. Executive Order 13771: Regulatory Reform

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

D. Administrative Procedure Act

The Assistant Administrator of National Ocean Service (NOS) finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the notice and comment requirements of the Administrative Procedure Act (APA) because this action is administrative in nature. This action postpones the effectiveness of the discharge requirements in the regulations for CBNMS and GFNMS in the areas added to the sanctuaries' boundaries in 2015, that underwent notice and comment review, with regard to USCG activities for one year to provide adequate time for public scoping, completion of an environmental assessment, and concurrent rulemaking on how to address the USCG activities, as appropriate. The substance of the underlying regulations currently remains unchanged. Therefore, providing notice and opportunity for public comment under the APA would serve no useful purpose. For the reasons above, the Assistant Administrator also finds good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness and make this action effective immediately upon publication.

Authority: 16 U.S.C. 1431 *et seq.*

Dated: November 14, 2017.

Nicole R. LeBoeuf,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.

[FR Doc. 2017–25104 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2013–N–0013]

Sanitary Transportation of Human and Animal Food: What You Need to Know About the Food and Drug Administration Regulation; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for industry entitled ''Sanitary Transportation of Human and Animal Food: What You Need to Know About the FDA Regulation—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entities comply with the final rule entitled ''Sanitary Transportation of Human and Animal Food.''

DATES: The announcement of the guidance is published in the **Federal Register** on November 22, 2017.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–0013 for ''Sanitary Transportation of Human and Animal Food: What You Need to Know About the FDA Regulation—Small Entity Compliance Guide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

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.

See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Carrol Burgundy, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2158.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 6, 2016 (81 FR 20091), we issued a final rule entitled ''Sanitary Transportation of Human and Animal Food'' (the final rule) that establishes requirements for shippers, loaders, carriers by motor vehicle and rail vehicle, and receivers engaged in the transportation of food, including food for animals, to use sanitary transportation practices to ensure the safety of the food they transport. The final rule, which is codified at 21 CFR part 1, subpart O, became effective June 6, 2016, and has compliance dates that started April 6, 2017.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to reduce the burden of determining how to comply by further explaining and clarifying the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 1, subpart O have been approved under OMB control number 0910–0773.

III. Electronic Access

Persons with access to the internet may obtain the SECG at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov*. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: November 16, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–25204 Filed 11–21–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–344]

Schedules of Controlled Substances: Placement of FDA-Approved Products of Oral Solutions Containing Dronabinol [(-)-delta-9-trans-tetrahydrocannabinol (delta-9-THC)] in Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without changes an interim final rule with request for comments published in the **Federal Register** on March 23, 2017. On July 1, 2016, the U.S. Food and Drug Administration (FDA) approved a new drug application for Syndros, a drug product consisting of dronabinol [(-)-delta-9-*trans*-tetrahydrocannabinol (delta-9-THC)] oral solution. The Drug Enforcement Administration (DEA) maintains FDA-approved products of oral solutions containing dronabinol in schedule II of the Controlled Substances Act.

DATES: The effective date of this final rulemaking is November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701

Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–8953.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2017, the DEA published an interim final rule to make FDA-approved products containing dronabinol in an oral solution a schedule II controlled substance. 82 FR 14815. The interim final rule provided an opportunity for interested persons to file written comments as well as a request for hearing or waiver of hearing, on or before April 24, 2017.

Comments Received

In response to the interim final rule, the DEA received 10 comments.

1. Support for rulemaking: Four commenters supported the interim final rule.

• *DEA Response:* The DEA appreciates the comments supporting the interim final rule.

2. Opposition for rulemaking: One commenter indicated that FDA-approved products of oral solutions containing dronabinol are in schedule II, but marijuana is in schedule I. Two commenters expressed concern that pharmaceutical companies are making a profit from approved drugs containing marijuana constituents. One commenter indicated that FDA should not approve drugs containing constituents of marijuana because, as the commenter alleged, of the lethality of those drugs.

• *DEA Response:* The DEA notes that FDA-approved products of oral solutions containing dronabinol have an approved medical use, whereas marijuana does not have an approved medical use and therefore remains in schedule I. Regarding the comments related to pharmaceutical companies and the approval of FDA drugs, these comments are outside the scope of this rulemaking because they do not relate to the factors determinative of control of a substance [21 U.S.C. 811(c)] or the criteria for placement of a substance in a particular schedule [21 U.S.C. 812(b)].

3. Request for clarification: One other commenter wanted clarification of the approval process, including effectiveness on a long-term basis. One commenter indicated hope that the regulation would clarify hiring practices for people testing positive for THC.

• *DEA Response:* The DEA notes that the comment regarding the approval process is written in vague terms; we interpret the comment to pertain to the FDA-approved drug product Syndros, rather than the regulatory process for the interim final rule, and respond accordingly. As such, the DEA notes that the FDA approved a New Drug Application (NDA) for Syndros which is an oral product containing dronabinol and provided the DEA with a scheduling recommendation for Syndros. The scheduling recommendation by HHS and the FDA approval of the NDA initiated the DEA review and scheduling action. As stated in the interim final rule, after careful consideration of data from preclinical and clinical studies, the DEA concurred with the HHS recommendation that Syndros has abuse potential comparable to other schedule II substances and therefore supported—and continues to support in this final rule—placement of FDA-approved products containing dronabinol in an oral solution in Schedule II under the Controlled Substances Act (CSA). Regarding the commenter seeking clarification on hiring practices, this comment is outside the scope of this rulemaking because it does not relate to the factors determinative of control of a substance [21 U.S.C. 811(c)] or the criteria for placement of a substance in a particular schedule [21 U.S.C. 812(b)].

The DEA did not receive any requests for hearing or waiver. Based on the rationale set forth in the interim final rule, the DEA adopts the interim final rule, without change.

Requirements for Handling FDA-Approved Products Containing Dronabinol in an Oral Solution

As DEA stated in the interim final rule, it should be noted as a preliminary matter that any form of dronabinol other than in an FDA-approved drug product remains a schedule I controlled substance, and those who handle such material remain subject to the regulatory controls, and administrative, civil, and criminal sanctions, applicable to schedule I controlled substances set forth in the CSA and DEA regulations. However, for those who handle dronabinol oral solution exclusively in the form of an FDA-approved drug product, the following is a summary of the schedule II regulatory requirements that remain in effect as a result of this final rule.

FDA-approved products containing dronabinol in an oral solution have been controlled as a schedule II controlled substance since March 23, 2017. With publication of this final rule, such products remain subject to the CSA's schedule II regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule II substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) FDA-approved products containing dronabinol in an oral solution, or who desires to handle such products, must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Quota.* Only registered manufacturers are permitted to manufacture FDA-approved products containing dronabinol in an oral solution in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

3. *Disposal of stocks.* Upon obtaining a schedule II registration to handle FDA-approved products containing dronabinol in an oral solution, any person who does not desire or is not able to maintain such registration must surrender all quantities of such products, or may transfer all quantities of such products to a person registered with the DEA in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

4. *Security.* FDA-approved products containing dronabinol in an oral solution are subject to schedule II security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and in accordance with 21 CFR 1301.71–1301.93.

5. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of FDA-approved products containing dronabinol in an oral solution must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

6. *Inventory.* Every DEA registrant who possesses any quantity of FDA-approved products containing dronabinol in an oral solution must take an inventory of such products on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for FDA-approved products containing dronabinol in an oral solution, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

8. *Order Forms.* Every DEA registrant who distributes FDA-approved products containing dronabinol in an oral solution is required to comply with

order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. *Prescriptions.* All prescriptions for FDA-approved products containing dronabinol in an oral solution must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

10. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule II controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of FDA-approved products containing dronabinol in an oral solution may only be for the legitimate purposes authorized by the FDCA and CSA.

11. *Importation and Exportation.* All importation and exportation of FDA-approved products containing dronabinol in an oral solution must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

12. *Liability.* Any activity involving FDA-approved products containing dronabinol in an oral solution not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

This final rule, without change, affirms the amendment made by the interim final rule that is already in effect. Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires notice and comment for rulemakings. However, Public Law 114–89 was signed into law, amending 21 U.S.C. 811. This amendment provides that in cases where a new drug is (1) approved by the Department of Health and Human Services (HHS) and (2) HHS recommends control in CSA schedule II–V, the DEA shall issue an interim final rule scheduling the drug within 90 days. This action was taken March 23, 2017. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause.

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

In accordance with 21 U.S.C. 811(j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding applicability of the Administrative Procedure Act, the DEA was not required to publish a general notice of proposed rulemaking prior to this final rule. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ Accordingly, the interim final rule amending 21 CFR part 1308, published on March 23, 2017 (82 FR 14815), is adopted as a final rule without change.

Dated: November 6, 2017.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2017–25275 Filed 11–21–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2560 and 2590

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

Extension of Certain Time Frames for Employee Benefit Plans, Participants, and Beneficiaries Affected by Hurricane Maria

AGENCY: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

ACTION: Extension of time frames.

SUMMARY: This document announces the extension of certain time frames under the Employee Retirement Income Security Act and the Internal Revenue Code for group health plans, disability and other welfare plans, pension plans, participants and beneficiaries of these plans, and group health insurance issuers directly affected by Hurricane Maria.

DATES: November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth Schumacher or Suzanne Adelman, Employee Benefits Security Administration, Department of Labor, at 202–693–8335; or Karen Levin, Internal Revenue Service, Department of the Treasury, at 202–317–5500.

SUPPLEMENTARY INFORMATION:

I. Purpose

As a result of Hurricane Maria, participants and beneficiaries covered by group health plans, disability or other welfare plans, and pension plans may encounter problems in exercising their health coverage portability and continuation coverage rights, or in filing or perfecting their benefit claims. Recognizing the numerous challenges already facing affected participants and beneficiaries, it is important that plans and the Employee Benefits Security Administration, Department of Labor and Internal Revenue Service, Department of the Treasury (the Agencies) take steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established time frames. Similarly, the Agencies recognize that affected group health plans may have difficulty in complying with certain notice obligations.

Accordingly, under the authority of section 518 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 7508A of the Internal Revenue Code of 1986 (the Code), the Agencies are extending certain time frames otherwise applicable to group health plans, disability and other welfare plans, pension plans, and their participants and beneficiaries under ERISA and the Code.[1]

The Agencies believe that such relief is immediately needed to preserve and protect the benefits of participants and beneficiaries in affected plans. Accordingly, the Agencies have determined, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), that there is good cause for granting the relief provided by this notice effective immediately upon publication and that notice and public participation may result in undue delay and, therefore, be contrary to the public interest.

This document has been reviewed by the Department of Health and Human Services (HHS), which concurs with the relief. HHS encourages plan sponsors of nonfederal governmental group health plans to provide the relief specified in this guidance. HHS also encourages States, and health insurance issuers, to enforce and operate, respectively, in a manner consistent with the relief provided in this guidance.[2]

The relief provided by this Notice supplements other disaster relief guidance, which can be accessed on the Internet at: *https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief* and *https://www.irs.gov/newsroom/tax-relief-in-disaster-situations.*

[1] ERISA section 518 and Code section 7508A generally provide that, in the case of an employee benefit plan, sponsor, administrator, participant, beneficiary, or other person with respect to such a plan affected by a Presidentially declared disaster, notwithstanding any other provision of law, the Secretaries of Labor and the Treasury may prescribe (by notice or otherwise) a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. Section 518 of ERISA and section 7508A of the Code further provide that no plan shall be treated as failing to be operated in accordance with the terms of the plan solely as a result of complying with the postponement of a deadline under those sections.

[2] Section 104 of Title I of Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that the Secretaries of Labor, the Treasury, and Health and Human Services (the Departments) ensure through an interagency Memorandum of Understanding (MOU) that regulations, rulings, and interpretations issued by each of the Departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Under section 104, the Departments, through the MOU, are to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. See section 104 of HIPAA and Memorandum of Understanding applicable to Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Code, published at 64 FR 70164, December 15, 1999.

II. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides portability of group health coverage by, among other things, requiring special enrollment rights. ERISA section 701, Code section 9801, 29 CFR 2590.701–6, 26 CFR 54.9801–6. Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) permits qualified beneficiaries who lose coverage under a group health plan to elect continuation health coverage. ERISA section 601, Code section 4980B, 26 CFR 54.4980B–1. Section 503 of ERISA and 29 CFR 2560.503–1 require employee benefit plans subject to Title I of ERISA to establish and maintain reasonable procedures governing the determination and appeal of claims for benefits under the plan. Section 2719 of the Public Health Service Act (PHS Act), incorporated into ERISA by ERISA section 715 and into the Code by Code section 9815, imposes additional rights and obligations with respect to claims, appeals, and external review for nongrandfathered group health plans and health insurance issuers offering nongrandfathered coverage. See also 29 CFR 2590.715–2719 and 26 CFR 54.9815–2719. All of the foregoing provisions include timing requirements for certain acts in connection with employee benefit plans, some of which are being modified by this notice.

A. Special Enrollment Time Frames

In general, the HIPAA special enrollment provisions require that a special enrollment period must be provided in certain circumstance including circumstances in which an employee or dependent loses eligibility for any group health plan or other health insurance coverage in which the employee or the employee's dependents were previously enrolled (including coverage under Medicaid and the Children's Health Insurance Program), and upon certain life events such as when a person becomes a dependent of an eligible employee by birth, marriage, or adoption. ERISA section 701(f), Code section 9801(f), 29 CFR 2590.701–6, and 26 CFR 54.9801–6. Generally, group health plans must allow such individuals to enroll in the group health plan if they are otherwise eligible and if enrollment is requested within 30 days of the occurrence of the event (or

within 60 days, in the case of the special enrollment rights added by the Children's Health Insurance Program Reauthorization Act of 2009). ERISA section 701(f), Code section 9801(f), 29 CFR 2590.701–6, and 26 CFR 54.9801–6.

B. COBRA Time Frames

The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan. ERISA section 605 and Code section 4980B(f)(5). Plans are required to allow payment of premiums in monthly installments, and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. ERISA section 602(3) and Code section 4980B(f)(2)(C). COBRA continuation coverage may be terminated for failure to pay premiums timely. ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day of the period for which payment is being made. ERISA section 602(2)(C), Code section 4980B(f)(2)(B)(iii), and 26 CFR 54.4980B–8 Q&A–5(a). Notice requirements prescribe time periods for employers to notify the plan of certain qualifying events and for individuals to notify the plan of certain qualifying events or a determination of disability; notice requirements also prescribe a time period for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage. ERISA section 606, Code section 4980B(f)(6), and 29 CFR 2590.606–3.

C. Claims Procedure Time Frames

Section 503 of ERISA and 29 CFR 2560.503–1, as well as section 2719 of the PHS Act, incorporated into ERISA by ERISA section 715 and into the Code by Code section 9815, 29 CFR 2590.715–2719, and 26 CFR 54.9815–2719, require ERISA-covered employee benefit plans and nongrandfathered group health plans and health insurance issuers to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and to provide claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Plans may not have provisions that unduly inhibit or hamper the initiation or processing of claims for benefits. Further, group health plans and disability plans must provide claimants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans). 29 CFR 2560.503–1(h)(2)(i), 29 CFR 2560.503–1(h)(3)(i), 29 CFR 2590.715–2719(b)(2)(ii)(C), and 26 CFR 54.9815–2719(b)(2)(ii)(C).

D. External Review Process Time Frames

PHS Act section 2719, incorporated into ERISA by ERISA section 715 and into the Code by Code section 9815, sets out standards for external review that apply to nongrandfathered group health plans and health coverage and provides for either a State external review process or a Federal external review process. Standards for external review processes and timeframes for submitting claims to the independent reviewer for group health plans or health insurance issuers may vary depending on whether a plan uses a State external review process or a Federal external review process. For plans or issuers that use the Federal external review process, the process must allow at least four months after the receipt of a notice of an adverse benefit determination or final internal adverse benefit determination for a request for an external review to be filed. 29 CFR 2590.715–2719(d)(2)(i) and 26 CFR 54.9815–2719(d)(2)(i). The Federal external review process also provides for a preliminary review of a request for external review. The regulation provides that if such request is not complete, the Federal process must provide for a notification that describes the information or materials needed to make the request complete, and the plan or issuer must allow a claimant to perfect the request for external review within the four-month filing period or within the 48 hour period following the receipt of the notification, whichever is later. 29 CFR 2590.715–2719(d)(2)(ii)(B) and 26 CFR 54.9815–2719(d)(2)(ii)(B).

III. Relief

A. Relief for Affected Plan Participants, Beneficiaries, Qualified Beneficiaries, and Claimants

With respect to plan participants, beneficiaries, qualified beneficiaries, or claimants directly affected by Hurricane Maria (as defined in paragraph III.C.(1)), group health plans, disability and other welfare plans, pension plans, and health insurance issuers offering coverage in connection with a group health plan must disregard the period from September 17, 2017 through March 16, 2018 for such plan participants, beneficiaries, qualified beneficiaries, or claimants located in Puerto Rico, and must disregard the period from September 16, 2017 through March 15, 2018 for such plan participants, beneficiaries, qualified beneficiaries, or claimants located in the United States Virgin Islands, when determining any of the following time periods and dates—

(1) The 30-day period (or 60-day period, if applicable) to request special enrollment under ERISA section 701(f) and Code section 9801(f),

(2) The 60-day election period for COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5),[3]

(3) The date for making COBRA premium payments pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C),

(4) The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6)(C),

(5) The date within which individuals may file a benefit claim under the plan's claims procedure pursuant to 29 CFR 2560.503–1,

(6) The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure pursuant to 29 CFR 2560.503–1(h),

(7) The date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination pursuant to 29 CFR 2590.715–2719(d)(2)(i) and 26 CFR 54.9815–2719(d)(2)(i), and

(8) The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete pursuant to 29 CFR 2590.715–2719(d)(2)(ii) and 26 CFR 54.9815–2719(d)(2)(ii).

B. Relief for Group Health Plans

With respect to group health plans, and their sponsors and administrators, that are directly affected by Hurricane Maria (as defined in paragraph III.C.(3)), the period from September 17, 2017 through March 16, 2018 for those located in Puerto Rico, and the period from September 16, 2017 through March 15, 2018 for those located in the United States Virgin Islands, shall be disregarded when determining the date for providing a COBRA election notice under ERISA section 606(c) and Code section 4980B(f)(6)(D).

[3] The term ''election period'' is defined as ''the period which—(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event, (B) is of at least 60 days' duration, and (C) ends not earlier than 60 days after the later of—(i) the date described in subparagraph (A), or (ii) in the case of any qualified beneficiary who receives notice under section 1166(4) of this title, the date of such notice.'' *See* ERISA section 605(a)(1). See also Code section 4980B(f)(5).

C. Definitions

For purposes of this notice—

(1) A participant, beneficiary, qualified beneficiary, or claimant directly affected by Hurricane Maria means an individual who resided, lived, or worked in one of the disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane, or whose employee benefit plan was directly affected (as defined in paragraph III.C.(3)), but solely with respect to that employee benefit plan.

(2) The term ''disaster areas'' means the counties in Puerto Rico and the counties and county equivalents in the United States Virgin Islands that have been or are later designated as disaster areas eligible for Individual Assistance by the Federal Emergency Management Agency because of the devastation caused by Hurricane Maria.

(3) An employee benefit plan is directly affected by Hurricane Maria if the principal place of business of the employer that maintains the plan (in the case of a single-employer plan, determined disregarding the rules of section 414(b) and (c) of the Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of section 414(b) and (c) of the Code); the office of the plan or the plan administrator; or the relevant office of the primary recordkeeper serving the plan was located in one of the disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane.

D. Later Extensions

The Agencies will continue to monitor the effects of Hurricane Maria and may provide additional relief as warranted.

IV. Examples

The following examples illustrate the timeframe for extensions required by this notice. In each example, assume that the individual described is directly affected by the hurricane.

Example 1 (Electing COBRA). (i) *Facts.* Individual *A* works for Employer *X* in Puerto Rico and participates in *X*'s group health plan. On September 20, 2017, the day Hurricane Maria made landfall, *X*'s business is destroyed, and the plan ceases to function. *A* has no other coverage. Employer *Y* is part of the same controlled group as *X* and continues to operate and sponsor a group health plan. *A* is provided a COBRA election notice on December 1, 2017. What is the deadline for *A* to elect COBRA?

(ii) *Conclusion.* In this *Example 1, A* is eligible to elect COBRA coverage under Employer *Y*'s plan because Employer *Y* is in the same controlled group as Employer *X*.[4] The period from September 17, 2017 through March 16, 2018 is disregarded for purposes of determining *A*'s COBRA election period. The last day of *A*'s COBRA election period is 60 days after March 16, 2018, which is May 15, 2018.

Example 2 (Special enrollment period). (i) *Facts.* Individual *B* resides in the United States Virgin Islands. *B* is eligible for, but previously declined participation in, her employer-sponsored group health plan. On October 31, 2017, *B* gives birth and would like to enroll herself and the child into her employer's plan; however, open enrollment does not begin until November 15.

(ii) *Conclusion.* In this *Example 2,* the period from September 16, 2017 through March 15, 2018 is disregarded for purposes of determining *B*'s special enrollment period. *B* may special enroll herself and her child into her employer's plan as early as the date of the child's birth, and the last day *B* may special enroll herself and her child into her employer's plan is 30 days after March 15, 2018, which is April 14, 2018.

Example 3 (COBRA premium payments). (i) *Facts.* Individual *C* resides in Puerto Rico. Before the hurricane, *C* was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since *C* had elected COBRA. Monthly premium payments are due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. *C* made a timely September payment, but did not make an October payment before the hurricane.

(ii) *Conclusion.* In this *Example 3,* the period from September 17, 2017 through March 16, 2018 is disregarded for purposes of making monthly COBRA premium installment payments. Premium payments made by 30 days after March 16, 2018, which would be April 15, 2018 for October, November, and December of 2017, and January, February, and March of 2018, are timely, and *C* is entitled to COBRA continuation coverage for these months.

Example 4 (COBRA premium payments). (i) *Facts.* Same facts as *Example 3.* By April 15, 2018, a payment equal to two months' premium has been made for *C.*

(ii) *Conclusion. C* is entitled to COBRA continuation coverage for October and November 2017, the two months for which timely premium payments were made, and *C* is not entitled to COBRA continuation coverage for any month after November 2017.

Example 5 (Claims for medical treatment under a group health plan). (i) *Facts.* Individual *D* resides in the United States Virgin Islands and is a participant in a group health plan. On October 1, 2017, *D* received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not submitted until later. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment.

(ii) *Conclusion.* For purposes of determining the 365-day period applicable to *D*'s claim, the period from October 1, 2017 through March 15, 2018 is disregarded. Therefore, *D*'s last day to submit a claim is 365 days after March 15, 2018, which is March 15, 2019.

Example 6 (Internal appeal). (i) *Facts.* Individual *E* resides in Puerto Rico. *E* received a notification of an adverse benefit determination from *E*'s disability plan on August 15, 2017. The notification advised *E* that there are 180 days within which to file an appeal.

(ii) *Conclusion.* When determining the 180-day period within which *E*'s appeal must be filed, the period from September 17, 2017 through March 16, 2018 is disregarded. Therefore, *E*'s last day to submit an appeal is 148 days after March 16, 2018, which is August 11, 2018.

Signed at Washington, DC, this 17th day of November, 2017.

Jeanne Klinefelter Wilson,

Deputy Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Signed this 16th day of November, 2017.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service, Department of the Treasury.

[FR Doc. 2017–25332 Filed 11–21–17; 8:45 am]

BILLING CODE 4510–29–P

[4] Under the COBRA rules, the COBRA period continues even after the end of the plan, if the employer continues to provide any group health plan to any employee. Code section 4980B(f)(2)(B)(ii) and ERISA 602(2)(B) . For purposes of COBRA, ''employer'' includes the person for whom services are performed and any other person that is a member of a group described in Code section 414(b), (c), (m), or (o). 26 CFR 54.4980B–2, Q&A 2.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0573]

Drawbridge Operation Regulation; Southern Branch of the Elizabeth River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the I–64 (High Rise) Bridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 7.1, at Chesapeake, VA. The deviation is necessary to facilitate routine maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The modified deviation is effective without actual notice from November 22, 2017 through 11 p.m. on December 3, 2017. For purposes of enforcement, actual notice will be used from 11:01 p.m. on November 22, 2017, until November 22, 2017.

ADDRESSES: The docket for this deviation, [USCG–2017–0573] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this modified temporary deviation, call or email Mr. Mickey Sanders, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6587, email *Mickey.D.Sanders2@uscg.mil*.

SUPPLEMENTARY INFORMATION: On September 26, 2017, the Coast Guard published a temporary deviation entitled ''Drawbridge Operation Regulation; Southern Branch of the Elizabeth River, Chesapeake, VA'' in the **Federal Register** (82 FR 44733). That document resulted from Virginia State Department of Transportation's request for a temporary deviation, occurring from 7 a.m. on October 2, 2017, through 11 p.m. on November 22, 2017, from the normal operation of the drawbridge to accommodate routine maintenance to bridge. Subsequent to the approval of that request, Virginia State Department of Transportation requested a modification to the temporary deviation, starting from 11:01 p.m. on November 22, 2017, through 11 p.m. on December 3, 2017, to allow more time to remove and replace the center locks and install new electrical wiring and lubrication piping. Therefore, through this document, the Coast Guard modifies the dates of the previously approved temporary deviation to allow the I–64 (High Rise) Bridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 7.1, at Chesapeake, VA, to remain in the closed-to-navigation position from Midnight on November 29, 2017, through 11 p.m. on December 3, 2017. At all other times, the bridge will open on signal if at least 24 hours notice is given. The bridge has a vertical clearance of 65 feet above mean high water in the closed position. The current operating schedule is set out in 33 CFR 117.997(e).

Vessels able to pass through the bridge in the closed position may do so if at least 15 minutes notice is given. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by this temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of this effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 17, 2017.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2017–25250 Filed 11–21–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0398; FRL–9971–14–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the September 29, 2017 direct final rule (DFR) that approved a revision to the Maryland state implementation plan (SIP). The revision was in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision was specific to nonattainment new source review (NNSR) requirements. EPA stated in the direct final rule that if EPA received adverse comments by October 30, 2017, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on September 29, 2017. EPA will not institute a second comment period on this action. This withdrawal action is being taken under section 110 of the Clean Air Act.

DATES: The direct final rule published at 82 FR 45475, on September 29, 2017, is withdrawn as of November 22, 2017.

ADDRESSES: EPA has established docket number EPA–R03–OAR–2017–0398 for this action. The index to the docket is available electronically at *https://www.regulations.gov* and in hard copy at Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Johansen, (215) 814–2156, or by email at *johansen.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 8, 2017, the Maryland Department of the Environment (MDE) submitted on behalf of the State of Maryland a formal revision, requesting EPA's approval for the SIP of its NNSR Certification for the 2008 Ozone Standard (Revision 17–01). The SIP revision is in response to EPA's final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. *See* 82 FR 9158 (February 3, 2017). Specifically, Maryland is certifying that its existing NNSR program, covering the Baltimore Nonattainment Area (which includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Philadelphia-Wilmington-Atlantic City Nonattainment Area (which includes Cecil County in Maryland), and the Washington, DC Nonattainment Area (which includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland) for the 2008 8-hour ozone NAAQS, is at least

as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule), for ozone and its precursors.[1] *See* 80 FR 12264 (March 6, 2015).

Please see additional information provided in the direct final action published in the **Federal Register** on September 29, 2017 (82 FR 45475) and in the companion proposed rule which was also published on September 29, 2017 (82 FR 45547). In the DFR, we stated that if we received adverse comment by October 30, 2017, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. As a result of the comment received, EPA is withdrawing the direct final rule approving Maryland's SIP revision related to NNSR requirements for the 2008 8-hour ozone standard.

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.

Dated: November 9, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

■ Accordingly, the amendment to 40 CFR 52.1070(e) published on September 29, 2017 (82 FR 45475) is withdrawn as of November 22, 2017.

[FR Doc. 2017–25322 Filed 11–21–17; 8:45 am]

BILLING CODE 6560–50–P

[1] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0396; FRL–9971–13–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Baltimore, Maryland Nonattainment Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments received, the Environmental Protection Agency (EPA) is withdrawing the October 3, 2017 direct final rule that approved a state implementation plan (SIP) revision submitted by the State of Maryland to add the 2011 base year inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone national ambient air quality standard (NAAQS) into Maryland's SIP. EPA stated in the direct final rule that if EPA received adverse comments by November 2, 2017, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed rulemaking action also published on October 3, 2017. EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 82 FR 45997, on October 3, 2017, is withdrawn as of November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814–2042, or by email at *huang.gavin@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 20, 2016, the State of Maryland submitted the 2011 base year emission inventory through the Maryland Department of the Environment (MDE) to meet the nonattainment requirements for moderate ozone nonattainment areas for the 2008 8-hour ozone NAAQS. In the direct final rule published on October 3, 2017 (82 FR 45997), EPA stated that if EPA received adverse comments by November 2, 2017, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from anonymous commenters.

Because adverse comments were received, EPA is withdrawing the direct final rule approving the revisions to the Maryland SIP that approves the 2011 base year inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone NAAQS on October 3, 2017 (82 FR 45997). EPA will respond to the adverse comments in a separate final rulemaking action.

List of Subjects in 40 CFR Part 52

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

Dated: November 9, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

■ Accordingly, the amendments to 40 CFR part 52 published on October 3, 2017 (82 FR 45997) are withdrawn as of November 22, 2017.

[FR Doc. 2017–25323 Filed 11–21–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0226; FRL–9971–12–Region 4]

Air Plan Approval; GA: Emission Reduction Credits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the September 25, 2017, direct final rule that would have approved changes to the Georgia State Implementation Plan (SIP) to revise the Emission Reduction Credits (ERC) regulation. EPA will address the comment in a separate final action based upon the proposed rulemaking action, also published on September 25, 2017. EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 82 FR 44519, on September 25, 2017, is withdrawn, effective November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached via telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 25, 2017 (82 FR 44519), EPA published a direct final rule approving a SIP revision submitted by the State of Georgia to revise the State's ERCs regulation. EPA took direct final action to approve portions of the September 15, 2008, submission that expands the eligibility for sources in Barrow County that can participate in the ERC Program, adds a provision for reevaluation of the Certificates of ERC, changes the administrative fees, and eliminates an exemption for certain types of ERCs.

In the direct final rule, EPA explained that the Agency was publishing the rule without prior proposal because the Agency viewed the submittal as a non-controversial SIP amendment and anticipated no adverse comments. Further, EPA explained that the Agency was publishing a separate document in the proposed rules section of the **Federal Register** to serve as the proposal to approve the SIP revision should an adverse comment be filed. EPA also noted that the rule would be effective generally 30 days after the close of the public comment period, without further notice unless the Agency received adverse comment by the close of the public comment period. EPA explained that if the Agency received such comments, then EPA would publish a document withdrawing the final rule and informing the public that the rule would not take effect. It was also explained that all public comments received would then be addressed in a subsequent final rule based on the proposed rule, and that EPA would not institute a second comment period on this action.

EPA received adverse comments from a single Commenter on the direct final rule concerning how revisions are recorded in the CFR. EPA will address the comments in a separate final action based on the proposed action also published on September 25, 2017 (82 FR 44543). EPA will not open a second comment period for this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: November 9, 2017.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

Accordingly, the amendment to 40 CFR 52.570(c) published on September 25, 2017 (82 FR 44519), are withdrawn effective November 22, 2017.

[FR Doc. 2017–25193 Filed 11–21–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170605543–7999–02]

RIN 0648–XF486

Atlantic Highly Migratory Species; 2018 Atlantic Shark Commercial Fishing Season

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

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes the 2018 opening date for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico and Caribbean. This final rule also establishes the quotas for the 2018 fishing season based on over- and/or underharvests experienced during 2017 and previous fishing seasons. The large coastal shark (LCS) retention limit for directed shark limited access permit holders is 45 LCS other than sandbar sharks per trip in the Gulf of Mexico region and 25 LCS other than sandbar sharks per trip in the Atlantic region. These retention limits for directed shark limited access permit holders may decrease or increase during the year after considering the specified inseason action regulatory criteria to provide, to the extent practicable, equitable fishing opportunities for commercial shark fishermen in all regions and areas. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2018. The 2018 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Highly Migratory Species (HMS) Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck, Karyl Brewster-Geisz, or Gray Redding at (301) 427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On August 22, 2017 (82 FR 39735), NMFS published a proposed rule for the 2018 opening dates for the Atlantic commercial shark fisheries, commercial shark fishing quotas based on shark landings information reported as of July 14, 2017, and the commercial shark retention limits for each region and sub-region. The August 2017 proposed rule (82 FR 39735; August 22, 2017) for the 2018 season contains details about the action that are not repeated here. The comment period on the proposed rule ended on September 21, 2017.

During the comment period, NMFS received approximately 13 written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As further detailed in the Response to Comments section below, after considering all the comments, NMFS is opening the fishing seasons for all shark management groups on January 1, 2018, as proposed. For directed shark limited access permit holders, the blacktip, aggregated LCS, and hammerhead management groups in the entire Gulf of Mexico region will start the fishing season with a retention limit of 45 LCS other than sandbar sharks per vessel per trip, which is a change from the proposed rule's retention limit of 50 LCS other than sandbar sharks per vessel per trip. The aggregated LCS and hammerhead shark management groups in the Atlantic region will start the fishing season with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, as proposed. The retention limit for incidental shark

limited access permit holders for all regions has not changed from the proposed rule and remains at 3 LCS other than sandbar sharks per trip and a combined total of 16 small coastal sharks (SCS) and pelagic sharks, combined per trip consistent with § 635.24(a)(3) and (4). Additionally, the retention limit for blacknose sharks for all permit holders in the Atlantic region south of 34°00′ N. lat. has not changed from the proposed rule and is 8 blacknose sharks per trip consistent with § 635.24 (a)(4).

This final rule serves as notification of the 2018 opening dates for the Atlantic commercial shark fisheries and 2018 retention limits and quotas, based on shark landings data updated as of October 23, 2017, and considering the ''opening commercial fishing season'' criteria at § 635.27(b)(3). Criteria considered include available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishermen participation in past years, impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology of target species (*e.g.,* seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed season openings. While this action adjusts certain quotas as allowable, this action does not establish or change the annual baseline commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. The baselines quotas were established under previous actions, and any changes to those baseline quotas would be performed through a separate action. Rather, this action adjusts the annual commercial quotas for 2018 based on over- and/or underharvests that occurred in 2017 and previous fishing seasons, consistent with existing regulations, and establishes the opening dates for the fisheries. All of the shark management group adjusted quotas remain the same as proposed.

Response to Comments

NMFS received approximately 13 written and oral comments on the proposed rule from fishermen, dealers, and other interested parties. All written comments can be found at *http://www.regulations.gov/* by searching for RIN 0648–XF486. NMFS received approximately six oral comments through phone conversations or at the HMS Advisory Panel meeting on September 6, 2017. All of the comments received are summarized below.

A. LCS Management Group Comments

Comment 1: NMFS received comments regarding the proposed opening date of January 1 for the western Gulf of Mexico LCS fisheries. Some commenters supported the proposed January 1 opening date for both Gulf of Mexico sub-regions, while other commenters supported a delayed western Gulf of Mexico opening date of January 15 or February 1 to coincide with the religious holiday of Lent, which is often associated with higher ex-vessel prices.

Response: After considering public comment and the ''opening commercial fishing season'' criteria (§ 635.27(b)(3)) described in the proposed rule, NMFS has determined that opening the Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management groups on January 1, as proposed, will promote equitable fishing opportunities throughout the Gulf of Mexico region. In reaching this determination, NMFS considered, in particular, the regulatory criterion regarding the length of the season in previous years for the different species and/or management groups and whether fishermen had been able to participate in the fishery in those years (§ 635.27(b)(3)(iii)), and found that with a January 1 opening date in 2016, the length of the fishing season provided all fishermen with equitable fishing opportunities to participate in the fishery in 2016. Specifically, in 2016, NMFS opened the season on January 1 and closed it on March 12, 2016 (81 FR 12602). In other words, in 2016, while the fishery closed before April 1 (which is when the State of Louisiana annually plans a state-water closure), all fishermen in the sub-region had the same opportunities. In 2017, NMFS opened the season on February 1 and closed it on May 2, 2017 (82 FR 20447). The delayed opening in 2017 allowed Louisiana state-water fishermen only two months to fish given the State of Louisiana's annual state-water closure from April 1 through June 30; fishermen in other parts of the sub-region could continue fishing after April 1. Thus, opening the season in January should give all fishermen in the sub-region a fishing season of equal duration given the State of Louisiana closure, and an equitable opportunity to harvest the quota before the state-water closure.

Comment 2: NMFS received comments regarding the proposed change in the commercial retention limit for the blacktip, aggregated LCS, and hammerhead management groups in the eastern Gulf of Mexico sub-region from the default (and current) level of 45 to 50 LCS other than sandbar sharks per vessel per trip. NMFS received a comment in support of the proposed higher retention limit of 50 LCS other than sandbar sharks per vessel per trip and a comment in support of the current retention limit of 45 LCS other than sandbar sharks per vessel per trip to ensure the season lasts most of the year.

Response: NMFS has determined that the default retention limit of 45 LCS other than sandbar sharks per vessel per trip at the start of the season will ensure equitable fishing opportunities in the eastern Gulf of Mexico sub-region. In the proposed rule, because the management groups remained open all of 2016 and because the relevant management groups were underharvested in 2016, NMFS proposed a higher trip limit (50 LCS other than sandbar sharks per vessel per trip) in order to allow fishermen to fully harvest the blacktip, aggregated LCS, and hammerhead management group quotas, presuming that future catch rates might be expected to be similar. However, as of October 23, 2017, the landings in 2017 are higher than at that time in 2016, and NMFS is considering whether it will be necessary to close the fishery to avoid overharvest of the quota. With the updated information showing an increase in the 2017 eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead management group landings, NMFS has decided to start the commercial retention limit at 45 LCS other than sandbar sharks per vessel per trip. However, NMFS may adjust the retention limit during the fishing season as appropriate after considering the relevant regulatory criteria.

Comment 3: NMFS received comments in support the proposed opening date of January 1, retention limit, and inseason retention limit adjustments for the aggregated LCS and hammerhead management groups in the Atlantic region as long as majority of the quota is available later in the year.

Response: After considering the ''opening commercial fishing season'' regulatory criteria in light of the comments, which reflected support of the proposed opening date, NMFS has decided to open the fisheries in the Atlantic region on January 1, as proposed. Specifically, on January 1, 2018, the LCS fisheries in the Atlantic region will open with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders. The January 1 opening date should allow fishermen in the southern and northern portions of the Atlantic region the opportunity to fish at the beginning of the year. NMFS will consider further adjusting the commercial retention limit during the

season as appropriate, after considering the applicable criteria, to provide all fishermen in the Atlantic region fishing opportunities later in the year as well, since the majority of the quota should still be available and the majority of fishing occurs later in the year. The proposed rule stated that, if it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish, NMFS will consider reducing the commercial retention limit after a portion of the quota is harvested (*e.g.,* 20 percent) and later consider raising the commercial retention limit to 36 LCS other than sandbar sharks per vessel per trip around July 15 to allow greater fishing opportunities later in the year. This is the same approach that has been used in 2016 and 2017. Specifically, in 2017, NMFS started with a retention limit of 25 LCS other than sandbar sharks per vessel per trip on January 1 and then reduced the commercial retention to 3 LCS other than sandbar sharks per vessel per trip on April 15, 2017 (82 FR 17765; April 13, 2017) when the aggregated LCS quota reached 19.5% of the available quota. NMFS increased the retention limit to 36 LCS other than sandbar sharks per vessel per trip on July 16, 2017 (82 FR 32490; July 14, 2017) and, as of the drafting of this final rule, the current fishing season remains open. Thus, based on how the most recent previous seasons have operated to date, NMFS has determined that a lower retention limit at the start of the season will allow NMFS to more easily and closely monitor the quota and catch rates in the beginning of the year to help ensure equitable fishing opportunities later in the year, while acknowledging that the majority of quota generally is harvested later in the year (see the criteria listed at § 635.24(a)(8)(iii)).

B. General Comments

Comment 4: NMFS received several comments in support of the proposed rule and more generally in favor of regulating commercial shark fishing, while other commenters opposed any regulations that allow shark fishing. Commenters who supported the regulation of shark fisheries stated the importance of sharks to the ecosystem. However, one commenter expressed concern about adequate enforcement of the quotas and retention limits including concerns about falsified reporting. The commenters who were opposed to the proposed rule specifically requested a closure of all shark fisheries; wanted more scientific justification of the LCS retention limit change; and were concerned about the mortality of prohibited sharks and other bycatch, shark finning, and consistency with unspecified provisions in international agreements, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response: In this rule, NMFS's goal is to establish quotas for the Atlantic shark fisheries based upon the baseline quotas previously established in the 2006 Consolidated HMS FMP and its amendments (*http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/index.html*), and based on allowable adjustments as a result of over- or underharvests in 2017 and previous years. Generally, when establishing the shark commercial baseline quotas, NMFS uses the total allowable catch (TAC) calculated during the stock assessment. NMFS then subtracts all other sources of mortality, including recreational landings, commercial discards, post-release mortality, and research set-aside mortality; the remaining portion is the commercial baseline quota. In establishing these baseline quotas through an FMP amendment, NMFS takes into account the fishery impacts on essential fish habitat, protected resources, and the environment in general in order to fulfill requirements for the associated FMP amendment along with socioeconomic value of these shark species to various groups. Thus, the commenter's concern that the impacts of fishing for sharks on the environment and other protected species have not been properly analyzed nor considered are not warranted.

Regarding the comment about adequate enforcement and falsified reporting, NMFS takes enforcement of these regulations seriously. If suspected illegal activities are observed in any fishery and/or region, specific information regarding such incidents can be reported to NOAA Office of Law Enforcement Division (*http://www.nmfs.noaa.gov/ole/*) through the national enforcement hotline at 1–800–853–1964. All commercial shark landings and quotas are monitored with the HMS electronic dealer reporting system, which has been in use since 2013. This improvement in commercial quota monitoring technology and the weekly reporting provides more information on each dealer transaction, including all shark landings to the species level, and ensures that quotas are not exceeded. Overall, this improvement helps with monitoring of commercial landings of all shark species and with closing management groups in an efficient and timely manner. In addition, NMFS can verify and detect falsified reporting by dealers and fishermen by cross-checking dealer reports to fishermen's logbooks.

Regarding comments that requested a closure of all sharks fisheries or that raised concerns regarding the scientific justification of the range of allowable retention limits adopted in an earlier rulemaking (Amendment 6 to the 2006 Consolidated HMS FMP) and the mortality of prohibited sharks and other bycatch, the comments are outside the scope of this rulemaking because the purpose of this rulemaking is to adjust quotas for the 2018 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2018 shark seasons. The quotas and general management measures were established in previous rulemakings, which were the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected on 73 FR 40658; July 15, 2008), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), Amendment 9 to the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015), and Amendment 5b to the 2006 Consolidated HMS FMP (82 FR 16478; April 4, 2017). In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS analyzed, among other things, the impacts and justification for increasing the LCS retention limit to a maximum of 55 LCS other than sandbar sharks per vessel per trip. In Amendment 5b to the 2006 Consolidated HMS FMP, NMFS implemented management measures to end overfishing of dusky sharks, which is a prohibited species, and clarified the annual catch limits (ACLs) for the prohibited shark species complex. Management of the Atlantic shark fisheries is based on the best available science to achieve optimum yield while rebuilding overfished shark stocks and preventing overfishing.

Regarding the concerns about shark finning, the United States by federal law has prohibited shark finning since 2000. The Shark Finning Prohibition Act of 2000 amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to prohibit any person under U.S. jurisdiction from engaging in the finning of sharks, possessing shark fins aboard a fishing vessel without the corresponding carcass, or landing shark fins without the corresponding carcass. Since 2008 in Atlantic HMS fisheries and then in 2011 nationally via the Shark Conservation Act, fishermen have been required to land sharks with fins

naturally attached, with one narrow exception related to smooth dogfish so long as certain requirements are met (see Amendment 9 to the 2006 Consolidated HMS FMP).

Regarding the concerns about violating international agreements, NMFS management of the Atlantic shark fisheries is undertaken consistent with applicable international agreements and both international and domestic legal requirements are considered in our development of FMPs. NMFS continues to work with the International Commission for the Conservation of Atlantic Tunas (ICCAT) and other international entities such as CITES to appropriately and effectively manage the stocks throughout their range. Although the commenter did not specify the international agreement provisions about which they were concerned, there are no international agreement provisions that would directly affect the actions undertaken in this rulemaking related to LCS and SCS quotas, allocations, or fishing mortality levels. NMFS will continue to work with the international community to promote conservation in fisheries that span international jurisdictions.

Changes From the Proposed Rule

NMFS made one change to the proposed rule. Specifically, NMFS changed the retention limit for directed shark limited access permit holders at the start of the commercial shark fishing season for the blacktip, aggregated LCS, and hammerhead shark management groups in the eastern Gulf of Mexico region from 50 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. As explained above, NMFS changed the retention limit after considering the ''opening commercial fishing season'' criteria (§ 635.27(b)(3)), public comment, and the 2017 landings data in order to promote equitable fishing opportunities throughout the sub-region. We clearly noted in the proposed rule that retention limits might change in response to public comment, and this level is within the allowable range and consistent with the range established in recent years. Thus, the regulated community had sufficient notice of this possible change between the proposed and final rule.

2018 Annual Quotas

This final rule adjusts the 2018 commercial quotas due to over- and/or underharvests in 2017 and previous fishing seasons, based on landings data through October 23, 2017. The 2018 annual quotas by species and management group are summarized in Table 1. Any dealer reports that are received by NMFS after October 23, 2017, will be used to adjust the 2019 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described in the ''Changes from the Proposed Rule'' section.

TABLE 1—2018 ANNUAL QUOTAS FOR THE ATLANTIC SHARK FISHERIES

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw]

Region or sub-region	Management group	2017 Annual quota (A)	Preliminary 2017 landings [1] (B)	Adjustments [2] (C)	2018 Baseline annual quota (D)	2018 Final adjusted annual quota (D + C)
Western Gulf of Mexico.	Blacktip Sharks ...	331.6 mt dw (730,425 lb dw).	206.6 mt dw (455,535 lb dw).	115.7 mt dw (255,131 lb dw) [3].	231.5 mt dw (510,261 lb dw).	347.2 mt dw (765,392 lb dw).
.....	Aggregated Large Coastal Sharks.	72.0 mt dw (158,724 lb dw).	65.8 mt dw (145,115 lb dw).	.....	72.0 mt dw (158,724 lb dw).	72.0 mt dw (158,724 lb dw).
.....	Hammerhead Sharks.	11.9 mt dw (26,301 lb dw).	2.5 mt dw (5,490 lb dw).	.....	11.9 mt dw (26,301 lb dw).	11.9 mt dw (26,301 lb dw).
Eastern Gulf of Mexico.	Blacktip Sharks ...	36.0 mt dw (79,359 lb dw).	24.9 mt dw (54,918 lb dw).	12.6 mt dw (27,719 lb dw) [3].	25.1 mt dw (55,439 lb dw).	37.7 mt dw (83,158 lb dw).
.....	Aggregated Large Coastal Sharks.	85.5 mt dw (188,593 lb dw).	57.6 mt dw (127,022 lb dw).	.....	85.5 mt dw (188,593 lb dw).	85.5 mt dw (188,593 lb dw).
.....	Hammerhead Sharks.	13.4 mt dw (29,421 lb dw).	6.8 mt dw (15,059 lb dw).	.....	13.4 mt dw (29,421 lb dw).	13.4 mt dw (29,421 lb dw).
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	112.6 mt dw (248,215 lb dw).	49.4 mt dw (108,965 lb dw).	.....	112.6 mt dw (248,215 lb dw).	112.6 mt dw (248,215 lb dw).
.....	Smoothhound Sharks.	504.6 mt dw (1,112,441 lb dw).	0 mt dw (0 lb dw)	168.2 mt dw (370,814 lb dw).	336.4 mt dw (741,627).	504.6 mt dw (1,112,441 lb dw).
Atlantic	Aggregated Large Coastal Sharks.	168.9 mt dw (372,552 lb dw).	104.4 mt dw (230,205 lb dw).	.....	168.9 mt dw (372,552 lb dw).	168.9 mt dw (372,552 lb dw).
.....	Hammerhead Sharks.	27.1 mt dw (59,736 lb dw).	7.9 mt dw (17,448 lb dw).	.....	27.1 mt dw (59,736 lb dw).	27.1 mt dw (59,736 lb dw).
.....	Non-Blacknose Small Coastal Sharks.	264.1 mt dw (582,333 lb dw).	92.9 mt dw (204,851 lb dw).	.....	264.1 mt dw (582,333 lb dw).	264.1 mt dw (582,333 lb dw).
.....	Blacknose Sharks (South of 34° N. lat. only).	17.2 mt dw (37,921 lb dw).	7.0 mt dw (15,344 lb dw).	.....	17.2 mt dw (37,921 lb dw).	17.2 mt dw (37,921 lb dw).
.....	Smoothhound Sharks.	1,802.6 mt dw (3,973,902 lb dw).	337.5 mt dw (744,146 lb dw).	600.9 mt dw (1,324,634 lb dw).	1,201.7 mt dw (2,649,268 lb dw).	1,802.6 mt dw (3,973,902 lb dw).
No regional quotas	Non-Sandbar LCS Research.	50.0 mt dw (110,230 lb dw).	12.2 mt dw (26,913 lb dw).	.....	50.0 mt dw (110,230 lb dw).	50.0 mt dw (110,230 lb dw).
.....	Sandbar Shark Research.	90.7 mt dw (199,943 lb dw).	45.8 mt dw (100,982 lb dw).	.....	90.7 mt dw (199,943 lb dw).	90.7 mt dw (199,943 lb dw).

TABLE 1—2018 ANNUAL QUOTAS FOR THE ATLANTIC SHARK FISHERIES—Continued

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw]

Region or sub-region	Management group	2017 Annual quota (A)	Preliminary 2017 landings [1] (B)	Adjustments [2] (C)	2018 Baseline annual quota (D)	2018 Final adjusted annual quota (D + C)
.....	Blue Sharks	273.0 mt dw (601,856 lb dw).	< 2.3 mt dw (< 5,000 lb dw).	.....	273.0 mt dw (601,856 lb dw).	273.0 mt dw (601,856 lb dw).
.....	Porbeagle Sharks	1.7 mt dw (3,748 lb dw).	0 mt dw (0 lb dw)	.....	1.7 mt dw (3,748 lb dw).	1.7 mt dw (3,748 lb dw).
.....	Pelagic Sharks Other Than Porbeagle or Blue.	488.0 mt dw (1,075,856 lb dw).	91.5 mt dw (201,822 lb dw).	.....	488.0 mt dw (1,075,856 lb dw).	488.0 mt dw (1,075,856 lb dw).

[1] Landings are from January 1, 2017, through October 23, 2017, and are subject to change.

[2] Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring. Also, the underharvest adjustments cannot exceed 50 percent of the baseline quota.

[3] This adjustment accounts for underharvest in 2017. This final rule increases the overall Gulf of Mexico blacktip shark quota by 128.3 mt dw (282,850 lb dw). Since any underharvest is divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota is increased by 115.7 mt dw, or 90.2 percent of the underharvest, while the eastern Gulf of Mexico blacktip shark quota is increased by 12.6 mt dw, or 9.8 percent of the underharvest.

Fishing Season Notification for the 2018 Atlantic Commercial Shark Fishing Seasons

NMFS considered the seven ''opening commercial fishing season'' criteria listed in § 635.27(b)(3), as discussed above and as described in the proposed rule (82 FR 39735; August 22, 2017). These include, among other things: The available annual quotas based on any over- and/or underharvests experienced during the previous seasons; the estimated season length based on available quotas and catch rates from previous years; the length of the season in the previous years and whether fishermen were able to participate in the fishery in those years; and the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas.

Regarding the LCS retention limit, as shown in Table 2, for directed shark limited access permit holders, the Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark management groups will start the commercial fishing season at 45 LCS other than sandbar sharks per vessel per trip, and the Atlantic aggregated LCS and hammerhead shark management groups will start the commercial fishing season at 25 LCS other than sandbar sharks per vessel per trip. These retention limits could be changed throughout the year based on consideration of the inseason trip limit adjustment criteria at 50 CFR 635.24(a)(8). In the Atlantic region specifically, as described above, NMFS will closely monitor the quota at the beginning of the year. If it appears that either the quota for the Atlantic aggregated LCS or the hammerhead shark management groups is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish (*e.g.,* if approximately 20 percent of the quota is caught at the beginning of the year), NMFS will consider reducing the commercial retention limit, then consider raising it later in the season. Based on prior years' fishing activity, to allow more consistent fishing opportunities later in the year, NMFS anticipates considering raising the commercial retention limit to the default limit of 36 LCS other than sandbar sharks per vessel per trip around July 15, 2018.

All of the shark management groups will remain open until December 31, 2018, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota; however, consistent with § 635.28(b)(5), NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. Additionally, NMFS has previously established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. The linked and non-linked quotas are shown in Table 2. NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group including any linked quotas, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP

Region or sub-region	Management group	Quota linkages	Season opening dates	Commercial retention limits for directed shark limited access permit holders (inseason adjustments are available)
Eastern Gulf of Mexico.	Blacktip Sharks	Not Linked	January 1, 2018	45 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked.		

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP—Continued

Region or sub-region	Management group	Quota linkages	Season opening dates	Commercial retention limits for directed shark limited access permit holders (inseason adjustments are available)
	Hammerhead Sharks.			
Western Gulf of Mexico.	Blacktip Sharks	Not Linked	January 1, 2018	45 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked.		
	Hammerhead Sharks.			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	Not Linked	January 1, 2018	N/A.
Atlantic	Aggregated Large Coastal Sharks.	Linked	January 1, 2018	25 LCS other than sandbar sharks per vessel per trip. [If quota is landed quickly (e.g., if approximately 20 percent of quota is caught at the beginning of the year), NMFS anticipates considering an inseason reduction (e.g., to 3 or fewer LCS other than sandbar sharks per vessel per trip), and later considering an inseason increase to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2018]
	Hammerhead Sharks.			
	Non-Blacknose Small Coastal Sharks.	Linked (South of 34° N. lat. only).	January 1, 2018	N/A.
	Blacknose Sharks (South of 34° N. lat. only).			
No regional quotas	Non-Sandbar LCS Research.	Linked	January 1, 2018	N/A.
	Sandbar Shark Research.			
	Blue Sharks	Not Linked	January 1, 2018	N/A.
	Porbeagle Sharks.			
	Pelagic Sharks Other Than Porbeagle or Blue.			

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

Section 604(a)(1) of the RFA requires an explanation of the purpose of the rulemaking. The purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to establish the 2018 Atlantic commercial shark fishing quotas, retention limits, and fishing seasons. Without this rule, the Atlantic commercial shark fisheries would close on December 31, 2017, and would not reopen until another action was taken. This final rule will be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other fishermen in the region. The opening dates were chosen to allow for an equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the RFA requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), provide a summary of NMFS' assessment of such issues, and provide a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2018 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA. However, NMFS received comments related to the overall economic impacts of the proposed rule, and those comments and NMFS' assessment of and response to them are summarized previously in the preamble (see Comment 1). As described in the responses to those comments relating to the season opening dates, consistent with § 635.27(b)(3), the opening date for all of the commercial shark fisheries will be implemented as proposed (January 1, 2018).

Section 604(a)(3) of the RFA requires NMFS to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register** (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes (80 FR 81194, December 29, 2015). NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than $11 million for commercial fishing.

As of October 2017, the final rule would apply to the approximately 222 directed commercial shark permit holders, 269 incidental commercial shark permit holders, 148 smoothhound shark permit holders, and 113 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 491 directed and incidental commercial shark permit holders, only 36 permit holders landed sharks in the Gulf of Mexico region and only 97 landed sharks in the Atlantic region. Of the 148 smoothhound shark permit holders, only 77 permit holders landed smoothhound sharks in the Atlantic region and none landed smoothhound sharks in the Gulf of Mexico region. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions.

Section 604(a)(4) of the RFA requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments.

Section 604(a)(5) of the RFA requires NMFS to describe the steps taken to minimize the economic impact on small entities, consistent with the stated objectives of applicable statutes. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the rule on small entities. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) for the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this rulemaking, NMFS adjusted the baseline quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest, as specified and allowable in existing regulations. Under current regulations (§ 635.27(b)(2)), all shark fisheries close on December 31 of each year, or when NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota, and do not open until NMFS takes action, such as this rulemaking to re-open the fisheries. Thus, not implementing these management measures would negatively affect shark fishermen and related small entities, such as dealers, and also would not provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Based on the 2016 ex-vessel price, fully harvesting the unadjusted 2018 Atlantic shark commercial baseline quotas could result in total fleet revenues of $7,779,285 (see Table 3). For the Gulf of Mexico blacktip shark management group, NMFS will increase the baseline sub-regional quotas due to the underharvests in 2017. The increase for the western Gulf of Mexico blacktip shark management group would result in a $218,647 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group would result in a $32,902 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS will increase the baseline quotas due to the underharvest in 2017. This would cause a potential gain in revenue of $581,718 for the fleet in the Gulf of Mexico region and a potential gain in revenue of $1,084,557 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for under- and overharvests at that time.

TABLE 3—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2016

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Western Gulf of Mexico	Blacktip Shark	$0.56	$11.00
	Aggregated LCS	0.52	11.06
	Hammerhead Shark	0.83	11.08
Eastern Gulf of Mexico	Blacktip Shark	0.89	10.67
	Aggregated LCS	0.56	11.23
	Hammerhead Shark	0.25	15.95
Gulf of Mexico	Non-Blacknose SCS	0.38	8.68
	Smoothhound Shark	1.50	1.91
Atlantic	Aggregated LCS	0.79	5.54
	Hammerhead Shark	0.38	5.73
	Non-Blacknose SCS	0.71	2.92
	Blacknose Shark	0.98	2.92
	Smoothhound Shark	0.75	1.91
No Region	Shark Research Fishery (Aggregated LCS)	0.70	9.47
	Shark Research Fishery (Sandbar only)	0.68	9.47
	Blue shark	0.75	3.58
	Porbeagle shark*	1.54	3.58
	Other Pelagic sharks	1.54	3.58

*Used other pelagic shark ex-vessel prices for porbeagle sharks ex-vessel prices since there currently are no landings of porbeagle sharks.

For this final rule, NMFS reviewed the ''opening commercial fishing season'' criteria at § 635.27(b)(3)(i) through (vii) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. Over- and/or underharvests of 2017 and previous fishing season quotas were examined for the different species/complexes to determine the effects of the 2018 final quotas on fishermen across regional fishing areas. The potential season lengths and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, NMFS examined the seasonal variation of the different species/complexes and the effects on fishing opportunities. In addition to these criteria, NMFS also considered updated landings data and public comments on the proposed rule before arriving at the final opening dates for the 2018 Atlantic shark management groups. For the 2018 fishing season, NMFS is opening the shark management groups on January 1, 2018. The direct and indirect economic impacts will be neutral on a short- and long-term basis for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, Gulf of Mexico non-blacknose shark SCS, Atlantic non-blacknose shark SCS, Atlantic blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, because NMFS did not change the opening dates of these fisheries from the status quo of January 1.

Opening the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1 will result in short-term, direct, moderate, beneficial economic impacts, as fishermen and dealers in the southern portion of the Atlantic region will be able to fish for and sell aggregated LCS and hammerhead sharks starting in January. These fishermen will be able to fish earlier in the 2018 fishing season compared to the 2010, 2011, 2012, 2014, and 2015 fishing seasons, which did not start until June or July. The opening date and retention limits finalized in this rule for the Atlantic region are the same as those for the current season and similar to those for the 2016 and 2017 seasons. For both 2016 and 2017, the fishery remained open all year with some modifications to the retention limit throughout the year.

Based on public comment on past season rules, some Atlantic fishermen in the southern and northern parts of the region prefer a January 1 opening for the fishery as long as the majority of the quota is available later in the year. With the implementation of the HMS electronic reporting system in 2013, NMFS now monitors the quota on a more real-time basis compared to the paper reporting system that was in place before 2013. This ability, along with the inseason retention limit adjustment criteria in § 635.24(a)(8), allows NMFS the flexibility to further provide equitable fishing opportunities for fishermen across all regions, to the extent practicable. Depending on how quickly the quota is being harvested, as was done in 2016 and 2017, NMFS will consider reducing the commercial retention limit, then consider raising it later in the season to ensure that fishermen farther north have sufficient quota for a fishery later in the 2018 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit depend on the needed reduction in the trip limit and the timing of such a reduction. Therefore, such a reduction in the trip limit for directed shark limited access permit holders is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the northern portion of the Atlantic region, a January 1 opening for the aggregated LCS and hammerhead shark management groups, with inseason trip limit adjustments to ensure quota is available later in the season, will have direct, minor, beneficial economic impacts in the short-term for fishermen as they will potentially have access to the aggregated LCS and hammerhead shark quotas earlier than in past seasons. Fishermen in this area have stated that, depending on the weather, some aggregated LCS species might be available to retain in January. Thus, fishermen will be able to target or retain aggregated LCS while targeting non-blacknose SCS. There will be indirect, minor, beneficial economic impacts in the short- and long-term for shark dealers and other entities that deal with shark products in this region as they will also have access to aggregated LCS products earlier than in past seasons. Thus, opening the aggregated LCS and hammerhead shark management groups

in January and using inseason trip limit adjustments to ensure the fishery is open later in the year in 2018 will cause beneficial cumulative economic impacts, because it allows for a more equitable distribution of the quotas among constituents in this region, consistent with the 2006 Consolidated HMS FMP and its amendments.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a listserv summarizing fishery information and regulations for Atlantic shark fisheries for 2018. This listserv also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2017.

Samuel D. Rauch, III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XF805

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason bluefin tuna quota transfer (Harpoon category to General category).

SUMMARY: NMFS is transferring 25.6 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Harpoon category to the General category for the remainder of the 2017 fishing year, to account for overharvests of the September and October through November subquotas, and utilize the unused portion of the adjusted Harpoon category quota. This action results in an adjusted General category subquota of 12.7 mt for the December subquota period. It is intended to preserve the opportunity for General category fishermen to participate in the December General category fishery, which reopens on December 1, 2017, and is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective December 1, 2017, through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The base quota for the General category is 466.7 mt, as established in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015). See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a ''subquota'' or portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods.

On December 19, 2016, NMFS published an inseason action transferring 16.3 mt of quota from the December 2017 subquota to the January 2017 subquota period, resulting in a subquota of 41 mt for the January 2017 period and a subquota of 8 mt for the December 2017 period (81 FR 91873). For 2017, NMFS also transferred 40 mt from the Reserve to the General category effective March 2, resulting in an adjusted General category quota of 506.7 mt (82 FR 12747, March 7, 2017). In advance of the October 1 General category reopening, NMFS published an inseason action transferring 156.4 mt from the Reserve category to the General category to account for overharvests of the January, June through August, and September subquotas, resulting in an adjusted 2017 General category quota of 663.1 mt (82 FR 46000, October 3, 2017). NMFS closed the General category fishery when the October through November subquota (60.7 mt) was met, effective October 5, 2017 (82 FR 46934, October 10, 2017). The Harpoon category fishery automatically closed for the year on November 15, 2017. Once re-opened on December 1, the 2017 General category fishery would be open until December 31, 2017, or until the General category quota is reached, whichever comes first.

Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria at § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to the General category fishery. These considerations include, but are not limited to, the following:

NMFS considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Preliminary landings data as of October 31, 2017, indicate that the General category has landed 676 mt this year, which exceeds the adjusted

General category quota of 663.1 mt, and the Harpoon category has landed 43 mt of the adjusted Harpoon category quota of 68.6 mt. Without a quota transfer at this time, there would be no quota available to General category participants in December because the entire adjusted General category quota of 663.1 mt has been reached and exceeded. Approximately 75 percent (816.3 mt) of the total of the BFT subquotas for all commercial categories (888.7 mt, as published in the 2015 BFT quota final rule) has been harvested as of October 31, 2017, however, and NMFS anticipates that some amount of that 888.7 mt of commercial quota may remain unused by the end of the year even with the transfer. Absent a transfer at this time, this segment of the fishery would have to remain closed if no adjustment is made, even though NMFS anticipates that commercial-sized BFT will be readily available to vessels fishing under the General category quota when the General category fishery is scheduled to reopen on December 1, 2017. Transferring 25.6 mt of BFT quota from the Harpoon category to the General category, effective December 1, 2017, would allow the General category to resume fishing and would result in an adjusted quota of 688.7 mt for the 2017 General category fishing season, and, specifically, 12.7 mt available for the December subquota period.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. A portion of the transferred quota covers overharvests in the category as prosecuted to date (*i.e.,* for late-reported September landings and landings in excess of the October through November subquota), and thus has already been harvested. For the remainder of the transferred quota, which make the December subquota whole to the extent that transferrable quota is available and to utilize unused Harpoon category quota, there is a high probability that the transferred quota will be harvested during the December time period.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2017 landings and dead discards. In the last several years, total U.S. BFT landings have been below the total available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2017 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2015 BFT quota final rule, and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

Based on the considerations above, NMFS is transferring all of the remaining 25.6 mt of Harpoon category quota to the General category with the objective of accounting for underharvests of the September and October through November subquotas, providing the previously announced 8 mt of BFT quota for the December subquota period, and also utilizing the remainder of the unused Harpoon category quota. Therefore, NMFS adjusts the General category quota to 688.7 mt for the 2017 General category fishing season (*i.e.,* through December 31, 2017, or until the General category quota is reached, whichever comes first), and adjusts the Harpoon category quota to 43 mt. This results in 12.7 mt being available to the General category for the December subquota period. If necessary, NMFS will close the General category fishery for December when the available subquota for that time period is reached.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting App. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.,* quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

NMFS reminds General category participants that when the fishery reopens December 1, 2017, the BFT General category daily retention limit will be one large medium or giant BFT (measuring 73'' or greater) per vessel per day/trip.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2017 is impracticable and contrary to the public interest as such a delay would result in continued closure of the General category fishery (because the available quota has been met) and the need to re-open the fishery later in the

December time period, rather than the fishery automatically re-opening on December 1. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.27(a)(9) (Inseason adjustments) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 16, 2017.

Emily H. Menashes,

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

[FR Doc. 2017–25202 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170104016–7999–03]

RIN 0648–XF138

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Disapproval of Northeast Fishery Sector IX Operational Plan

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

ACTION: Interim final rule.

SUMMARY: This rule withdraws approval of the 2017 and 2018 Northeast Fishery Sector IX operations plan. The Regional Administrator determined that the sector and its participants are not complying with the requirements of the approved operations plan, and that the continuation of the operations plan will undermine achievement of conservation and management objectives of the Northeast Multispecies Fishery Management Plan. This rule is intended to ensure that sector operations are consistent with approved plans for accurately monitoring and reporting sector catch to ensure that overages of a sector's allocation do not occur.

DATES: Approval of the Northeast Fishery Sector IX Operations Plan for Fishing Years 2017 and 2018 (May 1, 2017, through April 30, 2019) is withdrawn, effective November 20, 2017. Written comments must be received on or before December 20, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0016, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0016,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Interim Final Rule to Withdraw Approval of NEFS 9.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Policy Analyst, (978) 282–8493.

SUPPLEMENTARY INFORMATION:

Background

To help achieve the fishing mortality and conservation objectives of the Fishery Management Plan (FMP), each sector is allocated annual catch entitlements (ACE) and must ensure that these ACEs are not exceeded. The Regional Administrator must approve sector operations plans in order for sectors to operate and be allocated ACE for specific groundfish stocks. A sector's operations plan includes a detailed plan for monitoring and reporting catch and the specific management rules sector participants will abide by in order to avoid exceeding the sector's allocation, as well as a plan for how the sector will operate if an ACE is exceeded. The operations plan also includes internal sector enforcement measures for operation plan breaches and remedies, such as a penalty schedule for non-compliance with the operations plan or other actions that would jeopardize the sector's continued approval. Penalties under the plan range from a written warning or fine to expulsion from the sector.

The Regional Administrator may withdraw approval of a sector, after consultation with the New England Fishery Management Council, at any time as authorized in 50 CFR 648.87(c)(3). Withdrawal may occur if sector participants are not complying with the requirements of the approved operations plan or if the continuation of the operations plan will undermine achievement of fishing mortality objectives of the Northeast Multispecies FMP.

On March 30, 2017, Carlos Rafael pleaded guilty to all counts in *United States* v. *Carlos Rafael* (No. 16–CR10124–WGY). Mr. Rafael is the owner of Carlos Seafood (a Federally permitted dealer) and a fleet of Federally permitted groundfish vessels that are enrolled in NEFS 9. Mr. Rafael admitted to falsely reporting catch information (species and weight) for 13 of his vessels on dealer catch reports and vessel trip reports from 2012 through 2015. These 13 vessels operated under the sector operations plan for NEFS 9 during the period of known misreporting, and are currently enrolled in the sector for fishing year 2017. Sentencing for these violations occurred on September 25, 2017. Mr. Rafael was sentenced to serve 46 months in prison and 3 years of supervised release, and during supervised release, he is banned from working in the fishing industry. The Court also ordered Mr. Rafael to pay a fine of $200,000 and restitution to the U.S. Treasury of $108,929. On October 11, 2017, the U.S. District Court Judge in the criminal case ordered the forfeiture of Mr. Rafael's interests in 4 of the 13 vessels involved in the criminal case, as well as the permits issued to those vessels.

On April 28, 2017, we published an interim final rule approving 19 sectors and their operations plans, including NEFS 9, for fishing years 2017 and 2018 (82 FR 19618). At the time, although Mr. Rafael had pleaded guilty, the criminal case was not complete and sentencing for the violations had not occurred. We provisionally approved the NEFS 9 operations plan for fishing years 2017 and 2018, and allocated ACE to the sector for 2017, pending Mr. Rafael's sentencing to allow for our consideration of any additional information regarding NEFS 9 operations. In the interim final rule, we noted that we intended to take

additional action, which may include consideration of the continued approval of the sector or additional management and monitoring requirements.

NEFS 9 Composition

For fishing year 2017, there are 60 groundfish permits enrolled in NEFS 9, and Mr. Rafael is a major participant in the sector. All of Mr. Rafael's groundfish permits are enrolled in NEFS 9, and he does not have any other vessels enrolled in another sector. According to the current operations plan, 22 of the permits enrolled in NEFS 9 were expected to actively fish for groundfish. Of the remaining 38 permits in the sector, 18 are in Confirmation of Permit History (*i.e.* the permits are not on a vessel, but quota from these permits is available for use by sector vessels or to lease out to other sectors). The other permits in the sector are either active participants in other fisheries, or are completely inactive; all of these could begin to fish for groundfish, if granted permission by the sector, without a change to the operations plan.

Since fishing year 2011, NEFS 9 employed Mr. Rafael's daughter, Stephanie Rafael-DeMello as the Sector Manager. Prior to May 30, 2017, Mr. Rafael was the President of NEFS 9 and held a position on the Board of Directors. On May 30, 2017, the sector notified us that it had removed Mr. Rafael from the position of President, as well as from the Board of Directors. A new Board of Directors was identified, including the Board's elected officials, with only one individual in common with the Board from previous years.

NEFS 9 Operations Plan Breaches

Beyond the requirements described above to monitor and report catch, the NEFS 9 operations plan specifies that upon the Sector Manager becoming aware of an ''apparent breach'' in a member's compliance, the Manager will investigate. The Manager is also authorized to refer the matter to the sector's Enforcement Committee and take other actions as necessary, including potentially issuing a ''Stop Fishing Order.'' The Manager is required to submit a weekly Trip Issue Report to inform us of any enforcement, or reporting compliance issues in the sector.

Since Mr. Rafael's guilty plea in March 2017, we received a letter on May 30, 2017, from the newly elected president of NEFS 9 concerning matters related to Mr. Rafael's criminal acts. The letter outlined changes to the sector's Board of Directors, as described above, which is also included in the NEFS 9 operations plan. In the letter, the president stated that the Board notified all sector members that NEFS 9 vessels are prohibited from using Carlos Seafood, Inc. as the primary buyer and reporting dealer for any landings. The letter also indicated that the newly constituted Enforcement Committee intended to meet to further discuss Mr. Rafael's criminal violations.

On October 5, 2017, representatives of the sector requested a meeting with us to discuss the sector, and we met with the NEFS 9 Board of Directors, the Sector Manager, and representatives from the Northeast Seafood Coalition and the Northeast Sector Service Network (NESSN) on October 26, 2017. From that discussion, we learned that the Board of Directors, including those on the sector's newly formed Enforcement Committee, had met monthly since forming in May 2017. However, the Board of Directors indicated that no additional changes have been made to the operations of the sector beyond what was described in the May 30, 2017, letter. Similarly, the sector's annual Year-End Report for Fishing Year 2016, submitted on October 27, 2017, made reference to the steps laid out in the May 30 letter, but gave no indication that further steps had been taken. We have not received any other information from the sector.

While the steps taken that are identified in the May 30 letter are potentially positive measures, they are insufficient. The sector has not provided sufficient background information about the new Board members that would help us assess their independence or ability to govern the sector differently to ensure compliance. NEFS 9 has not provided us with any information, via the Trip Issue Report or other means, regarding any investigation by the sector to determine if any of its members or vessel operators breached the operations plan agreement. Nor has there been any indication that the Board, Enforcement Committee, or Manager have taken any sector operations plan measures to address any breach such as imposing or putting in place any liquidated damages, fine, stop fishing order, expulsion, or a requirement to post a security bond, which are potential actions included in NEFS 9's operations plan. There has been no indication of whether any measures have been put in place to ensure compliance by any vessel operators who may have assisted in the misreporting. Additionally, the sector has not provided to us any accounting of any of the potential ACE overages or misallocations. Although the new Board does provide a more independent group to which the Manager is required to report potential violations, it is not clear if the sector personnel changes fully address the Manager's responsibility for the sector's reporting requirements, ACE monitoring, and monitoring sector members' compliance with the operations plan. Last, there have been no substantial changes in the NEFS 9 operations plan for fishing years 2017 and 2018 to prevent further misreporting by any of its members or vessel operators; however, we recognize that the Board prohibited NEFS 9 vessels from using Carlos Seafood as the primary buyer and reporting dealer for any landings.

NEFS 9 ACE Overages

If a sector exceeds its ACE in any fishing year, the regulations require that the overage be deducted from the sector's ACE in the following fishing year. Based on publically available information from the criminal case, NEFS 9 likely exceeded its ACE for multiple groundfish stocks in multiple years potentially beginning in the 2012 fishing year. Because Mr. Rafael operated as both the dealer and vessel owner with no independent oversight, he was able to coordinate the misreporting, allowing these potential overages to go undetected until now. The repeated ACE overages we are now aware of indicate that the initial allocations made to the sector at the start of the 2017 fishing year and likely other fishing years were artificially high. As a result, the sector's catch to date may already exceed what would have been an accurate allocation for this fishing year.

Based on initial analysis of the misreported catch for American plaice and witch flounder, the magnitude of some of the ACE overages could be extensive. The misreported catch information for cod and yellowtail flounder is at a species level, and additional analysis is required to apportion this catch by stock area. We intend to complete this analysis as soon as possible to determine the full extent of any overages for cod and yellowtail flounder stocks. Any accountability measures, such as assessing and deducting ACE overages incurred by the sector, would be determined in a future action. Other than the public information we have access to from Mr. Rafael's plea agreement, NEFS 9 has not provided any information about the nature and scope of misreporting that would help us to accurately administer its ACEs.

Disapproval of NEFS 9 Sector Operations Plan

The Council discussed Mr. Rafael's violations and the conditional approval of NEFS 9 at both its June and September 2017 meetings and was encouraged to comment on this issue. On September 29, 2017, we received a letter from the Council requesting that we immediately implement the sector regulations and the NEFS 9 operations plan.

Based on our review, NEFS 9 has failed to uphold sector operations plan requirements to a degree and extent that undermines foundational principles necessary for successful sector operations. Further, the sector's corrective measures to date are insufficient. We need more information and further measures are necessary to ensure that the sector operates in a manner that does not undermine the sector program.

Accurate reporting, internal accountability, and organizational integrity are core principles of the sector system. The systematic sector and vessel misreporting over a long period of time was facilitated by an internal structure and control by a single, dominant participant combined with a lack of oversight. The weakness and vulnerability of this sector's structure was underscored by NEFS 9's lack of an adequate response once the scope and nature of these violations were revealed. To date, there appears to be persistent non-compliance with fundamental operations plan requirements along with a significantly compromised structure and lack of NEFS 9 oversight. NEFS 9's failures to manage its operations effectively appear to have led to repeated ACE overages, some of which may be extensive. These overages may be continuing this fishing year, which threatens to continue undermining the sector system and its fishing mortality and conservation controls.

Without further information or revisions to its operations plan, we are not confident that the operations plan contains measures that would provide us with current accurate information or ensure compliance with the operations plan to prevent and address future misreporting or ACE overages. The sector has not provided us with information of any action it has taken to investigate its members' compliance with the sector operations plan or any measures to address breaches of its plan. The sector has not provided any information to help us corroborate the nature and scope of the false information provided to us and its effect on the sector's ACEs. The sector has not provided us with any information about the nature and scope of vessel operator cooperation with the non-compliance, or how the sector can be assured the operators are acting in compliance with the operations plan now. The sector has made no new proposals about any new compliance measures or provided any information about actions taken by their new Enforcement Committee.

NEFS 9 has failed its primary responsibility of accurately reporting and tracking its catch and has taken only minimal, insufficient steps to ensure accurate reporting and compliance with its operations plan. This includes addressing the fraudulent catch within the sector over multiple years and for multiple stocks to ensure the sector has proper ACE allocations, which may require deducting ACE overages the sector has incurred. As a result, continuation of the sector operations plan will undermine achievement of fishing mortality and management objectives of the Northeast Multispecies FMP. Therefore, we are withdrawing approval of the NEFS 9 sector operations plan until a complete and successful accounting of what happened is provided and steps are taken to ensure the sector will operate within its operations plan. We intend to work with NEFS 9 to address their operations plan issues, which we expect will take considerable time and will require additional correspondence and meetings after publication of this rule.

Timing of Withdrawing Approval and Approval

Effective November 20, 2017, approval of the NEFS 9 operation plan is withdrawn. The sector ACE remains allocated to NEFS 9, and this action does not reallocate the ACE to other sectors or to the common pool. Without an approved operations plan, NEFS 9 is prohibited from transferring ACE to or from other sectors. Vessels that were enrolled in NEFS 9 during this fishing year are prohibited from: (1) Fishing on a sector trip and harvesting sector ACE; (2) fishing on a common pool trip; or (3) joining another sector. If a vessel enrolled in NEFS 9 has declared a sector trip, and is at sea on November 20, 2017, it must return to port immediately; the vessel is permitted to offload its catch for sale. Also, we will work with individual vessels that had previously set gillnet gear, to haul the gear as soon as practicable. Vessels that are able to fish under other permits, without declaring a sector trip or using a multispecies day-at-sea, can continue to do so.

If NEFS 9 submits a new operations plan, we would attempt to conduct a review and complete a rulemaking as expeditiously as practicable. Before we could approve a new operations plan for NEFS 9, the sector must provide us with critical information about steps taken to comply with operations plan requirements and ensure steps are taken to address the organizational and operational issues that facilitated the false reporting. Vessels currently enrolled in NEFS 9 may opt to participate in the common pool or enroll in a different sector for the 2018 fishing year, as sector rosters are set annually.

Comments and Responses

We are accepting comments on this interim final rule. In response to the previous interim final rule approving 19 sectors (April 28, 2017; 82 FR 19618), we received eight comments relating to the provisional approval of NEFS 9 for the 2017 and 2018 fishing years. The comments came from Associated Fisheries of Maine (AFM), NEFS 9, NESSN, Portland Fish Exchange (PFEX), Sustainable Harvest Sector (SHS), two industry members, and one anonymous commenter.

Provisional Approval of NEFS 9 Operations Plan

Comment 1: NESSN commented that NMFS approval of NEFS 9 was appropriate at that time given the ongoing legal proceedings against a sector member and not the sector itself.

Other comments from AFM, PFEX, SHS, two industry members, and one anonymous commenter disagreed, stating that NEFS 9's operations plan should not have been approved for Fishing Years 2017 and 2018 given the admitted crimes of NEFS 9 sector member, Mr. Rafael. Several of these commenters elaborated on measures included in the sector operations plan that the sector may not have complied with or enforced after it learned of Mr. Rafael's actions, and that the sector should be held accountable to the actions outlined in their plan. Some also stated that NMFS' actions were inadequate in this case and that 100 percent monitoring for NEFS 9 may be appropriate.

Response: We agree that, at the time, provisional approval of the NEFS 9 operations plan was appropriate given that sentencing for the criminal violations was not complete and may have provided additional information. In the interim final rule, we noted that once sentencing is complete, we would consider all of the available information to determine whether any management action is necessary, including additional

management measures or withdrawal of NEFS 9 approval.

Based on all of the available information, and now that sentencing is complete, we have determined that NEFS 9 failed and continues to fail to uphold the requirements of its operations plan. This non-compliance likely contributed to extensive overages of the sector's allocation for multiple groundfish stocks in multiple fishing years. The degree and extent of NEFS 9's failure to uphold its operations plan requirements undermines the foundational principles necessary for successful sector operations. As a result, we determined that NEFS 9 cannot continue to operate until and unless we receive sufficient information concerning the scope and nature of the operations plan breaches, actions taken by the sector in response to the breaches in accordance with operations plan requirements, and actions that will ensure the sector currently is operating in compliance with its operations plan and within its ACEs. This includes addressing the fraudulent catch within the sector over multiple years and for multiple stocks to ensure the sector has proper ACE allocations, which may require deducting ACE overages the sector has incurred. We intend to work with NEFS 9 to address its operations plan issues and will determine the measures necessary for ensuring that the sector's operations are appropriate and sufficient for accurately monitoring and reporting sector catch.

Accurate reporting, accountability, and organizational integrity are core principles of the sector system. In this case, NEFS 9 failed its primary responsibilities. Systematic misreporting over multiple fishing years, a failure to abide by, and enforce, sector operations plan requirements, and the internal structure of NEFS 9 were all contributing factors to the persistent non-compliance of NEFS 9 operations plan requirements and likely to extensive ACE overages. Because NEFS 9 has not sufficiently addressed all of these contributing factors, its continued approval under the current operations plan is likely not adequate to prevent and address continued, or future, misreporting, or non-compliance by any of its members, and would undermine the conservation and management objectives of the Northeast Multispecies FMP.

Forfeiture of Permits Held by Carlos Rafael

Comment 2: AFM, PFEX, and two members of the industry stated that Mr. Rafael should no longer be allowed to participate in the groundfish fishery and that all his permits should be relinquished.

Response: As discussed earlier in this rule, Mr. Rafael was sentenced to 46 months of prison, 3 years of supervised release, assessed a $200,000 fine, and required to pay $108,929 restitution. On October 11, 2017, the U.S. District Court also ordered the forfeiture of Mr. Rafael's interest in four of 13 vessels involved in the criminal case. There may be management implications from this forfeiture that may need to be included in the NEFS 9 operations plan. We intend to discuss potential implications, if any, with NEFS 9.

This is not an enforcement action, and does not impose civil penalties, permit sanctions, or forfeitures. Any civil penalties or permit sanctions may be imposed only after adequate notice and an opportunity for a hearing before an administrative law judge in accordance with NOAA's civil procedure regulations. This rule withdrawing approval of the NEFS 9 operations plan is administrative in nature, and addresses the sector requirements of the FMP and the sector's operations plan. If NEFS 9 continues to operate under its current operations plan with only the minimal changes it has proposed, it will undermine conservation and management objectives of the FMP.

This disapproval of the current NEFS 9 operations plan in this action relates only to the sector operations plan and the sector's ability to operate without undermining the sector system. Without an approved operations plan, all of the vessels currently enrolled in NEFS 9 will be unable to operate in the groundfish fishery for the remainder of the 2017 fishing year. Unless there is an additional enforcement action that affects the vessels' permits, the sector vessels may continue to operate in accordance with their non-groundfish permits. For the 2018 fishing year, these vessels could opt to fish in the common pool, or enroll in a sector with an approved operations plan. If NEFS 9 submits, and we approve, a new operations plan that addresses the serious management concerns discussed throughout this rule and that ensures the sector could operate without undermining the objectives of the Northeast Multispecies FMP, the vessels could re-enroll in NEFS 9.

Changes to NEFS 9 Operations

Comment 3: NEFS 9 submitted a letter outlining the changes it made in response to the pending criminal case. NEFS 9 removed Mr. Rafael from its Board of Directors and elected a new Board, created a new Enforcement Committee, and decided not to allow sector members to sell catch to Carlos Seafood, Inc. as a primary buyer.

Response: We acknowledge these actions; however, they are insufficient by themselves. There are numerous issues that must be addressed as noted in this rule that we have begun to address with the sector. We expect to continue to discuss these issues with NEFS 9 during the approval process for any new operations plan.

Classification

The NMFS Assistant Administrator (AA) has determined that this interim final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This interim final rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

The interim final rule approving 19 sectors, including NEFS 9, provided an opportunity for the public to comment on the provisional approval of the NEFS 9 operations plan. The interim final rule specified that we would consider further action, including consideration of further management or monitoring requirements and continued approval of the sector. Pursuant to 5 U.S.C. 553(b)(B), the AA finds that prior notice and the opportunity for public comment would be contrary to the public interest. The purpose of this action is to withdraw approval for a previously approved and currently operating sector. We have determined that NEFS 9 and its members are not complying with the requirements of the operations plan, and that the operations plan is not sufficient to address the serious management issues described earlier in this preamble. The time it would take for prior notice and opportunity for public comment would allow the sector to continue to operate under a failed operations plan that is not consistent with the management and conservation objectives of the FMP. We need further information to determine the full nature and extent of any ACE overages and how they will affect NEFS 9 operations. The likely ACE overages that occurred, possibly beginning in the 2012 fishing year, suggest that the initial allocations made to NEFS 9 at the start of this fishery year may be artificially high. As a result, the sector's catch to date may already exceed what would have been an accurate allocation for this fishing year. Allowing the sector to proceed without an accurate accounting of known misreporting will undermine effective management of the sector program and could further undermine fishing mortality objectives of the FMP.

Further, providing the participants in the sector with advanced notice of the disapproval by delaying the effective date would create an incentive for sector members to harvest or lease out as much of the sector's quota as possible, while operating under an operations plan that we have determined undermines the objectives of the Northeast Multispecies FMP.

Additionally, the AA finds there is good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness so that the purpose of this rule is not undermined. As stated above, the purpose of this action is prevent a sector from fishing under a sector operations plan that has been determined to undermine the objectives of the FMP, and that may be fishing under allocations that are artificially high considering the potential ACE overages that have occurred since 2012. A delay in the implementation of this rule would allow the sector to continue to operate under an operations plan that is determined to have not adequately ensured accurate reporting or compliance, and that the sector has failed to enforce. A delay in implementation would also increase the likelihood of additional ACE overages for NEFS 9 since its initial allocations for the 2017 fishing year does not include any adjustments for previous overages. As a result, continued operation of the sector further jeopardizes the objectives of the FMP and increases the likelihood that additional quota overages may occur.

This interim final rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

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

Dated: November 17, 2017.

Samuel D. Rauch III,

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

[FR Doc. 2017–25299 Filed 11–20–17; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 224
Wednesday, November 22, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1078; Product Identifier 2017–CE–038–AD]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With BRP-Rotax GmbH & Co KG 912 A Series Engine

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for various aircraft equipped with a BRP-Rotax GmbH & Co. KG (formerly BRP-Powertrain GmbH & Co. KG; Bombardier-Rotax GmbH & Co. KG; Bombardier-Rotax GmbH) 912 A series engine. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as defective valve push-rod assemblies manufactured from June 8, 2016, through October 2, 2017. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 8, 2018.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://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 proposed AD, contact BRP-Rotax GmbH & Co. KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 6370; Internet: *http://www.flyrotax.com.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1078; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1078; Product Identifier 2017–CE–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2017–0208, dated October 13, 2017 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Power loss and engine RPM drop have been reported on Rotax 912/914 engines in service. It has been determined that, due to a quality control deficiency in the manufacturing process of certain valve push-rod assemblies, manufactured between 08 June 2016 and 02 October 2017 inclusive, partial wear on the rocker arm ball socket may occur, which may lead to malfunction of the valve train.
>
> This condition, if not detected and corrected, may lead to rough engine operation and loss of power, possibly resulting in a forced landing, with consequent damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, BRP-Rotax issued Service Bulletin (SB) SB–912 i-008/SB–912–070/SB–914–052 (single document), providing applicable instructions.
>
> For the reason described above, this [EASA] AD requires a one-time inspection and, depending on findings, replacement of affected parts. This [EASA] AD also prohibits installation of affected parts on an engine.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1078.

Related Service Information Under 1 CFR Part 51

BRP-Rotax GmbH & Co KG has issued Rotax Aircraft Engines BRP Service Bulletin SB–912 i-008 R1/SB–912–070 R1/SB–914–052 R1 (co-published as one document), Revision 1, dated October 12, 2017. The service information describes procedures for inspecting and, if necessary, replacing the valve push-rod assembly on the left and/or right rocker arms. 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 of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 63 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic inspection requirement of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $70 per product.

Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $9,765, or $155 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours to replace all 8 valve push-rod assemblies and associated parts on all 4 cylinders and require parts costing $3,093, for a cost of $3,263 per product. We have no way of determining the number of products that may need these actions.

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.

We are 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, and domestic business jet transport airplanes to the Director of the Policy and Innovation Division.

Regulatory Findings

We 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) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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 AD:

Various Aircraft: Docket No. FAA–2017–1078; Product Identifier 2017–CE–038–AD.

(a) Comments Due Date

We must receive comments by January 8, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all serial numbers of the airplanes listed in table 1 to paragraph (c) of this AD, that are:

(1) equipped with a BRP-Rotax GmbH & Co. KG (formerly BRP-Powertrain GmbH & Co. KG; Bombardier-Rotax GmbH & Co. KG; Bombardier-Rotax GmbH) 912 A series engine (Rotax 912 A series engine) with a serial number (S/N) listed in table 2 of paragraph (c) to this AD; or

(2) equipped with a Rotax 912 A series engine with any S/N that has had a part number (P/N) 854861 valve push-rod assembly replaced in-service (*e.g.,* during engine repair, maintenance, or general overhaul) during the time frame of June 8, 2016, to the effective date of this AD; and

(3) certificated in any category.

TABLE 1 TO PARAGRAPH (c)—AFFECTED AIRPLANES

Type certificate holder	Aircraft model	Engine model
Aeromot-Indústria Mecânico-Metalúrgica Ltda	AMT–200	912 A2.
Diamond Aircraft Industries	HK 36 R ''SUPER DIMONA''	912 A.
DIAMOND AIRCRAFT INDUSTRIES GmbH	HK 36 TS and HK 36 TC	912 A3.
Diamond Aircraft Industries Inc.	DA20–A1	912 A3.
HOAC-Austria	DV 20 KATANA	912 A3.
Iniziative Industriali Italiane S.p.A.	Sky Arrow 650 TC	912 A2.
SCHEIBE-Flugzeugbau GmbH	SF 25C	912 A2, 912 A3.

TABLE 2 TO PARAGRAPH (c)—AFFECTED ENGINE SERIAL NUMBERS (S/N)

Engine	Affected S/N
912 A series	4 411 126 through 4 411 146 and 4 411 401 through 4 411 492.

(d) Subject

Air Transport Association of America (ATA) Code 85: Reciprocating Engine.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as defective valve push-rod assemblies manufactured from June 8, 2016, through October 2, 2017. We are issuing this AD to prevent rough engine operation, which could cause loss of power and result in loss of control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) *For aircraft with engines that have 160 hours time-in-service (TIS) or less since first installed:* Before exceeding 170 hours TIS on the engine since first installed or within the next 3 months after the effective date of this AD, whichever occurs first, visually inspect the valve push-rod ball sockets of each valve push-rod using the Accomplishment Instructions in Rotax Aircraft Engines BRP Service Bulletin SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1 (co-published as one document), Revision 1, dated October 12, 2017 (Rotax SB SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1).

(2) *For airplanes with engines that have 160 hours TIS or more since first installed:* Within the next 10 hours TIS after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, visually inspect the valve push-rod ball sockets of each valve push-rod using the Accomplishment Instructions in Rotax SB SB–912 i-008 R1/SB–912–070 R1/SB–914–052 R1.

(3) *For all affected airplanes:* If a valve push-rod with a black surface is found during the inspection required in paragraph (f)(1) or (f)(2) of this AD, before further flight, replace the valve push-rod and its affected parts with airworthy parts using the Accomplishment Instructions in Rotax SB SB–912 i-008 R1/SB–912–070 R1/SB–914–052 R1.

(4) *For all affected airplanes:* As of the effective date of this AD, do not install a valve push-rod that was manufactured from June 8, 2016, through October 2, 2017.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the European Aviation Safety Agency (EASA).

(h) Related Information

Refer to MCAI EASA AD No. 2017–0208, dated October 13, 2017, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1078. For service information related to this AD, contact BRP-Rotax GmbH & Co. KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 6370; Internet: *http://www.flyrotax.com*. You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on November 9, 2017.

Pat Mullen,

Acting Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–25005 Filed 11–21–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 170315274–7274–01]

RIN 0648–BG73

Vessel and Aircraft Discharges From United States Coast Guard Activities in Greater Farallones and Cordell Bank National Marine Sanctuaries

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: With this proposed rule, the National Oceanic and Atmospheric Administration (NOAA) considers allowing the United States Coast Guard (USCG or Coast Guard) to carry out certain otherwise prohibited activities within waters of Greater Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) approximately 3 nautical miles (nm) from the shore, in the areas of the sanctuaries that were expanded in 2015. The discharges under consideration are: Untreated vessel sewage, vessel graywater as defined by the Federal Water Pollution Control Act, as amended (FWPCA), that does not meet the definition of ''clean'' as defined by the GFNMS and CBNMS regulations, and ammunition and pyrotechnic (warning projectile, flare, smoke float and marine marker) materials used in USCG training exercises for use of force (live fire or gunnery) and training exercises for search and rescue (SAR) of vessels or persons in distress. No change is proposed to the regulatory prohibitions or exceptions applicable to the pre-expansion boundaries of the two sanctuaries. A draft environmental assessment (DEA) under the National Environmental Policy Act (NEPA) has been prepared for this proposed action. NOAA is soliciting public comment on the proposed rule and DEA.

DATES: Comments will be considered if received by January 16, 2018. Public hearings will be held on December 5 and 13, 2017, from 6 p.m. to 8 p.m.

ADDRESSES: You may submit comments on this document and/or on the DEA, identified by NOAA–NOS–2017–0140, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2017-0140,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Maria Brown, Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to

remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the DEA and proposed rule can be downloaded or viewed on the internet at *www.regulations.gov* (search for docket # NOAA–NOS–2017–0140) or at *https://farallones.noaa.gov/manage/regulations.html.* Copies can also be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

Public hearings will be held in the following locations:

- December 5, 2017. 6–8 p.m. Bay Model, 2100 Bridgeway, Sausalito, CA 94965.
- December 13, 2017. 6–8 p.m. Gualala Community Center, 47950 Center Street, Gualala, CA 95445.

FOR FURTHER INFORMATION CONTACT: Maria Brown, Greater Farallones National Marine Sanctuary Superintendent, at *Maria.Brown@noaa.gov* or 415–561–6622.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On March 12, 2015, NOAA expanded the boundaries of GFNMS and CBNMS to an area north and west of their previous boundaries. In that rule, pursuant to a request from the USCG, NOAA announced that it would postpone the effective date for the discharge requirements in both expansion areas (defined as the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively) with regard to USCG activities. NOAA stated the purpose of the postponement was to look at ways to address Coast Guard's concerns that the discharge regulations would impair the operations of Coast Guard vessels in, and aircraft over, the sanctuaries, and to consider, among other things, whether to exempt Coast Guard activities in both sanctuary expansion areas. This proposed rule considers allowing the USCG to carry out otherwise prohibited discharges within waters of the GFNMS and CBNMS expansion areas seaward of approximately 3 nm from the shore, as described in more detail below. In formulating this proposed rule, NOAA considered a number of factors discussed more fully in the DEA, including the ability of the USCG to complete its mission requirements and the policy of facilitating uses of the sanctuaries to the extent compatible with resource protection.

B. Greater Farallones and Cordell Bank National Marine Sanctuaries

NOAA is charged with managing areas of the marine environment which are of special national significance as the National Marine Sanctuary System (16 U.S.C. 1431 (b)(1)). The Office of National Marine Sanctuaries (ONMS) is the federal office within NOAA that manages the National Marine Sanctuary System. The mission of ONMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the National Marine Sanctuary System (System) for this and future generations throughout the nation. This System includes 13 national marine sanctuaries, among them GFNMS and CBNMS, and Papahānaumokuākea and Rose Atoll marine national monuments. GFNMS was designated in 1981 and protects approximately 3,295 square miles (2,488 square nautical miles). CBNMS was designated in 1989 and protects approximately 1,286 square miles (971 square nautical miles). NOAA expanded both sanctuaries to their current size on March 12, 2015 (80 FR 13078). When referring to the expansion areas of the sanctuaries, NOAA means the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively.

Both GFNMS and CBNMS' regulations prohibit discharging or depositing, from within or into the sanctuary, any material or other matter (15 CFR 922.82(a)(2) and (3) and 15 CFR 922.112(a)(2)(i) and (ii)). Both the GFNMS and CBNMS regulations also prohibit discharging or depositing, from beyond the boundary of the sanctuary, any material or other matter that subsequently enters the sanctuary and injures a sanctuary resource or quality (15 CFR 922.82(a)(4); 15 CFR 922.112(a)(2)(iii)). Most national marine sanctuaries also have similar regulatory prohibitions. The discharge prohibitions are aimed at maintaining and improving water quality within national marine sanctuaries to enhance conditions for their living marine resources. The discharge prohibitions include the following exceptions relevant to the proposed action:

- For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device that is approved in accordance with section 312 of the Federal Water Pollution Control Act,[1] as amended (FWPCA); vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage (15 CFR 922.82(a)(2)(ii) and 922.112(a)(2)(i)(B));
- For a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the sanctuary, clean graywater as defined by section 312 of the FWPCA (15 CFR 922.82(a)(2)(iv) and 922.112(a)(2)(i)(D));
- Activities necessary to respond to an emergency threatening life, property or the environment (15 CFR 922.82(c) and 922.112(b)).

The following definitions apply to these exceptions:

- ''Clean'' means not containing detectable levels of a harmful matter (15 CFR 922.81 and 922.111); and,
- ''Graywater'' means galley, bath, and shower water (33 U.S.C. 1322(a)(11)).

The first two existing discharge exceptions listed above apply to all vessels other than cruise ships. Therefore, they would apply to USCG vessels and would continue to apply if the regulatory changes proposed in this rulemaking were finalized.

C. USCG Activities

The USCG, part of the U.S. Department of Homeland Security, is a military service and a branch of the armed forces (14 U.S.C. 1), charged with carrying out eleven maritime safety, security and stewardship missions (6 U.S.C. 468(a)).

One of the missions of the USCG is to enforce or assist in the enforcement of all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. As part of this mission, the USCG supports resource protection efforts within GFNMS and CBNMS by providing surveillance of activities within the sanctuaries and enforcement of the National Marine Sanctuaries Act (NMSA) and other laws and their implementing regulations. The USCG has the authority to enforce the NMSA under 14 U.S.C. 2 and 14 U.S.C. 89. Law enforcement activities for the two sanctuaries are also conducted by other agencies, primarily NOAA's Office of Law Enforcement and the California Department of Fish and Wildlife. In GFNMS, the National Park Service and several local agencies also conduct law enforcement activities.

The USCG also leads incident planning and response activities for oil

[1] The Federal Water Pollution Control Act is more commonly referred to as the Clean Water Act.

spills and other incidents in U.S. coastal and ocean waters. These activities are necessary components of GFNMS and CBNMS management. Other USCG missions that are conducted inside NMS boundaries, some of which also support national marine sanctuary management, include waterways and coastal security; aids to navigation, including tending buoys; search and rescue (SAR); living marine resources; marine safety; and marine environmental protection. The USCG may concurrently conduct activities to support more than one of its missions when operating vessels within or aircraft above GFNMS and CBNMS.

According to the USCG Environmental Vessel Manual, USCG practices allow for discharges of untreated sewage and non-clean graywater from USCG vessels in waters beyond 3 nm from shore. USCG vessels have continued these discharges beyond 3 nm from shore in the expansion areas of GFNMS and CBNMS, due to NOAA's decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities in the expansion areas of GFNMS and CBNMS while NOAA assesses these activities and their potential environmental effects.

According to other regulatory requirements and USCG guidance and practices, discharges are not allowed to take place within approximately 3 nm of the shore. The FWPCA requires (in Section 312) that vessels with installed toilets must only discharge sewage through a Type I or II marine sanitation device within three miles [2] of shore (33 U.S.C. 1322(h)(4); 33 U.S.C. 1362(7)–(8)). The California Harbors and Navigation Code 775 (a)(2) and (b) require compliance with the FWPCA. There is also a U.S. Environmental Protection Agency (USEPA) designated No Discharge Zone (NDZ) prohibiting sewage discharges in the marine waters of the state that applies to specified vessels of 300 gross tons or greater,[3] which would apply to several classes of USCG vessels. Further, the USCG Vessel Environmental Manual includes a restriction on discharging raw sewage within 3.5 miles (3 nm) of land.

D. Need for Action

In the course of the rulemaking to expand GFNMS and CBNMS, NOAA received a letter dated February 4, 2013, from the USCG stating that the prohibitions proposed for the GFNMS and CBNMS expansion areas had the potential to impair USCG surface and airborne use of force training activities, SAR training activities, and the ability of Coastal Patrol Boats to conduct any mission within the sanctuaries. Of specific concern to the USCG were the proposed prohibitions on discharges made during these training activities: Vessel sewage discharges, particularly with respect to law enforcement and SAR missions, and the ability of the USCG to operate and remain ''mission ready.''

To accommodate the need for these USCG activities to take place after the expansion rule entered into effect, NOAA postponed, for six months from the effective date of the rule, the applicability of the discharge requirements to Coast Guard activities in both expanded areas. NOAA published the final rule for the expansion of GFNMS and CBNMS on March 12, 2015 (80 FR 13078), in the **Federal Register** and the rule became effective on June 9, 2015 (80 FR 34047). Additional six-month postponements of the effectiveness of the discharge requirements in the expansion areas were published in the **Federal Register** on December 1, 2015 (80 FR 74985), May 31, 2016 (81 FR 34268), December 6, 2016 (81 FR 87803), and June 7, 2017 (82 FR 26339) to enable completion of the environmental assessment and to determine NOAA's next steps. The effective date for the discharge requirements in the expansion areas for both sanctuaries with regard to USCG activities is currently postponed until December 9, 2017. Accordingly, without further NOAA action, the discharge regulations would become effective with regard to USCG activities on December 9, 2017. Thus, a separate document published in the **Federal Register** concurrently with this proposed rule extends the postponement of the discharge requirements for the USCG activities in the expansion areas until December 9, 2018 to provide adequate time for completion of a final environmental assessment and final rule, as appropriate. As described in the separate document, the new postponement of these discharge requirements will terminate either on December 9, 2018 or 30 days after publication of a final rule, whichever comes first.

Of primary concern to USCG are the discharge regulations in both expanded sanctuaries and USCG compliance with these regulations. USCG vessels have limited capacity to treat sewage and some have limited capacity to hold sewage and graywater, and are without Type I or II marine sanitation devices onboard to treat the wastewater prior to discharge; accordingly, the discharges from such vessels would not fit within the existing regulatory exemptions for discharge within GFNMS and CBNMS. Training exercises designed to make USCG personnel ready for missions involving use of force and SAR involve discharging live ammunition and pyrotechnic materials. NOAA is concerned with protecting sanctuary resources and habitats, resolving any conflicts that could occur among sanctuary user groups (*e.g.,* fishing and USCG live fire training), and ensuring continued USCG enforcement of sanctuary regulations and other mission activities that support sanctuary management.

Prior to the expansion of GFNMS and CBNMS, the USCG was able to comply with the sanctuaries' vessel discharge regulations by discharging untreated vessel sewage and non-clean graywater in ocean waters outside GFNMS and CBNMS or by pumping it out at shoreside pump-out facilities. The expansion of GFNMS and CBNMS, with the resulting larger sizes of the sanctuaries and extension of discharge prohibitions to the expanded portions of the sanctuaries, would make it difficult for the USCG to both fulfill its missions and comply with the vessel discharge prohibitions. The USCG vessels have constraints for treating and holding sewage and non-clean graywater, and crews would have to plan for the extra time required to travel from the GFNMS and CBNMS expansion areas to USCG shoreside pump-out facilities in Bodega and San Francisco bays or to ocean waters outside national marine sanctuary boundaries to discharge vessel holding tanks (where allowed by state and federal regulations).

Similarly, with regard to training activities, prior to the expansion of GFNMS and CBNMS, the USCG planned and conducted these exercises outside the sanctuaries' boundaries and within relatively short distances from USCG stations without violating sanctuary discharge regulations. Because the USCG maritime enforcement, defense readiness, and SAR capabilities are enhanced by conducting live-fire and SAR exercises in the areas in which its personnel normally operate, the expansion of GFNMS and CBNMS and extension of discharge prohibitions to the expanded portions of the sanctuaries have the potential to impair the ability of USCG to operate and train to remain ''mission ready.''

[2] The FWPCA refers to ''miles'' but the common interpretation is ''nautical miles'', as statute miles are not used by mariners, and many states use a 3 nm from shore boundary (*http://www.gc.noaa.gov/gcil_seaward.html*).

[3] Various laws and regulations refer to gross tons or gross registered tons (GRT). NOAA uses the terms in this document exactly as they appear in the specific legal source cited.

E. History of Action

Prior to the expansion of the two sanctuaries' boundaries, GFNMS and USCG had been discussing potentially allowing USCG to make discharges within the sanctuary during live fire and SAR training exercises. In 2012 and 2013, USCG District 11 and GFNMS held a series of meetings focused on discharges of flares, ammunition, and targets related to live fire and SAR training. During this time, GFNMS and USCG identified several areas for potentially allowing seasonal training-related discharges as well as possible operating protocols. The intention was to consider allowing USCG training discharges via a national marine sanctuary permit, if the activities could be conducted in a way that would minimize potential impacts to marine mammals and other living marine resources. The USCG did not submit an application for a permit, and therefore NOAA did not issue a permit.

After receiving the USCG's February 4, 2013 letter, the USCG and NOAA initiated discussions to address the full range of USCG discharges from training activities, and untreated vessel sewage and graywater discharges in both GFNMS and CBNMS. As part of these discussions, the USCG and NOAA reviewed potential environmental effects and various approaches to mitigate potential harm to sanctuary resources from these USCG discharges, including NMS permits and best practices for USCG discharge activities. In January 2015, prior to the publication of the final rule to expand GFNMS and CBNMS, NOAA and the USCG entered into interagency consultations to address both agencies' concerns. The details of this ongoing consultation are described above under ''Need for Action.''

From April 21 to May 31, 2016 (81 FR 23445), NOAA accepted public comments and information to determine the relevant scope of issues and range of alternatives for NOAA to address in the environmental assessment and proposed rule. Public and agency comments were received via the Federal e-Rulemaking Portal, by mail, and at three public meetings that were held in Sausalito, Bodega Bay and Gualala on May 10, 11 and 12, respectively. Comments received are available at *www.regulations.gov* (search for docket NOAA–NOS–2017–0140). NOAA considered these comments in preparing this proposed rule and associated DEA.

F. Process

The process for this action is composed of four major stages: (1) Information collection and characterization and public scoping (scoping was completed on May 31, 2016); (2) preparation and release of a draft environmental assessment under the National Environmental Policy Act (NEPA), and any proposed amendments to the regulations if appropriate; (3) public review and comment of the proposed amendments and the draft environmental assessment; (4) preparation and release of a final environmental review document, and any final amendments to the GFNMS and CBNMS regulations, if appropriate. With the publication of this proposed rule, NOAA enters the third phase of this process.

NOAA will fulfill its responsibilities to complete required consultations and/or receive necessary authorizations under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*), section 7 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101), and Federal Consistency review under the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 *et seq.*), along with its ongoing NEPA (42 U.S.C. 4321 *et seq.*) process including the use of NEPA documents and public meetings to also meet the requirements of other federal laws. Together with this proposed rule, NOAA is releasing a DEA containing more detailed information on the considerations of this proposal, including assessment of alternatives, analysis of potential environmental impacts, and references. The EA can be found through the Web site in the **FOR FURTHER INFORMATION CONTACT** section above.

II. Summary of the Proposed Regulations

A. Sewage and Graywater

With this proposed rule, NOAA would amend the GFNMS and CBNMS regulations to allow USCG vessels to discharge untreated sewage and non-clean graywater only in the waters of the expansion areas of GFNMS and CBNMS seaward of approximately 3.5 miles (3 nautical miles (nm)) from the shoreline. USCG discharges of untreated sewage and non-clean graywater from vessels that are not equipped with a Type I or II marine sanitation device (MSD) and without sufficient holding tank capacity would continue, as per historic and current routine USCG operational practices in waters of both expansion areas beyond 3 nm from shore. As previously described, these discharges have continued since June 2015 due to NOAA's decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities while NOAA assesses these activities and their potential environmental effects.

The current GFNMS and CBNMS discharge prohibitions provide an exception for clean sewage discharge (''clean effluent'') through a Type I or II MSD for: (1) A vessel less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary (15 CFR 922.82(a)(2)(ii) and 922.112(a)(2)(i)(B)). They also provide an exception for clean graywater to be discharged: (1) A vessel less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the Sanctuary (15 CFR 922.82(a)(2)(iv) and 922.112(a)(2)(i)(D)). According to the USCG, most of its vessels operating in GFNMS and CBNMS do not have capacity to treat sewage and graywater; they are without Type I or II MSD onboard to treat the wastewater prior to discharge. Some classes of USCG vessels also have limited capacity to hold sewage and non-clean graywater until it may be discharged outside GFNMS and CBNMS. Thus, if the regulations were to take effect in the expansion areas of GFNMS and CBNMS, the vessels would not be able to legally discharge in those portions of the sanctuaries in a manner consistent with these existing regulatory exceptions. The proposed exceptions to the GFNMS and CBNMS prohibitions for the USCG would be in addition to the current exceptions noted earlier.

The areas within GFNMS and CBNMS in which these USCG vessel discharges would be excepted from the sanctuaries' discharge prohibitions correspond to the waters seaward of 3 nm from shore in the expansion areas of GFNMS and CBNMS (*i.e.,* the areas added when the sanctuaries expanded in 2015). The geographic coordinates of these areas would be listed in an appendix to each sanctuary's regulations (appendix G of subpart H and appendix C of subpart K). Aside from the proposed exceptions for USCG training-related discharges (see below), the USCG would also continue to comply with all other existing prohibitions provided in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries and comply with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries. No changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries are proposed.

B. Discharges of Ammunition and Pyrotechnic Materials During Training

NOAA would amend the GFNMS and CBNMS regulations to allow USCG discharges of ammunition and pyrotechnic materials (including warning projectiles, flares, smoke floats and marine markers) during live ammunition and search and rescue training exercises only in the federal waters of the expansion areas of GFNMS and CBNMS, seaward of approximately 3.5 miles (3 nautical miles (nm)) from the shoreline. The geographic coordinates of this designated area, where training discharges would be excepted from the sanctuary discharge prohibition within GFNMS and CBNMS, would be listed in an appendix to each sanctuary's regulations (appendix G of subpart H and appendix C of subpart K).

The USCG would also continue to comply with all other existing prohibitions, aside from the previously described proposed exceptions for USCG vessel discharges of untreated sewage and graywater, provided in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries and comply with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries. No changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries are proposed.

Based on a request by USCG, this proposed rule focuses on a regulatory exception to the GFNMS and CBNMS general discharge prohibition for the specified USCG discharges. However, NOAA presents in the DEA a variety of alternatives for protecting sanctuary resources while addressing the USCG's request to allow for USCG's routine discharges of untreated sewage and graywater from vessels and training discharges in GFNMS and CBNMS, allowing the USCG to fulfill its missions and comply with the sanctuaries' regulations. The DEA also lays out in more detail NOAA's consideration and analysis of factors pertinent to this proposed rule, including the ability of USCG to complete its mission operations and in the expansion areas of the sanctuaries, constraints in certain USCG vessel capabilities to treat and hold sewage and graywater, the role that USCG live fire and search and rescue trainings in the expansion areas of the sanctuaries play in USCG mission readiness, and the extent to which such USCG activities may be conducted to the maximum extent feasible in a manner consistent with the sanctuaries' primary objective of resource protection. No final decision or final rulemaking will be made until completion of the public comment period, satisfaction of permitting and consultation requirements, and completion of the NEPA analysis process.

III. Classification

A. National Environmental Policy Act

NOAA has prepared a draft environmental assessment (DEA) to evaluate the potential impacts on the human environment of this proposed rulemaking, which is the preferred action analyzed in the DEA, as well as alternative actions. No significant adverse impacts to resources and the human environment are expected, and accordingly, under NEPA (43 U.S.C. 4321 *et seq.*) a draft environmental assessment is the appropriate document to analyze the potential impacts of this action. Following close of the public comment period and satisfaction of permitting and consultation requirements under applicable natural and cultural resource statutes (described below), NOAA will finalize its NEPA analysis and findings and prepare a final NEPA document. Copies of the DEA are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule.

B. Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13771: Regulatory Reform

This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

E. Regulatory Flexibility Act

The purpose of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) is to fit regulatory requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. The RFA requires that agencies determine, to the extent feasible, the rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their ultimate choice of regulatory approach. The Chief Counsel for Regulation of the Department of Commerce certifies to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the proposed changes are specifically targeted to the activities of the USCG in CBNMS and GFNMS, and would not have an economic effect on any small businesses. Also, this proposed rule would not substantively alter the rights, responsibilities, or legal obligations pertaining to vessel discharges for the regulated community. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

F. Paperwork Reduction Act

This proposed rule does not create any new information collection requirement, nor does it revise the information collection requirement that was approved by the Office of Management and Budget (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

G. National Historic Preservation Act

In fulfilling its responsibility under the National Historic Preservation Act (NHPA) and NEPA, NOAA intends to determine whether the proposed rule is the type of activity that could affect historic properties. If so, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; assess potential adverse effects; and resolve adverse effects. If applicable, NOAA will initiate formal consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties as appropriate; involve the public in accordance with NOAA's NEPA procedures, and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties as appropriate and describe them in the environmental assessment.

NOAA will complete applicable NHPA requirements before finalizing its NEPA analysis. Individuals or organizations who wish to participate as a consulting party should notify NOAA.

Consultation requirements for the effects of the actual USCG training activities and vessel discharges on historic properties remain the responsibility of USCG, as USCG would be the lead agency performing these activities.

H. Endangered Species Act

The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. 1531, *et seq.*), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Federal agencies have an affirmative mandate to conserve ESA-listed species. Section 7(a)(2) of the ESA requires federal agencies to, in consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of designated critical habitat. NOAA's ONMS intends to begin informal consultation under the ESA with NOAA's NMFS Office of Protected Resources (OPR) upon publication of this proposed rule and complete consultation prior to the publication of the final rule or finalization of the NEPA analysis. NOAA's consultation will focus on any potential adverse effects of providing a regulatory exception to its discharge prohibition in CBNMS and GFNMS on threatened and endangered species. NOAA will complete ESA consultation before finalizing its NEPA analysis.

Consultation requirements for the effects of the actual USCG training activities and vessel discharges on threatened and endangered species remain the responsibility of USCG, as USCG would be the lead agency performing the training activities. USCG communicated to NOAA its intent to fulfil the consultation requirements under the ESA, specific to their training activities and vessel discharges, with (OPR).

I. Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*), as amended, prohibits the ''take'' [4] of marine mammals in U.S. waters. Section 101(a)(5)(A–D) of the MMPA provides a mechanism for allowing, upon request, the ''incidental,'' but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. ONMS intends to request technical assistance from NMFS upon publication of this proposed rule on ONMS's preliminary assessment that this action is not likely to result in take of marine mammals. If NMFS recommends that ONMS seek an Incidental Harassment Authorization or Letter of Authorization, then ONMS will submit an application for any incidental taking of small numbers of marine mammals that ONMS and NMFS conclude could occur as a result of the discharges allowed by this proposed rulemaking. NOAA's request for technical assistance will focus on the effects of providing a regulatory exception to its discharge prohibitions in CBNMS and GFNMS on marine mammals. NOAA will complete any MMPA requirements before finalizing its NEPA analysis.

Satisfying MMPA requirements for the effects of the actual training activities and vessel discharges on marine mammals remain the responsibility of USCG, as USCG would be the federal agency performing these activities. Moreover, USCG communicated to NOAA its intent to fulfill the consultation requirements under the MMPA, specific to their training activities and vessel discharges, with OPR.

J. Coastal Zone Management Act (CZMA)

The principal objective of the CZMA is to encourage and assist states in developing coastal management programs, to coordinate State activities, and to preserve, protect, develop and, where possible, to restore or enhance the resources of the nation's coastal zone. Section 307(c) of the CZMA requires federal activity affecting the land or water uses or natural resources of a state's coastal zone to be consistent with that state's approved coastal management program, to the maximum extent practicable. NOAA will provide a copy of this proposed rule, the DEA, and a consistency determination to the California Coastal Commission (Commission) upon publication. NOAA will wait for concurrence from the Commission prior to publication of the final rule.

Consultation requirements for the effects of the actual USCG training activities and vessel discharges on land or water uses or natural resources of California's coastal zone remain the responsibility of USCG, as USCG would be the lead agency performing these activities.

IV. Request for Comments

NOAA requests comments on this proposed rule and the DEA. The comment period will remain open until January 16, 2018.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 14, 2017.

Nicole R. LeBoeuf,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.

Accordingly, for the reasons set forth above, NOAA proposes amending part 922, title 15 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart H—Greater Farallones National Marine Sanctuary

■ 2. Amend § 922.82 by revising paragraphs (a)(2)(iv) and (v), adding paragraph (a)(2)(vi), and revising paragraph (a)(4) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

(a) * * *

(2) * * *

(iv) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(v) Vessel engine or generator exhaust; or

(vi) For a United States Coast Guard vessel that is without sufficient holding tank capacity and is without a Type I or II marine sanitation device, and that is

[4] The MMPA defines take as: ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.'' Harassment means any act of pursuit, torment, or annoyance which, (1) Has the potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment).

operating within the designated area defined in appendix G of this subpart, sewage and non clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix G of this subpart. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a)(2)(i) through (vi) and (a)(3) of this section.

* * * * *

(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a)(2)(i) through (vi) and (a)(3) of this section.

* * * * *

■ 3. Amend subpart H by adding appendix G to read as follows:

Appendix G to Subpart H of Part 922—Designated Area for Certain United States Coast Guard Discharges

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Greater Farallones National Marine Sanctuary area where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1 identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc, and continues from Point 2 to Point 3 in a straight line arc, and from Point 3 to Point 4 in a straight line arc. From Point 4 the boundary extends east and north along a straight line arc towards Point 5 until it intersects the fixed offshore boundary between the United States and California (approximately 3 NM seaward of the coast as defined in *United States* vs. *California,* 135 S. Ct. 563 (2014)). The boundary then extends northward following the fixed offshore boundary between the United States and California until it intersects the line segment formed between Point 6 and Point 7. From this intersection, the boundary extends west along the northern boundary of Greater Farallones National Marine Sanctuary to Point 7 where it ends.

Point No.	Latitude	Longitude
1	39.00000	−124.33350
2	38.29989	−123.99988
3	38.29989	−123.20005
4	38.26390	−123.18138
5[1]	38.29896	−123.05989
6[1]	39.00000	−123.75777
7	39.00000	−124.33350

[1]These coordinates are not a part of the boundary for the Designated Area for Certain United States Coast Guard Discharges. These coordinates are reference points used to draw line segments that intersect with the fixed offshore boundary between the United States and California.

Subpart K—Cordell Bank National Marine Sanctuary

■ 4. Amend § 922.112 by revising paragraphs (a)(2)(i)(D) and (E) and adding paragraph (a)(2)(i)(F) to read as follows:

§ 922.112 Prohibited or otherwise regulated activities.

(a) * * *

(2)(i) * * *

(D) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust; or

(F) For a United States Coast Guard vessel that is without sufficient holding tank capacity and is without a Type I or II marine sanitation device, and that is operating within the designated area defined in appendix C of this subpart, sewage and non clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix C of this subpart.

* * * * *

■ 5. Amend subpart K by adding appendix C to read as follows:

Appendix C to Subpart K of Part 922—Designated Area for Certain United States Coast Guard Discharges

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Cordell Bank National Marine Sanctuary area where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1, identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc and continues in numerical order through each subsequent point to Point 38. From Point 38 the boundary extends west along the northern boundary of Cordell Bank National Marine Sanctuary to Point 39 where it ends.

Point No.	Latitude	Longitude
1	38.29989	−123.99988
2	37.76687	−123.75143
3	37.76716	−123.42758
4	37.77033	−123.43466
5	37.78109	−123.44694
6	37.78383	−123.45466
7	37.79487	−123.46721
8	37.80094	−123.47313
9	37.81026	−123.46897
10	37.81365	−123.47906
11	37.82296	−123.49280
12	37.84988	−123.51749
13	37.86189	−123.52197
14	37.87637	−123.52192
15	37.88541	−123.52967
16	37.90725	−123.53937
17	37.92288	−123.54360
18	37.93858	−123.54701
19	37.94901	−123.54777
20	37.95528	−123.56199
21	37.96683	−123.57859
22	37.97761	−123.58746
23	37.98678	−123.59988
24	37.99847	−123.61331
25	38.01366	−123.62494
26	38.01987	−123.62450
27	38.02286	−123.61531
28	38.02419	−123.59864
29	38.03409	−123.59904
30	38.04614	−123.60611
31	38.05308	−123.60549
32	38.06188	−123.61546
33	38.07451	−123.62162
34	38.08289	−123.62065
35	38.11256	−123.63344
36	38.13219	−123.64265
37	38.26390	−123.18138
38	38.29989	−123.20005
39	38.29989	−123.99988

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM16–22–000]

Coordination of Protection Systems for Performance During Faults and Specific Training for Personnel Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to approve Reliability Standards PRC–027–1 (Coordination of Protection Systems for Performance

During Faults) and PER–006–1 (Specific Training for Personnel) submitted by the North American Electric Reliability Corporation (NERC). The purpose of proposed Reliability Standard PRC–027–1 is to maintain the coordination of protection systems installed to detect and isolate faults on bulk electric system elements, such that those protection systems operate in the intended sequence during faults. The purpose of proposed Reliability Standard PER–006–1 is to ensure that personnel are trained on specific topics essential to reliability to perform or support real-time operations of the bulk electric system. In addition, the Commission proposes to direct NERC to develop certain modifications to proposed Reliability Standard PRC–027–1.

DATES: Comments are due January 22, 2018.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Juan Villar (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, 888 First Street NE., Washington, DC 20426, Telephone: (772) 678–6496, *Juan.Villar@ferc.gov*.

Alan Rukin (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8502, *Alan.Rukin@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission proposes to approve proposed Reliability Standards PRC–027–1 (Coordination of Protection Systems for Performance During Faults) and PER–006–1 (Specific Training for Personnel), which were submitted for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO).[1] As discussed below, however, the Commission also proposes to direct NERC to modify proposed Reliability Standard PRC–027–1 to require an initial protection system coordination study to ensure that applicable entities will perform (or have performed), as a baseline, a study demonstrating proper coordination of its protection systems. We propose to direct NERC to submit the modified Reliability Standard for Commission approval within 12 months following the effective date of a final rule in this proceeding.

2. The Commission also proposes to approve the associated violation risk factors, violation severity levels, implementation plans, and effective dates proposed by NERC for Reliability Standards PRC–027–1 and PER–006–1. The Commission further proposes to approve the retirement of currently-effective Reliability Standard PRC–001–1.1(ii) (System Protection Coordination).[2]

3. In addition, the Commission proposes to approve new and revised definitions submitted by NERC for incorporation in the NERC Glossary of Terms Used in NERC Reliability Standards (''NERC Glossary'') for the following terms: (1) ''Protection system coordination study;'' (2) ''operational planning analysis;'' and (3) ''real-time assessment.''

I. Background

A. Section 215 and Mandatory Reliability Standards

4. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[3] Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight or by the Commission independently.[4] In 2006, the Commission certified NERC as the ERO pursuant to section 215 of the FPA.[5]

B. Order No. 693

5. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard PRC–001–1.[6] In addition, the Commission directed NERC to develop modifications to Reliability Standard PRC–001–1 that:

> (1) Correct the references for Requirements, and [*sic*] (2) include a requirement that upon the detection of failures in relays or protection system elements on the Bulk-Power System that threaten reliable operation, relevant transmission operators must be informed promptly, but within a specified period of time that is developed in the Reliability Standards development process, whereas generator operators must also promptly inform their transmission operators; and (3) clarifies that, after being informed of failures in relays or protection system elements that threaten reliability of the Bulk-Power System, transmission operators must carry out corrective control actions, *i.e.,* return a system to a stable state that respects system requirements as soon as possible and no longer than 30 minutes after they receive notice of the failure.[7]

C. NERC Petition and Proposed Reliability Standards PRC–027–1 and PER–006–1

6. On September 2, 2016, NERC submitted a petition seeking Commission approval of proposed Reliability Standards PRC–027–1 and PER–006–1.[8] NERC states that the proposed Reliability Standards, new and revised NERC Glossary terms, and the retirement of Reliability Standard PRC–001–1.1(ii) satisfy the Commission's criteria in Order No. 672 and are just, reasonable, not unduly discriminatory or preferential, and in the public interest.[9] NERC explains that the intent of the proposed Reliability Standards and changes to the NERC Glossary are to maintain the coordination of protection systems installed to detect and isolate faults on bulk electric system elements and require registered entities to provide training to their relevant personnel on protection systems and remedial action schemes. NERC asserts that the proposed Reliability Standards are an improvement over currently-effective Reliability Standard PRC–001–1.1(ii) and will ensure that appropriate personnel are trained on protection

[1] 16 U.S.C. 824o.

[2] The Commission approved Reliability Standard PRC–001–1.1(ii) on May 29, 2015. *North American Electric Reliability Corporation,* 151 FERC ¶ 61,186 (2015).

[3] *Id.* 824o(c), (d).

[4] *Id.* 824o(e).

[5] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,190, *order on reh'g,* 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[6] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at PP 1433–1449, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[7] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1449.

[8] Proposed Reliability Standards PRC–027–1 and PER–006–1 are not attached to this Notice of Proposed Rulemaking. The proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RM16–22–000 and are posted on the NERC Web site, *http://www.nerc.com.*

[9] NERC Petition at 10.

systems and that protection systems are appropriately studied, coordinated, and monitored.

1. Proposed Reliability Standard PER–006–1

7. NERC states that proposed Reliability Standard PER–006–1 requires generator operators to use a systematic approach to develop and implement training for dispatch personnel at centrally-located dispatch centers.[10] NERC explains that proposed Reliability Standard PER–006–1 will also cover plant personnel who are responsible for real-time control of a generator. NERC maintains that it is appropriate to train plant personnel [in] the functionality of protection systems and remedial action schemes. NERC observes that proposed Reliability Standard PER–006–1 replaces the phrase ''purpose and limitations'' used in currently-effective Reliability Standard PRC–001–1(ii) with the phrase ''operational functionality'' to clearly identify the objective of the training.[11] NERC also observes that proposed Reliability Standard PER–006–1 replaces the phrase ''applied in its area'' in Reliability Standard PRC–001–1.1(ii) with the phrase ''that affect the output of the generating facility(ies) it operates'' to properly tailor the scope of the required training. NERC notes that proposed Reliability Standard PER–006–1 does not specify a periodicity for the required training.

2. Proposed Reliability Standard PRC–027–1

8. NERC asserts that proposed Reliability Standard PRC–027–1:

> provides a clear set of Requirements that obligate entities to (1) implement a process for establishing and coordinating new or revised Protection System settings, and (2) periodically study Protection System settings that could be affected by incremental changes in Fault current to ensure the Protection Systems continue to operate in their intended sequence.[12]

According to NERC, proposed Reliability Standard PRC–027–1, Requirement R1 mandates that each transmission owner, generator owner, and distribution provider establish a process for developing new and revised protection system settings for bulk electric system elements.[13]

9. NERC states that proposed Reliability Standard PRC–027–1, Requirement R2 mandates that every six years, applicable entities must either: (1) Perform a protection system coordination study to determine whether the protection systems continue to operate in the intended sequence during faults; (2) compare present fault current values to an established fault current baseline and, only if the comparison identifies a 15 percent or greater deviation in fault current values (either three phase or phase to ground) at a bus to which the bulk electric system is connected, perform a protection system coordination study; or (3) use a combination of options 1 and 2.[14]

10. NERC explains that proposed Reliability Standard PRC–027–1, Requirement R3 will require applicable entities to use the process established under proposed Reliability Standard PRC–027–1, Requirement R1 for the development of any new or revised protection system settings.

3. Proposed Retirement of Reliability Standard PRC–001–1.1(ii)

11. NERC states that Reliability Standard PRC–001–1.1(ii) includes six requirements that are either addressed by Reliability Standards approved by the Commission or by the proposed Reliability Standards. Specifically, NERC explains that Reliability Standard PRC–001–1.1(ii), Requirement R1 has been partially replaced by currently-effective Reliability Standards PER–003–1 and PER–005–2. NERC continues that proposed Reliability Standard PER–006–1 and the proposed revised definitions of operational planning analysis and real-time assessment will replace the remaining portions of Reliability Standard PRC–001–1.1(ii), Requirement R1. NERC asserts that Reliability Standard PRC–001–1.1(ii), Requirement R2 has been addressed by Reliability Standards IRO–001–4, IRO–008-2, IRO-010-2, TOP-001-3, and TOP-003-3, which the Commission approved in Order No. 817.[15] NERC states that Reliability Standard PRC–001–1.1(ii), Requirements R3 and R4 will be replaced with proposed Reliability Standard PRC–027–1. NERC also explains that Reliability Standard PRC–001–1.1(ii), Requirement R5 has been replaced with several Reliability Standards developed after Reliability Standard PRC–001–1(ii) became effective.[16] NERC further states that Reliability Standard PRC–001–1.1(ii), Requirement R6 has been replaced with Reliability Standards TOP–001–3 and TOP–003–3.

II. Discussion

12. Pursuant to section 215(d)(2) of the FPA, we propose to approve proposed Reliability Standards PER–006–1 and PRC–027–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest, as both proposed Reliability Standards improve upon currently-effective Reliability Standard PRC–001–1.1(ii) in important ways.[17] Specifically, proposed Reliability Standard PRC–027–1 does so by (1) modifying the applicability section to include the appropriate functional entity types with the responsibilities, resources, and skill sets to conduct the studies required to coordinate protection systems, and (2) listing the protection system functions on all bulk electric system elements that require coordination. Proposed Reliability Standard PER–006–1, along with existing formal training requirements in the PER group of Reliability Standards, also improves upon Reliability Standard PRC–001–1.1(ii), Requirement R1 by ensuring that the necessary personnel are familiar with and understand the purpose and limitations of protection systems schemes while providing more precise and auditable requirements. However, proposed Reliability Standard PRC–027–1, Requirement R2, Option 2 does not appear to ensure coordination of all bulk electric system elements with protection system functions. Accordingly, pursuant to section 215(d)(5) of the FPA, we propose to direct that NERC develop modifications to proposed Reliability Standard PRC–027–1 that address our concern regarding this gap, as discussed below.

13. In addition, we propose to approve NERC's associated violation risk factors, violation severity levels, implementation plans, and effective dates. We also propose to approve the revised definitions for inclusion in the NERC Glossary. Further, we propose to approve the retirement of Reliability Standard PRC–001–1.1(ii), as requested by NERC.

14. Pursuant to 215(d)(5) of the FPA, we propose to direct that NERC develop modifications to proposed Reliability Standard PRC–027–1 addressing our concern that applicable entities that choose Requirement R2, Option 2 perform (or have already performed) an initial baseline study demonstrating proper coordination of their protection systems. Any additional protection system coordination studies would be

[10] *Id.* at 13.

[11] *Id.* at 15.

[12] *Id.* at 26.

[13] *Id.* at 27.

[14] *Id.* at 26.

[15] *Id.* at 5 (citing *Transmission Operations Reliability Standards and Interconnection Reliability Operations and Coordination Reliability Standards,* Order No. 817, 153 FERC ¶ 61,178 (2015)).

[16] *Id.* at 6.

[17] 16 U.S.C. 824o(d)(2).

necessary only if an applicable entity is confronted with 15 percent or greater fault current deviations from the prior baseline study amounts, as currently proposed in Reliability Standard PRC–027–1, Requirement R2, Option 2. We propose to direct NERC to submit the modified Reliability Standard within 12 months following the effective date of a final rule in this proceeding.

15. Proposed Reliability Standard PRC–027–1, Requirement R2 does not require an initial protection system coordination study if an applicable entity elects Option 2. Unlike Option 1, which requires performance of protection system coordination studies every six years, Option 2 requires applicable entities to ''[c]ompare present Fault current values to an established Fault current baseline and perform a Protection System Coordination Study when the comparison identifies a 15 percent or greater deviation.'' The proposed Reliability Standard and NERC's petition do not indicate that the ''Fault current baseline'' must be established through an initial protection system coordination study. Instead, NERC's petition states that the baseline must be established ''by the effective date of the standard based on short-circuit studies.'' [18] The proposed Reliability Standard provides that ''the initial Fault current baseline(s) shall be established by the effective date of this Reliability Standard and updated each time a Protection System Coordination Study is performed,'' but this language does not require establishing the ''initial Fault current baseline'' through an initial protection system coordination study.[19] NERC's petition reinforces this understanding, as noted above, by explicitly allowing the use of short-circuit studies to establish the initial Fault current baseline.

16. While they are related terms, we understand there to be a difference between short-circuit studies and protection system coordination studies. NERC defines protection system coordination study as an ''analysis to determine whether Protection Systems operate in the intended sequence during Faults.'' [20] By comparison, proposed Reliability Standard PRC–027–1 explains that a short-circuit study is ''an analysis of an electrical network that determines the magnitude of the currents flowing in the network during an electrical fault . . . [and] are used as the basis for protection device coordination studies.'' [21] Therefore, while short-circuit studies are inputs to protection system coordination studies, it appears that a short-circuit study differs in scope from a protection system coordination study. Based on this record, it would be incorrect to conclude that proposed Reliability Standard PRC–027–1, Requirement R2, Options 1 and 2 afford the same level of protection system coordination because the former requires a protection system coordination study while the latter does not.

17. While we generally support permitting flexibility in the Reliability Standards to achieve required performance goals, the possibility that some bulk electric system elements may never undergo a protection system coordination study raises reliability concerns. In past serious Bulk-Power System events, mis-coordination was a contributing factor to misoperations and outages. For example, the Arizona Southern California September 8, 2011 Outage Report identified an instance where a transmission owner did not perform a protection system coordination study prior to the implementation of a protection system.[22] The 2011 Outage Report stated that this omission negatively affected the reliable operation of the Bulk-Power System during the 2011 event.[23]

18. Over the past eleven years, several NERC reports have addressed the importance of protection system coordination to Bulk-Power System reliability. Proposed Reliability Standard PRC–027–1 addresses some of the issues raised in these reports; but without requiring an initial protection system coordination study, the proposed Reliability Standard does not address all of them. In 2006, for example, the NERC System Protection Control Task Force assessed Reliability Standard PRC–001.[24] The report recommended requiring the coordination of all existing protection systems.[25]

19. In 2009, in a letter from the NERC President to the NERC Board of Trustees and stakeholders, NERC identified generation and transmission mis-coordination as responsible for 30 percent of the misoperations that occurred between 2005 and 2008.[26] The 2009 letter stated that mis-coordination between generation and transmission protection systems ''has caused two significant system disturbances in the past two years, and resulted in the unnecessary loss of generation during seven additional disturbances in that timeframe.'' [27] The letter explained that the 2009 NERC System Protection Initiative would initially focus on the area of protection system coordination.[28]

20. In 2013, NERC issued a Misoperations Report prepared by the Protection System Misoperations Task Force.[29] The Misoperations Report identified ''ways to potentially reduce the amount of future misoperations'' and concluded that ''[m]isoperations due to setting errors can potentially be reduced.'' [30] The identified techniques to reduce incorrect settings, included: Peer reviews, increased training, more extensive fault studies, standard templates for setting standard schemes using complex relays, and periodic review of existing settings when there is a change in system topography.[31] In the ReliabilityFirst region, NERC identified a category of misoperations caused by ''Engineering/Design Issues,'' which specifically included setting mis-coordination.[32] This category of misoperations was one of the three most common causes of misoperations for above 200 kV facilities within the ReliabilityFirst region.[33] The positive impact on Bulk-Power System reliability

[18] NERC Petition at 36 n.35.

[19] Proposed Reliability Standard PRC–027–1, Requirement R2, Option 2 n.1. Footnote 1 further states that if an ''initial baseline was not established by the effective date of this Reliability Standard because of the previous use of an alternate option or the installation of a new BES Element, the entity *may* establish the baseline by performing a Protection System Coordination Study'' (emphasis added). *Id.*

[20] NERC Petition, Exhibit A–3, Proposed Definitions. This definition is consistent with the definition of coordination of protection in IEEE Std. C37.113–1999 (stating that the ''process of choosing settings or time delay characteristics of protective devices, such that operation of the devices will occur in a specified order to minimize customer service interruption and power system isolation due to a power system disturbance'').

[21] Proposed Reliability Standard PRC–027–1, Supplemental Material at 8.

[22] Arizona Southern California September 8, 2011 Outage Report at 101–103, *https://www.ferc.gov/legal/staff-reports/04-27-2012-ferc-nerc-report.pdf.*

[23] *Id.* at 100–102.

[24] NERC SPCTF Assessment of Standard PRC–001–0—System Protection Coordination (2006), *http://www.nerc.com/pa/Stand/Project200706SystemProtectionCoordinationDL/NERC_SPCTF_Assessment_of_Standard_PRC.pdf.*

[25] *Id.* at 3–4.

[26] NERC Letter from Rick Sergel, NERC President, Regarding System Protection Initiative at Figure 2 (April 24, 2009).

[27] *Id.* at 1.

[28] *Id.* at 1–2.

[29] NERC Misoperations Report (2013), *http://www.nerc.com/comm/PC/Protection%20System%20Misoperations%20Task%20Force%20PSMTF%202/PSMTF_Report.pdf.*

[30] *Id.* at 3.

[31] *Id.*

[32] *Id.* at 14–15. The 2013 Misoperations Report elaborated that the ''Engineering/Design Issues'' category included:

[33] *Id.* at 14.

of reducing misoperations because of ''Incorrect setting/logic/design errors'' is found in NERC's 2015 Analysis of System Protection Misoperations:

> Incorrect short circuit values and coordination errors. The incorrect short circuit values included outdated or incorrect data used to calculate relay settings. The coordination errors in these cases all involved pilot protection either of insufficient carrier blocking trip delays or of improper choice of ground pickup values used in a blocking scheme. *Id.* at 15.
>
> The State of Reliability 2015 report found that protection system misoperations continued to be a significant contributor to automatic transmission outage severity. In general, transmission system events with protection system misoperations were more impactful than other transmission events. They were also a significant contributor to transmission outage severity, indicating that a reduction in protection system misoperations would lead to an improvement in system reliability.[34]

21. In 2014, a NERC ''lessons learned'' document on ''Generation Relaying—Underfrequency Protection Coordination'' identified a 2014 incident where underfrequency relay trip settings were installed on the system unnecessarily and were not coordinated with a generator's relay trip setting.[35] The document explained that ''[u]nintended generator tripping during an underfrequency event can exacerbate the condition.'' [36] The document also stated that ''generator relay protection should be coordinated with all auxiliary power system relaying with specific regard to time-delay settings'' in order to ensure reliable generator operation.[37]

22. The 2016 State of Reliability Report noted that while protection system misoperations declined in 2015, misoperations showed a ''statistically significant positive correlation with transmission outage severity and show[ed] a higher relative transmission risk.'' [38] Misoperations showed the strongest correlation of the factors considered. In addition, the 2016 State of Reliability Report identified that ''over 40 percent of the incorrect setting/logic/design misoperations were due to the miss coordination [*sic*] of ground overcurrent settings'' found by ERCOT.[39]

23. The 2017 State of Reliability Report recognized the significance of protection system misoperations to Bulk-Power System reliability by observing that ''[p]rotection system misoperations should remain an area of focus as it continues to be one of the largest contributors to the severity of transmission outages.'' [40]

24. For the reasons discussed above, we propose to direct that NERC develop modifications to proposed Reliability Standard PRC–027–1 to address our concern by requiring that applicable entities perform an initial protection coordination study under Requirement R2, Option 2. We propose that applicable entities would have six years from the effective date of a modified Reliability Standard to complete the analysis. An applicable entity could use pre-existing protection system coordination studies to satisfy the proposed requirement provided it was reasonable (*i.e.,* no intervening system changes that would render the earlier work obsolete). After conducting the initial protection system coordination study, subsequent protection system coordination studies would only be required when an applicable entity is confronted with 15 percent or greater fault current deviations from the prior baseline study amounts, as currently proposed in Reliability Standard PRC–027–1, Requirement R2, Option 2. We seek comments on this proposal.

25. Separately, we seek comment from NERC and other interested entities explaining the technical basis for employing a 15 percent deviation threshold in proposed Reliability Standard PRC–027–1, Requirement R2, Option 2. We seek to better understand the basis for this threshold to ensure an adequate record in the proceeding on this matter.

III. Information Collection Statement

26. The collection of information addressed in this Notice of Proposed Rulemaking is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[41] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[42] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

27. The Commission will submit the information collection requirement to OMB for its final review and approval. We solicit public comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

28. The information collection requirements in this Notice of Proposed Rulemaking in Docket No. RM16–22–000 are associated with FERC–725A,[43] FERC–725G6,[44] and FERC–725Y, as discussed below.

29. *Public Reporting Burden:* The number of respondents below is based on an examination of the NERC compliance registry on April 7, 2017, for transmission owners, generator owners, generator operators, and distribution providers within the United States and an estimate of how many entities from that registry will be affected by the Reliability Standards proposed for adoption and implementation. At the time of Commission review of proposed Reliability Standards PRC–027–1 and PER–006–1, 334 transmission owners, 913 generator owners, 875 generator operators, and 365 distribution providers in the United States were registered in the NERC compliance registry. However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. We note that many generation sites share a common

[34] NERC, Analysis of System Protection Misoperations at 1 (Dec. 2015) (citations omitted), *http://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/2015_Analysis_of_System_Protection_Misoperations_Final.pdf* (finding that 31 percent of all misoperations were due to ''Incorrect setting/logic/design errors'').

[35] NERC, Lesson Learned, Generation Relaying—Underfrequency Protection Coordination (2014), *http://www.nerc.com/pa/rrm/ea/Lessons%20Learned%20Document%20Library/LL20140601_Generation_Relaying_Underfrequency_Protection_Coordination_final.pdf.*

[36] *Id.*

[37] *Id.*

[38] 2016 State of Reliability Report at 17, *http://www.nerc.com/pa/RAPA/Pages/default.aspx.*

[39] *Id.* at 166.

[40] 2017 State of Reliability Report at 2.

[41] 44 U.S.C. 3507(d).

[42] 5 CFR 1320.11.

[43] FERC–725A (OMB Control No. 1902–0244) currently includes the information collection requirements associated with Reliability Standard PRC–001–1.1(ii), which is proposed for retirement. Only one item per OMB Control No. may be pending OMB review at a time, and an unrelated item affecting FERC–725A is pending OMB review. We are providing estimates of the burden reduction related to FERC–725A for review and comment. However, to submit this Notice of Proposed Rulemaking timely to OMB, the Commission is being conservative and not reducing the burden estimates associated with FERC–725A at this time.

[44] The information collection requirements related to proposed Reliability Standard PRC–027–1 would normally be included in FERC–725G (OMB Control No. 1902–0252). However, only one item per OMB Control No. may be pending OMB review at a time, and an unrelated item affecting FERC–725G is pending OMB review. For this Notice of Proposed Rulemaking and the related submittal to OMB, we use a placeholder information collection no. of FERC–725G6.

generator owner or generator operator. The following table provides the estimated proposed annual burden and cost related to information collection requirements in this Notice of Proposed Rulemaking.[45]

PROPOSED CHANGES IN THE NOPR IN DOCKET NO. RM16–22–000

Respondent category and requirement[46]	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of annual responses (1) * (2) = (3)	Average burden hours & cost per response[47] (4)	Annual burden hours & total annual cost (rounded)[48] (3) * (4) = (5)
FERC–725G6 (covering Proposed Reliability Standard PRC–027–1)[49]					
TO; Reporting Reqs. R1, R2, & R3	334	1	334	60 hrs.; $3,941.40	20,040 hrs.; $1,316,428.
TO; Recordkeeping Reqs.	334	1	334	40 hrs.; $1,565.60	13,360 hrs.; $522,910.
GO; Reporting Reqs. R1, R2, & R3	913	1	913	10 hrs.; $656.90	9,130 hrs.; $599,750.
GO; Recordkeeping Reqs.	913	1	913	10 hrs.; $391.40	9,130 hrs.; $357,348.
DP; Reporting Reqs R1, R2, & R3	365	1	365	10 hrs.; $656.90	3,650 hrs.; $239,769.
DP; Recordkeeping Reqs.	365	1	365	10 hrs.; $391.40	3,650 hrs.; $142,861.
Sub-Total for Reporting Reqs. for FERC–725G6					32,820 hrs.; $2,155,947.
Sub-Total for Recordkeeping Reqs. for FERC–725G6					26,140 hrs.; $1,023,119.
Total Proposed Increase for FERC–725G6					58,960 hrs.; $3,179,066.
FERC–725Y (covering Proposed Reliability Standard PER–006–1)					
GOP; Reporting Req. R1	875	1	875	5 hrs.; $328.45	4,375 hrs.; $287,394.
GOP; Recordkeeping Req.	875	1	875	10 hrs.; $391.40	8,750 hrs.; $342,475.
Total Proposed Increase for FERC–725Y					13,125 hrs.; $629,869.
Reductions to FERC–725A (covering proposed retirement of Reliability Standard PRC–001–1.1)[50]					
GOP; Reporting Req.	875	1	875	40 hrs.; $2,627.60	35,000 hrs.; $2,299,150.
GOP; Recordkeeping Req.	875	1	875	50 hrs.; $1,957.00	43,750 hrs.; $1,712,375.
TOP; Reporting Req.	177	1	177	60 hrs.; $3,941.40	10,620 hrs.; $697,628.
TOP; Recordkeeping Req.	177	1	177	70 hrs.; $2,739.80	12,390 hrs.; $484,945.
BA; Reporting Req.	99	1	99	32 hrs.; $2,102.08	3,168 hrs.; $208,106.
BA; Recordkeeping Req.	99	1	99	20 hrs.; $782.80	1,980 hrs.; $77,497.
Reduction Sub-Total Reporting Reqs. for FERC–725A					48,788 hrs.; $3,204,884.
Reduction Sub-Total Recordkeeping Reqs. for FERC–725A.					58,120 hrs.; $2,274,817.
Reduction, Sub-Total for FERC–725A					106,908 hrs.; $5,479,701 (reduction).
NET TOTAL REDUCTION FOR PROPOSED CHANGES IN NOPR IN RM16–22–000.					34,823 hrs.; $1,670,766 (reduction).

Titles: FERC–725G6 (Mandatory Reliability Standard PRC–027–1) and FERC–725Y (Mandatory Reliability Standards: Operations Personnel Training (PER–005–2 and PER–006–1).

Action: Revision to existing collections and proposed new information collection.

OMB Control Nos.: To be determined (FERC–725G6)[51] and 1902–0279 (FERC–725Y).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: Annual recordkeeping and reporting requirements, with some reporting requirements being at least once every six years.

Necessity of the Information: Proposed Reliability Standards PRC–027–1 and PER–006–1 set forth requirements for coordination of protection systems and personnel training on specific topics essential to reliability. The Commission proposes to approve proposed Reliability Standards PRC–027–1 and PER–006–1, which will replace Commission-approved Reliability Standard PRC–001–1.1(ii). The proposed Reliability Standards PRC–027–1 and PER–006–1 improve upon the existing Reliability Standard PRC–001–1.1(ii) because the proposed Reliability Standards assign responsibilities to entities with more appropriate resources and skill sets to conduct studies required to coordinate protection systems. The proposed Reliability Standards also provide additional clarity to the applicable entities.

Internal review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

[45] TO=transmission owner; TOP=transmission operator; GO=generator owner; GOP=generator operator; DP=distribution provider; and BA=balancing authority.

[46] For each Reliability Standard, the Measure shows the acceptable evidence for the associated Reporting Requirement, and the Compliance section details the related Recordkeeping Requirement.

[47] Based on data from the Bureau of Labor Statistics, the average hourly cost (wages plus benefits) is $65.69/hour for an engineer, and $39.14/hour for a record clerk. The hourly cost for an engineer is used for reporting requirements; the hourly cost for a record clerk is used for recordkeeping requirements.

[48] For display purposes, the cost figures in column 5 have been rounded.

[49] Some of the reporting requirements are required at least every six calendar years. In this table, the Commission assumes that respondents might work on some of their elements each year; the annual burden estimate shown is one sixth of the burden associated with one complete six-year cycle. For example, for each transmission owner: (a) The annual reporting burden associated with Requirements R1, R2, and R3 is shown as 60 hours per year, and (b) the burden for the six-year cycle would be six times that, or a total of 360 hours.

[50] The estimates for average annual burden hours per response are based on Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 1906, 1907. The numbers of respondents and estimated hourly costs are based on current figures.

[51] OMB will assign a Control No. when it issues a decision.

30. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

31. Comments concerning the information collection proposed in this Notice of Proposed Rulemaking and the associated burden estimates should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please refer to OMB Control Nos. to be determined (FERC–725G6) and 1902–0279 (FERC–725Y) in your submittal.

IV. Environmental Analysis

32. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[52] The action proposed here falls within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[53]

V. Regulatory Flexibility Act

33. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.[54] The Small Business Administration (SBA) defines which utilities are small businesses based on the number of employees that a utility and its affiliates employ.[55]

34. The proposed Reliability Standard PRC–027–1 (included in FERC–725G6) will apply to approximately 1,612 entities (334 transmission owners, 913 generator owners, and 365 distribution providers) in the United States.[56] Pursuant to SBA regulations, the employment threshold for transmission is 500 employees, for generator owners is between 250 and 750 employees (depending on the fuel source), and for distribution providers is 1,000 employees. We estimate that the annual cost for each entity will be $1,048 for each generator owner and distribution provider and $5,507 for each transmission owner.

35. The proposed Reliability Standard PER–006–1 (included in FERC–725Y) will apply to approximately 875 generator operators in the United States. Pursuant to SBA regulations the employment threshold for generator operators is between 250 and 750 employees (depending on the fuel source). We estimate that the annual cost for each generator operator will be $719.

36. In addition, this Notice of Proposed Rulemaking proposes the retirement of Reliability Standard PRC–001–1.1(ii) (included in FERC–725A). That retirement would decrease the annual estimated cost for 875 generator operators by $4,585 each, for 177 transmission operators by $6,681 each, and for 99 balancing authorities by $2,885 each. For the generator operators affected by this retirement and the proposed Reliability Standard PER–006–1, the net annual effect would be a decrease of $3,866 each. We estimate the net annual cost of this Notice of Proposed Rulemaking would vary, by type of entity, from an annual decrease of $6,681 (for each transmission operator) to an annual increase of $5,507 (for each transmission owner). We view this as a minimal economic impact for each entity. Accordingly, we certify that the proposed Reliability Standards PRC–027–1 and PER–006–1 and retirement of Reliability Standard PRC–001–1.1 (ii) will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

37. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 22, 2018. Comments must refer to Docket No. RM16–22–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

38. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

39. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

40. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

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

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

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

By direction of the Commission.

Issued November 16, 2017.

Kimberly D. Bose,

Secretary.

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

[53] 18 CFR 380.4(a)(2)(ii).

[54] 5 U.S.C. 601–612.

[55] 13 CFR 121.201, Subsector 221.

[56] Many respondents serve multiple roles in the NERC compliance registry, so there is likely double counting in the estimates.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401

[EPA–HQ–OW–2017–0644; FRL–9970–57–OW]

RIN 2040–AF80

Definition of ''Waters of the United States''—Addition of an Applicability Date to 2015 Clean Water Rule

AGENCY: Department of the Army, Corps of Engineers, Department of Defense; and Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency and the Department of the Army (''the agencies'') are proposing to add an applicability date to the ''Clean Water Rule: Definition of 'Waters of the United States''' (the ''2015 Rule'') to two years from the date of final action on this proposal. On October 9, 2015, the Sixth Circuit stayed the 2015 Rule nationwide pending further action of the court, but the Supreme Court is currently reviewing the question of whether the court of appeals has original jurisdiction to review challenges to the 2015 Rule. On February 28, 2017, the President signed an Executive Order, ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule.'' With this proposed rule, the agencies intend to maintain the *status quo* by proposing to add an applicability date to the 2015 Rule and thus provide continuity and regulatory certainty for regulated entities, the States and Tribes, agency staff, and the public while the agencies continue to work to consider possible revisions to the 2015 Rule.

DATES: Comments must be received on or before December 13, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2017–0644, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The agencies may publish any comment received to the 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 agencies will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Donna Downing, Office of Water (4504–T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–2428; email address: *CWAwotus@epa.gov;* or Ms. Stacey Jensen, Regulatory Community of Practice (CECW–CO–R), U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314; telephone number: (202) 761–5903; email address: *USACE_CWA_Rule@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency and the Department of the Army (''the agencies'') are proposing to add an applicability date to the 2015 Clean Water Rule of two years from the date of final action on this proposal. The effective date of the 2015 Rule was August 28, 2015. On July 27, 2017, the agencies published a proposed rule to initiate the first step in a comprehensive, two-step process intended to review and revise, as appropriate and consistent with law, the definition of ''waters of the United States'' under with Executive Order 13778 signed on February 28, 2017, ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule.'' The first step in the process (the ''Step One rule'') proposed to rescind the definition of ''waters of the United States'' promulgated by the agencies in 2015 in the Code of Federal Regulations and to re-codify the previous definition of ''waters of the United States,'' which defines the scope of the Clean Water Act. The previous definition is currently in effect pursuant to a decision issued by the U.S. Court of Appeals for the Sixth Circuit staying the 2015 definition of ''waters of the United States.'' In a second step (the ''Step Two rule''), the agencies intend to pursue a public notice-and-comment rulemaking in which the agencies would conduct a substantive re-evaluation of the definition of ''waters of the United States.'' With this proposed rule to add an applicability date to the 2015 Rule, the agencies intend to provide, for an interim period, greater regulatory certainty about the definition of ''waters of the United States'' in effect while they continue to work on the two-step rulemaking process.

The addition of the applicability date to the 2015 Rule to two years after the date of a final rule under this proposed rulemaking effort would ensure that the regulatory definition of ''waters of the United States'' that existed prior to promulgation of the rule in 2015 and that has been in effect nationwide since the 2015 Rule was stayed on October 9, 2015, would remain in effect during the ongoing actions undertaken in response to the Executive Order. This proposed rule to add an applicability date to the 2015 Rule would maintain the legal *status quo* and thus provide continuity and certainty for regulated entities, the States and Tribes, agency staff, and the public. The agencies would administer the regulations as they are currently being implemented, consistent with Supreme Court decisions and longstanding practice as informed by applicable agency guidance documents.

State, tribal, and local governments have well-defined and longstanding relationships with the federal government in implementing CWA programs and these relationships are not altered by this proposed rule. This proposed rule would not establish any new regulatory requirements. Rather, this rule would simply add an applicability date to the 2015 Rule leaving in place the current legal *status quo* while the agencies continue to engage in substantive rulemaking to reconsider the definition of ''waters of the United States.''

I. Background and Discussion of Addition of Applicability Date

A. What This Proposed Rule Does

In 2015, the agencies published the ''Clean Water Rule: Definition of 'Waters of the United States''' (80 FR 37054, June 29, 2015), and on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015 Rule nationwide pending further action of the court. The 2015 Rule had an effective date of August 28, 2015. The agencies propose to add an applicability date of two years from the date of final action on this proposal. The effective date of the 2015 Rule was established by a document published by the agencies in the **Federal Register** (80 FR 37054, June 29, 2015).

The Code of Federal Regulations text does not include an applicability date; therefore, the agencies are proposing to amend the text of the Code of Federal Regulations to add a new applicability date. Until the new applicability date, the agencies would continue to implement the prior regulatory definitions, informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice, as the agencies have been operating pursuant to the Sixth Circuit's October 9, 2015, order.

B. History and the Purpose of This Rulemaking

Congress enacted the Federal Water Pollution Control Act Amendments of 1972, Public Law 92–500, 86 Stat. 816, as amended, Public Law 95–217, 91 Stat. 1566, 33 U.S.C. 1251 *et seq.* (''Clean Water Act'' or ''CWA'' or ''Act'') ''to restore and maintain the chemical, physical and biological integrity of the Nation's waters.'' Section 101(a). A primary tool in achieving that purpose is a prohibition on the discharge of any pollutants, including dredged or fill material, to ''navigable waters'' except in accordance with the Act. Section 301(a). The CWA provides that ''[t]he term 'navigable waters' means the waters of the United States, including the territorial seas.'' Section 502(7).

The regulations defining the ''waters of the United States'' currently in effect were established in large part in 1977 (42 FR 37122, July 19, 1977). While EPA administers most provisions in the CWA, the U.S. Army Corps of Engineers (Corps) administers the permitting program under section 404. During the 1980s, both of these agencies adopted substantially similar definitions (51 FR 41206, Nov. 13, 1986, amending 33 CFR 328.3; 53 FR 20764, June 6, 1988, amending 40 CFR 232.2).

In 2015, following public notice and comment on a proposed rule, the agencies published a final rule defining the ''waters of the United States'' (80 FR 37054). Thirty-one States and other parties sought judicial review in multiple actions in Federal district courts and Circuit Courts of Appeal, raising concerns about the scope and legal authority of the 2015 Rule. One district court issued an order granting a motion for preliminary injunction one day prior to the rule's effective date that applies to the thirteen plaintiff States in that case, *State of North Dakota et al.* v. *US EPA,* No. 15–00059, slip op. at 1–2 (D.N.D. Aug. 27, 2015, as clarified by order issued on September 4, 2015), and several weeks later, the Sixth Circuit stayed the 2015 Rule nationwide to restore the ''pre-Rule regime, pending judicial review.'' *In re U.S. Dep't. of Def. and U.S. Envtl. Protection Agency Final Rule: Clean Water Rule,* No. 15–3751 (lead), slip op. at 6. Pursuant to the Sixth Circuit's order, the agencies are applying the definition of ''waters of the United States'' that preceded the 2015 Rule nationwide. On January 13, 2017, the U.S. Supreme Court granted *certiorari* on the question of whether the court of appeals has original jurisdiction to review challenges to the 2015 Rule. The Sixth Circuit granted petitioners' motion to hold in abeyance the briefing schedule in the litigation challenging the 2015 Rule pending a Supreme Court decision on the question of the court of appeals' jurisdiction. On October 11, 2017, the Supreme Court held oral argument on the question of whether the court of appeals has original jurisdiction to review challenges to the 2015 Rule. The Supreme Court could issue a decision resolving the question at any time.

On February 28, 2017, the President of the United States issued an Executive Order entitled ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule.'' Section 1 of the Order states, ''[i]t is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution.'' The Executive Order directed the EPA and the Army to review the 2015 Rule for consistency with the policy outlined in section 1 of the Order, and to issue a proposed rule rescinding or revising the 2015 Rule as appropriate and consistent with law. Section 2. The Executive Order also directed the agencies to consider interpreting the term ''navigable waters'' in a manner consistent with Justice Scalia's plurality opinion in *Rapanos* v. *United States,* 547 U.S. 715 (2006). Section 3.

On July 27, 2017, the agencies proposed a rule to rescind the 2015 Rule and replace it with a recodification of the regulatory text that governed the legal regime prior to the 2015 Rule (82 FR 34899), and that the agencies are currently implementing under the court stay, informed by applicable guidance documents (*e.g.,* 2003 and 2008 guidance documents, as well as relevant memoranda and regulatory guidance letters), and consistent with Supreme Court decisions and longstanding agency practice. The agencies received many comments on the Step One proposed recodification and it remains under active consideration.

C. Today's Proposed Rule

In this proposed rule, the agencies would add an applicability date to the 2015 Rule such that it is not implemented until two years from the date of a final action on this proposal. During that time, the agencies will continue to implement nationwide the previous regulatory definition of ''waters of the United States'' as they are currently doing under the Sixth Circuit's stay, informed by applicable guidance documents (*e.g.,* 2003 and 2008 guidance documents, as well as relevant memoranda and regulatory guidance letters), and consistent with Supreme Court decisions and longstanding agency practice.

The scope of CWA jurisdiction is an issue of great national importance and therefore the agencies will provide for robust deliberations to re-evaluate the definition of ''waters of the United States.''. While engaging in such deliberations, however, the agencies recognize the need to provide an interim step for regulatory continuity and clarity for the many stakeholders affected by the definition of ''waters of the United States.'' The pre-2015 Rule regulatory regime is in effect as a result of the Sixth Circuit's stay of the 2015 Rule but that regime depends upon the pendency of the Sixth Circuit's order and could be altered at any time by factors beyond the control of the agencies. The Supreme Court's resolution of the question as to which courts have original jurisdiction over challenges to the 2015 Rule could impact the Sixth Circuit's exercise of jurisdiction and its stay. If, for example, the Supreme Court were to decide that the Sixth Circuit lacks original jurisdiction over challenges to the 2015 Rule, the Sixth Circuit case would be dismissed and its nationwide stay would expire, leading to possible inconsistencies, uncertainty, and confusion as to the regulatory regime that could be in effect pending substantive rulemaking under the Executive Order.

As noted previously, prior to the Sixth Circuit's stay order, the District Court for North Dakota had preliminarily enjoined the rule in 13 States (North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming and New Mexico). Therefore, if the Sixth Circuit's nationwide stay were to expire, the 2015 Rule would be enjoined under the North Dakota order in States covering a large geographic area of the country, but the rule would be in effect in the rest of the

country pending further judicial decision-making or substantive rulemaking under the Executive Order. Adding to the confusion that could be caused if the Sixth Circuit's nationwide stay of the 2015 Rule were to expire, there are multiple other district court cases pending on the 2015 Rule, including several where challengers have filed motions for preliminary injunctions. These cases—and the pending preliminary injunction motions—could be reactivated if the Supreme Court were to determine that the Sixth Circuit lacks original jurisdiction over challenges to the 2015 Rule.

In addition, if the Supreme Court were to decide that the courts of appeal do have original jurisdiction over challenges to the 2015 Rule, the litigation in the Sixth Circuit could resume and therefore control over which regulatory definition of ''waters of the United States'' is in effect while the agencies engage in deliberations on the ultimate regulation could remain outside of the agencies. The proposed interim rule would establish a clear regulatory framework that could avoid the possible inconsistencies, uncertainty and confusion that could result from a Supreme Court ruling while the agencies reconsider the 2015 Rule. It would ensure that, during this interim period, the scope of CWA jurisdiction will be administered exactly the way it is now, and as it has been for many years prior to the promulgation of the 2015 Rule.

The agencies are proposing an applicability date two years after the date of publication of the final rule in order to ensure that there is sufficient time for the regulatory process for reconsidering the definition of ''waters of the United States'' to be fully completed. The agencies are undertaking an extensive outreach effort to gather information and recommendations from States and tribes, regulated entities, academia, and the public. The geographic scope of the Clean Water Act is of great national interest and there were more than 680,000 public comments on the Step One proposed rule. The agencies continue to work as expeditiously as possible to complete the two-step rulemaking process. However, in light of the great interest in this rulemaking, the agencies are proposing an applicability date for the 2015 Rule that is two years after the publication date of the final rule to ensure that there is sufficient time for a consideration of the results of the outreach process, robust discussion with other federal agencies, an appropriate public comment period, and consideration of the resulting comments during the Step Two rulemaking.

The agencies recognize that there may be some confusion because there is an existing proposal to rescind the 2015 Rule and replace it with the previous definition of ''waters of the United States,'' as well as ongoing pre-proposal stakeholder outreach and engagement about the scope of the Step Two rulemaking that would substantively reconsider the definition of ''waters of the United States.'' The comment period for the July Step One proposed rule is now closed and the agencies are considering those comments and developing the Step Two proposal. In light of the public interest in these rules and the length of time involved in these rulemakings, the agencies today are proposing this more narrowly targeted and focused interim rule to ensure the consistency of implementation of the definition of ''waters of the United States'' during this interim period. Because the request for comment is on such a narrow topic, and because a Supreme Court ruling could come at any time, the agencies believe that a short comment period is reasonable.

II. General Information

A. How can I get copies of this document and related information?

1. *Docket.* An official public docket for this action has been established under Docket ID No. EPA–HQ–OW–2017–0644. The official public docket consists of the documents specifically referenced in this action, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket telephone number is 202–566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically under the ''**Federal Register**'' listings at *http://www.regulations.gov.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may access EPA Dockets at *http://www.regulations.gov* to view public comments as they are submitted and posted, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility.

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

The authority for this action is the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.,* including sections 301, 304, 311, 401, 402, 404 and 501.

C. What are the economic impacts of this action?

The agencies have determined that there are no economic costs or benefits associated with this action. In light of the ongoing, complex litigation over the 2015 Rule, the agencies believe it is reasonable and appropriate for purposes of considering economic impacts for this proposal to presume that the legal *status quo* is likely to remain the same. This proposal, if finalized, would have the effect of providing the public with regulatory certainty while the agencies pursue a substantive rulemaking process. This proposal would eliminate one source of uncertainty for the regulated community as they consider investments. While the agencies recognize that there could be benefits associated with greater regulatory certainty, we are unable to quantify those benefits. The agencies have prepared a memorandum to the record to provide the public with information about this conclusion with respect to the potential economic impacts associated with this action. A copy of the memorandum is available in the docket for this action.

III. Public Comments

The agencies solicit comment as to whether it is desirable and appropriate to add an applicability date to the 2015 Rule. The agencies are proposing to establish an applicability date of two years after a final rule and seek comment on whether the time period should be shorter or longer, and whether adding the applicability date contributes to regulatory certainty. The agencies have prepared a memorandum to the record to provide the public with information about the activities envisioned in support of a comprehensive rulemaking process. A copy of the memorandum is available in the docket for this action.

Because the agencies propose to simply add the applicability date and ensure continuance of the legal *status quo* and because it is a temporary,

interim measure pending substantive rulemaking, the agencies believe that a short comment period is reasonable. In addition, please note that this proposed rulemaking does not undertake any substantive reconsideration of the pre-2015 ''waters of the United States'' definition nor are the agencies soliciting comment on the specific content of those longstanding regulations. *See P&V Enterprises* v. *Corps of Engineers,* 516 F.3d 1021,1023–24 (D.C. Cir. 2008). For the same reason, the agencies are not at this time soliciting comment on the scope of the definition of ''waters of the United States'' that the agencies should ultimately adopt in the Step Two rule in this process, as the agencies will address those issues as appropriate, including those related to the 2015 Rule, in the notice and comment rulemaking to consider adopting a revised definition of ''waters of the United States'' in light of the February 28, 2017, Executive Order. The agencies do not intend to engage in substantive re-evaluation of the definition of ''waters of the United States'' until the Step Two rulemaking. *See P&V,* 516 F.3d at 1025–26.

IV. Statutory and Executive Order Reviews

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

This action is a significant regulatory action because policy issues with respect to the definition of ''waters of the United States'' are novel for purposes of Executive Order 12866 and it was submitted to the Office of Management and Budget (OMB) for review. It is not an economically significant action. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, the agencies prepared a memorandum to the record regarding analysis of the potential economic impacts associated with this action. The agencies have determined that there are no costs or benefits associated with this action. This action would simply add an applicability date to the 2015 Rule which is stayed nationwide and the legal *status quo* continues to remain in place. A copy of the memorandum is available in the docket for this action.

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

This action is not expected to be subject to Executive Order 13771 because this proposed rule is expected to result in no additional costs.

C. Paperwork Reduction Act (PRA)

This proposed rule does not involve any information collection activities subject to the PRA, 44 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act (RFA)

We certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action would simply add an applicability date to the 2015 Rule which is stayed nationwide and the legal *status quo* continues to remain in place. We have therefore concluded that this action will not have a significant impact on small entities. This analysis is contained in a memorandum to the record, which is available in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. The definition of ''waters of the United States'' applies broadly to all CWA programs.

F. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications, as specified in Executive Order 13175. This action would simply add an applicability date to the 2015 Rule which is stayed nationwide and the legal *status quo* continues to remain in place. 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 agencies interpret Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the agencies have reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action would simply add an applicability date to the 2015 Rule which is stayed nationwide and the legal *status quo* continues to remain in place.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The agencies believe that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This is a proposal to add an applicability date to the 2015 Rule. The agencies believe it is more appropriate to consider the impact on minority and low-income populations in the context of possible substantive changes as part of any reconsideration of the 2015 Rule.

List of Subjects

33 CFR Part 328

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Navigation, Water pollution control, Waterways.

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401

Environmental protection, Water pollution control.

Dated: November 16, 2017.

E. Scott Pruitt,

Administrator, Environmental Protection Agency.

Dated: November 16, 2017.

Ryan A. Fisher,

Acting Assistant Secretary of the Army (Civil Works).

Title 33—Navigation and Navigable Waters

For the reasons set out in the preamble, title 33, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

■ 1. The authority citation for part 328 continues to read as follows:

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

■ 2. Section 328.3 is amended by adding paragraph (e) to read as follows:

§ 328.3 Definitions.

* * * * *

(e) *Applicability date.* Paragraphs (a) through (c) of this section are applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

Title 40—Protection of Environment

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 110—DISCHARGE OF OIL

■ 3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.,* 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR parts 1971–1975 Comp., p. 793.

■ 4. Section 110.1 is amended by adding paragraph (4) to the definition of ''Navigable waters'' to read as follows:

§ 110.1 Definitions.

* * * * *

Navigable waters * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

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PART 112—OIL POLLUTION PREVENTION

■ 5. The authority citation for part 112 continues to read as follows:

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

■ 6. Section 112.2 is amended by adding paragraph (4) to the definition of ''Navigable waters'' to read as follows:

§ 112.2 Definitions.

* * * * *

Navigable waters * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

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PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

■ 7. The authority citation for part 116 continues to read as follows:

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

■ 8. Section 116.3 is amended by adding paragraph (4) to the definition of ''Navigable waters'' to read as follows:

§ 116.3 Definitions.

* * * * *

Navigable waters * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

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PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

■ 9. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.,* and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

■ 10. Section 117.1 is amended by adding paragraph (i)(4) to read as follows:

§ 117.1 Definitions.

* * * * *

(i) * * *

(4) *Applicability date.* This paragraph (i) is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 11. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 12. Section 122.2 is amended by adding paragraph (4) to the definition of ''Waters of the United States'' read as follows:

§ 122.2 Definitions.

* * * * *

Navigable waters * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

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PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

■ 13. The authority citation for part 230 continues to read as follows:

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

■ 14. Section 230.3 is amended by adding paragraph (o)(4) to read as follows:

§ 230.3 Definitions.

* * * * *

(o) * * *

(4) *Applicability date.* This paragraph (o) is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

■ 15. The authority citation for part 232 continues to read as follows:

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

■ 16. Section 232.2 is amended by adding paragraph (4) to the definition of ''Waters of the United States'' to read as follows:

§ 232.2 Definitions.

* * * * *

Waters of the United States * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 18. Section 300.5 is amended by adding paragraph (4) to the definition of ''Navigable waters'' to read as follows:

§ 300.5 Definitions.

* * * * *

Navigable waters * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

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■ 19. In appendix E to part 300, section 1.5 Definitions is amended by adding paragraph (4) to the definition of ''Navigable waters'' to read as follows:

Appendix E to Part 300—Oil Spill Response

* * * * *

1.5 * * *

Navigable waters * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

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PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 20. The authority citation for part 302 continues to read as follows:

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

■ 21. Section 302.3 is amended by adding paragraph (4) to the definition of ''Navigable waters'' to read as follows:

§ 302.3 Definitions.

* * * * *

Navigable waters * * *

(4) *Applicability date.* This definition is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

PART 401—GENERAL PROVISIONS

■ 22. The authority citation for part 401 continues to read as follows:

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

■ 23. Section 401.11 is amended by adding paragraph (1)(4) to read as follows:

§ 401.11 General definitions.

* * * * *

(l) * * *

(4) *Applicability date.* This paragraph (l) is applicable beginning on [DATE TWO YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

[FR Doc. 2017–25321 Filed 11–21–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP20

Third Party Billing for Medical Care Provided Under Special Treatment Authorities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its medical regulations to clarify that VA will not bill third party payers for care and services provided by VA under certain statutory provisions, which we refer to as ''special treatment authorities.'' These special treatment authorities direct VA to provide care and services to veterans based upon discrete exposures or experiences that occurred during active military, naval, or air service. VA is authorized, but not required by law, to recover or collect charges for care and services provided to veterans for non-service connected disabilities. This proposed rule would establish that VA would not exercise its authority to recover or collect reasonable charges from third party payers for care and services provided under the special treatment authorities.

DATES: Comments must be received by VA on or before January 22, 2018.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026 (this is not a toll-free number). Comments should indicate that they are submitted in response to ''RIN 2900–AP20, Third Party Billing for Medical Care Provided under Special Treatment Authorities.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Director, Policy and Planning VHA Office of Community Care (10D1A1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (303–370–1637). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Many veterans enrolled in VA's health care system also have private insurance. VA is authorized by law under 38 U.S.C. 1729 to recover or collect reasonable charges from third parties under certain situations for care and services provided for non-service-connected disabilities. For example, VA may recover or collect such charges when a veteran requires medical care following a motor vehicle accident or an injury at work. 38 U.S.C. 1729(a)(2)(A)–(B). These provisions are reflected in regulation at 38 CFR 17.101. VA does not have authority to recover or collect charges from third parties for care or services provided for service-connected disabilities.

Under the statutes referred to as the special treatment authorities, which are codified at 38 U.S.C. 1710(a)(2)(F) and (e), 1720D, and 1720E, VA provides care and services to veterans for conditions and disabilities that are related to certain exposures or experiences during active military, naval, or air service, regardless of whether such condition or disability is formally adjudicated by the Veterans Benefits Administration (VBA) to be service-connected. Specifically, these statutory provisions do not expressly refer to the conditions or disabilities resulting from such exposures or experiences as service-connected. Therefore, if veterans meet the eligibility criteria of these discrete categories in law, they receive the health care benefits enumerated in the special treatment authorities. A brief description of each of the special treatment authorities follows.

Subject to the availability of appropriations, under 38 U.S.C. 1710(a)(2)(F), VA provides hospital care and medical services, and may furnish nursing home care, to veterans who were exposed to a toxic substance, radiation, or other conditions identified in 38 U.S.C. 1710(e) for the treatment of the disabilities described in subsection (e). More specifically, subject to the requirements in 38 U.S.C. 1710(e)(2)-(4), such care and services are available under 38 U.S.C. 1710(a)(2)(F) and 1710(e) (at no cost to the veteran) as follows:

- For the treatment of any disability of a Vietnam-era, herbicide-exposed veteran, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure;
- For the treatment of any disease specified by 38 U.S.C. 1112(c)(2) or for which the Secretary, based on the

advice of the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between occurrence of the disease in humans and exposure to ionizing radiation, of any radiation-exposed veteran;

- For treatment of any disability of a veteran who served on active duty between August 2, 1990, and November 11, 1998, in the Southwest Asia theater of operations during the Persian Gulf War, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such service;
- For treatment of any illness suffered by a veteran who served on active duty in a theater of combat operations during a period of war after the Persian Gulf War or in combat against a hostile force during a period of hostilities after November 11, 1998, notwithstanding that there is insufficient medical evidence to conclude that such condition is attributable to such service;
- For treatment of any illness suffered by a veteran who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as ''Project Shipboard Hazard and Defense (SHAD)'' and related land-based tests) notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such testing; and
- For treatment of certain illnesses or conditions identified by statute suffered by a veteran who served on active duty in the Armed Forces at Camp Lejeune, North Carolina, for not fewer than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, notwithstanding that there is insufficient medical evidence to conclude that such illnesses or conditions are attributable to such service.

Under 38 U.S.C. 1720D, VA is authorized to provide counseling and appropriate care and services to help veterans overcome psychological trauma, which in the judgment of a mental health professional employed by VA, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty, active duty for training, or inactive duty training.

Under 38 U.S.C. 1720E, VA is authorized to provide any veteran, whose service records include documentation of nasopharyngeal radium irradiation treatments, a medical examination, hospital care, medical services, and nursing home care that is needed for the treatment of any cancer of the head or neck that the Secretary finds may be associated with the veteran's receipt of those treatments in active military, naval, or air service; additionally, notwithstanding the absence of such documentation, VA may provide such care to a veteran who served as an aviator in the active military, naval, or air service before the end of the Korean conflict or a veteran who underwent submarine training in active naval service before January 1, 1965.

The special treatment authorities do not require an adjudication of service-connection to establish eligibility for care. These veterans are eligible under those authorities for treatment of specific conditions, which although not adjudicated as service-connected, are the practical equivalent for medical care purposes. VA proposes, therefore, in the interest of equity, to add a new paragraph (a)(9) in § 17.101 to exclude from recovery or collections any reasonable charges from third parties for care and services provided under the special treatment authorities. This would conform the regulation to the current general practice of not seeking recovery or collection from third parties for medical care and services related to conditions and disabilities under the special treatment authorities.

Proposed paragraph (a)(9)(i) would state that, notwithstanding any other provision in this part authorizing VA to recover or collect such charges, VA will not seek to recover or collect reasonable charges from a third party payer for care and services when such care and services are being provided under any of the special treatment authorities discussed above. Proposed paragraphs (a)(9)(i)(A)–(C) would cite each of these authorities.

The special treatment authorities of 38 U.S.C. 1710(a)(2)(F) and (e) do not extend, however, to conditions and disabilities that the Under Secretary for Health determines, consistent with the terms of 38 U.S.C. 1710(e)(2)(A)–(B), have resulted from causes other than those described in the special treatment authorities. In these cases, needed treatment is still provided to the veteran but, depending on the facts, the veteran may be subject to copayment requirements in connection with the receipt of such treatment. In proposed § 17.101(a)(9)(ii), VA would clarify that we would continue to have the right to recover or collect reasonable charges from third parties, pursuant to 38 CFR 17.101, for the cost of care that VA provides to these same veterans for conditions and disabilities that VA determines are not covered by any of the special treatment authorities. For example, VA would not recover or collect charges from a third party payer for treatment of a veteran's lung cancer if that veteran served on active duty in the Armed Forces at Camp Lejeune, North Carolina, for not fewer than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987. However, VA could recover or collect reasonable charges from a third party payer for treatment of the same veteran's broken leg incurred in a post-deployment automobile accident. Similarly, VA would not recover or collect charges from a third party payer for treatment of a Vietnam-era herbicide-exposed veteran's disability found to be possibly related to such exposure, but VA could recover or collect reasonable charges from a third party payer for treatment of a condition determined by the Under Secretary for Health to have resulted from a cause other than such exposure. Continuing with this last example, the determination of whether a Vietnam-era herbicide-exposed veteran's disability may be related to that exposure is strictly a clinical judgment to be made by the responsible physician (acting in accordance with the guidelines issued by the Under Secretary of Health and a report issued in accordance with section 3 of the Agent Orange Act of 1991 by the National Academy of Sciences).

Finally, VA also proposes to amend the list of authorities appearing at the end of § 17.101 to include 38 U.S.C. 1720D and 1720E. These are two of the special treatment authorities previously discussed. The list of authorities already includes 38 U.S.C. 1710.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 17.101, under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521), no new or proposed collections of information are associated with this proposed rule.

The information collection requirements for § 17.101 are currently approved by the Office of Management and Budget (OMB) and have been

assigned OMB control number 2900–0606.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Secretary certifies that this proposed rule will not result in a significant economic impact on a substantial number of small entities. We have not proposed any new requirements that would have such an effect. Our proposed standards would almost entirely conform to the existing statutory requirements and existing practices in the program. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by OMB, unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm,* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, scholarships and fellows, travel, and transportation expenses, veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on November 6, 2017, for publication.

Dated: November 17, 2017.

Janet Coleman,

Chief, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

■ 1. The authority citation for Part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.101 by:

■ a. Adding a new paragraph (a)(9).

■ b. Amending the authority citation at the end of the section.

The revisions read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a) * * *

(9) *Care provided under special treatment authorities.*

(i) Notwithstanding any other provisions in this section, VA will not seek recovery or collection of reasonable charges from a third party payer for:

(A) Hospital care, medical services, and nursing home care provided by VA or at VA expense under 38 U.S.C. 1710(a)(2)(F) and (e).

(B) Counseling and appropriate care and services furnished to veterans for psychological trauma authorized under 38 U.S.C. 1720D.

(C) Medical examination, and hospital care, medical services, and nursing home care furnished to veteran for cancer of the head or neck as authorized under 38 U.S.C. 1720E.

(ii) VA may continue to exercise its right to recover or collect reasonable charges from third parties, pursuant to 38 CFR 17.101, for the cost of care that VA provides to these same veterans for conditions and disabilities that VA determines are not covered by any of the special treatment authorities.

* * * * *

Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1720D, 1720E, 1721, 1722, 1729.

[FR Doc. 2017–25269 Filed 11–21–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2017–0075; FF09E41000 178 FXES111609C0000]

Endangered and Threatened Wildlife and Plants; Regulations for Candidate Conservation Agreements With Assurances

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Regulatory review; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce the intention to review and potentially revise the regulations concerning enhancement-of-survival permits issued under the Endangered Species Act of 1973, as amended (ESA), associated with Candidate Conservation Agreements with Assurances. In a separate document published in today's **Federal Register**, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service announce the intention to review and potentially revise the Candidate Conservation Agreement with Assurances policy.

DATES: We will accept comments that we receive on or before January 22, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter docket number FWS–HQ–ES–2017–0075. Then, click on the Search button. On the resulting page, you may enter a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct document before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2017–0075; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike; MS: BPHC; Falls Church, VA 22041.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jeff Newman, Chief, Division of Recovery and Restoration, U.S. Fish and Wildlife Service Headquarters, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2171. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Through its Candidate Conservation Program, one of the FWS's goals is to encourage the public to voluntarily develop and implement conservation agreements for declining species prior to them being listed under the ESA (16 U.S.C. 1531 *et seq.*). The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. The FWS put in place a voluntary conservation program to provide incentives for non-Federal property owners to develop and implement conservation agreements for unlisted species: Candidate Conservation Agreements with Assurances (CCAAs). On June 17, 1999, the policy for this type of agreement (64 FR 32726) and implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706) were made final. On May 3, 2004, we published a final rule (69 FR 24084) to revise the CCAA regulations to make them easier to understand and implement by, among other things, defining ''property owner'' and by clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take.

To participate in a CCAA, non-Federal property owners agree to implement specific conservation actions on their land that reduce or eliminate threats to the species that are covered under the agreement. An ESA section 10(a)(1)(A) enhancement-of-survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner's agreed-upon conservation actions and routine property management actions (*e.g.,* agricultural, ranching, or forestry activities) result in take of the covered species, if it is listed. Property owners receive assurances that they will not be required to undertake any conservation actions other than those agreed to if new information indicates that additional or revised conservation measures are needed for the species, and they will not be subject to additional resource use or land-use restrictions.

Based on our past 16 years of experience with CCAAs, on December 27, 2016, we revised the CCAA policy (81 FR 95164) and made necessary amendments to the CCAA regulations (81 FR 95053) to conform to the revised policy. Those revisions to the regulations clarify the level of conservation effort each agreement needs to include in order for the FWS to approve an agreement and issue a permit. We revised the issuance criteria at 50 CFR 17.22(d)(2)(ii) and 17.32(d)(2)(ii) to include language indicating that a CCAA must provide a net conservation benefit consistent with the 2016 CCAA policy. The conservation criteria required for permit issuance were not included in the previous version of the regulations. Instead, they specifically referred to compliance with the CCAA policy, which established the criteria. Our intent was to be more clear and transparent about the level of conservation effort required for each CCAA to be approved and make it consistent with the criteria for Safe Harbor Agreements; this change also better aligned the regulations with the CCAA policy. The other major change we made to the regulations was to the duration language at 50 CFR 17.22(d)(8) and 17.32(d)(8), where we stated that the duration of a CCAA must be sufficient to provide a net conservation benefit to the covered species. The full definition of ''net conservation benefit (for CCAA)'' is included in part 2 of the 2016 CCAA policy. The Services are committed to strengthening the delivery of our voluntary conservation tools, such as CCAAs, by making it easier to work with us on proactive conservation efforts, thus we are soliciting public review and comment on whether to revise the 2016 CCAA regulations (and accompanying policy).

Request for Information

During the comment period (see **DATES**, above), we will accept written comments and information on our 2016 revisions to the CCAA regulations (81 FR 95053; December 27, 2016). You may submit your comments and materials by one of the methods listed in **ADDRESSES**. 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—will be posted on *http://www.regulations.gov.* 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. All comments and recommendations, including names and addresses, will become part of the record for this review.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 4, 2017.

Gregory J. Sheehan,

Principal Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–25268 Filed 11–21–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 170322302–7999–01]

RIN 0648–BG74

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 16 to the Coastal Pelagic Species Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 16 of the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The purpose of this proposed rule is to amend the CPS regulations to allow for very small amounts of directed, non-live bait fishing on CPS finfish to occur when a fishery is otherwise closed to directed fishing. Currently, when directed fishing closures are enacted, a small sector of the CPS fishery that is not part of the primary commercial directed fishery has been precluded from fishing and/or harvesting even minor amounts because this activity does not fall under the existing exemptions during closures for incidental harvest or for harvesting CPS to be sold as live bait. NMFS is proposing changes to the CPS regulations to allow this sector to continue directed fishing after other directed fisheries are closed, unless otherwise specified or if an applicable annual catch limit (ACL) is anticipated to be exceeded. As a further restriction, to ensure this minor directed fishing provision is not exploited to make large aggregate harvests, minor directed fishing would not be allowed to exceed landings of 1 metric ton (mt) per day per vessel or person or one fishing trip per day by any vessel.

DATES: Comments must be received by December 22, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0135, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0135,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802–4250; Attn: Joshua Lindsay.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the draft CPS FMP as amended through Amendment 16, with notations showing how Amendment 16 would change the FMP, if approved, are available via the Federal eRulemaking Portal: *http://www.regulations.gov, docket NOAA-NMFS-2017-0135,* or by contacting the Pacific Fisheries Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034; or Kerry Griffin, Pacific Fishery Management Council, at 503–820–2280.

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations at 50 CFR part 660, subpart I.

The MSA requires each regional fishery management council to submit any amendment to a FMP to NMFS for review and approval, disapproval, or partial approval. The MSA also requires that NMFS, upon receiving an amendment to a FMP, publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 16.

At its April 2017 meeting, the Pacific Fishery Management Council (Council) voted to submit Amendment 16 to NMFS for review and approval; this proposed rule would revise the implementing regulations for the CPS FMP to implement Amendment 16 by allowing ''minor directed'' fishing for CPS finfish after a directed fishery has been closed. Current regulations provide for potential allowances of live bait fishing and incidental landings in the event of a directed fishery closure; this action would allow a small sector of the CPS fishery that is not part of the primary commercial directed fishery to harvest minor amounts of CPS. This sector of the fishery intentionally targets CPS and typically sells the catch as specialty dead bait to recreational and commercial fisheries, or as fresh fish to restaurants and the public. Total landings from this sector typically make up less than one percent of the total landings of any particular CPS stock. Currently, when directed fishing closures are enacted, these very small-scale fisheries have been precluded from fishing and/or harvesting these minor amounts because they do not fall under the existing exemptions during closures.

If this proposed rule is approved, minor directed fishing will be allowed to continue after a directed fishery is closed. Minor directed fishing will be allowed unless otherwise specified, or if an applicable ACL is anticipated to be exceeded. As a further restriction, to ensure the minor directed landing provision is not exploited to make large aggregate harvests, this action proposes regulations to limit this directed fishing exemption so that landings cannot exceed 1 mt per day per vessel or person, and which is limited to one fishing trip per day by any vessel. The intent of distinguishing between a ''vessel'' and ''person'' in these regulations is that some participants in

this small sector of the CPS fishery fish from a platform other than a vessel (*e.g.,* beach seine) and in a single fishing trip (*e.g.,* a single haul of a beach seine) may only land a few hundred pounds. Therefore, the Council recommended, and NMFS is proposing, to allow a person to make multiple fishing trips in a single day as long as their total landings do not exceed 1 mt in a day. The Council recommended that vessels be limited to a single trip as their typical landings are much greater per trip. For vessels, it was the Council's intent that the 1 mt daily landing restriction function like a trip limit.

This rule also proposes to update the definition of ''Regional Administrator'' to reflect the absorption of the former NMFS Southwest Region into the West Coast Region, and to explicitly reference the fact that directed ''live bait'' fisheries may continue to operate after most other directed fishing is prohibited (which is an original provision of the FMP, not a change proposed in Amendment 16).

Classification

Pursuant to section 304 (b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 16, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

The purpose of this rule is to add an exemption to the CPS regulations that would allow very small levels of directed fishing to occur during times when directed fishing would normally be disallowed.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The primary entities that would be affected by the proposed action are the vessels and individuals that target very small levels of CPS finfish as part of a small sector of the CPS fishery that is not part of the primary commercial directed fishery and are all considered small businesses under the above size standards. This small sector of the fishery intentionally targets CPS and typically sells the catch as specialty dead bait to recreational and commercial fisheries, or as fresh fish to restaurants and the public. Total landings from this sector typically make up less than one percent of the total landings of any particular CPS stock. For example, the highest landing year for Pacific sardine from this sector between 2005 and 2015 included 134 landings by 12 vessels, totaling only 50 mt of sardines, with an average of 20 mt per year over this same time period. In comparison, the average total landings of Pacific sardine over this time period was around 69,000 mt. Although the landings from this sector are small in comparison to the primary directed fisheries for CPS, the revenue derived from these small landings make up an important revenue stream for the participants.

The proposed action is not expected to have direct or indirect adverse socioeconomic impacts as the primary function of this action is to provide relief for the small entities who harvest small amounts of CPS but are precluded from doing so under the existing directed fishery closure regulations. Although the CPS FMP requires prohibitions on directed fishing in certain situations, such as to protect the stock when biomass is low, any fishing done under the proposed minor harvest regulations would be accounted for and tracked under any applicable catch limit for that year thereby continuing to protect the stock and prevent overfishing. Additionally, because the landings from this sector are so small this action is not expected to indirectly negatively impact, through lost harvesting potential, those that are currently provided exemptions during closures, such as the live bait sector or the traditional purse seine vessels that utilize the incidental harvest provisions during closures.

Based on the analysis above, the proposed action, if adopted, will not have a significant economic impact on a substantial number of these small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 16, 2017.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be 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. In § 660.502, revise the definition of ''*Regional Administrator*'' to read as follows:

§ 660.502 Definitions.

* * * * *

Regional Administrator means the Regional Administrator, West Coast Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

* * * * *

■ 3. In § 660.505, revise paragraph (i) to read as follows:

§ 660.505 Prohibitions.

* * * * *

(i) When a directed fishery has been closed, take and retain, possess, or land more than the incidental trip limit announced in the **Federal Register**, or a directed trip limit as described in § 660.511(d).

* * * * *

■ 4. In § 660.511, revise paragraph (d) to read as follows:

§ 660.511 Catch restrictions.

* * * * *

(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator, except the following directed fisheries may continue until the effective date of a **Federal Register** notice published by the Regional Administrator that the annual catch limit has been reached or is projected to be reached:

(1) Fishing exclusively for live bait;

(2) Minor directed fishing for finfish that does not exceed 1 mt per day per vessel or person, and which is limited to 1 fishing trip per day by any vessel.

* * * * *

[FR Doc. 2017–25200 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 224
Wednesday, November 22, 2017

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

November 16, 2017.

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 (1) 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) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of 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 December 22, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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.

Foreign Agricultural Service

Title: CCC's Export Credit Guarantee Program (GSM–102).

OMB Control Number: 0551–0004.

Summary of Collection: The Export Credit Guarantee Program (GSM–102) is administered by the Commodity Credit Corporation (CCC) of the U.S. Department of Agriculture. This program provides guarantees to exporters in order to maintain and increase overseas importers ability to purchase U.S. agricultural goods. The Export Credit Guarantee Program underwrites credit extended by U.S. private banks to approved foreign banks using dollar-denominated, irrevocable letters of credit. The Foreign Agricultural Service (FAS) will collect information from the guarantee application submitted by the participants in writing (via fax or email) or mail.

Need and Use of the Information: FAS will collect information from participating U.S. exporters in order to determine the exporter's eligibility for program benefits. The information collection is necessary to enable exporters, U.S. banks and foreign banks to receive the benefits of the program and to allow CCC to comply with the Federal Funding Accountability and Transparency Act, the Debt Collection Improvement Act, and non-procurement suspension and debarment regulations found at 2 CFR Pars 180 and 417. If the information were not collected CCC would be unable to determine if export sales under the program would be eligible for coverage or, if coverage conformed to program requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 88.

Frequency of Responses: Record keeping, Reporting: On occasion.

Total Burden Hours: 1,423.

Foreign Agricultural Service

Title: Food Donation Programs (Food for Progress & Section 416(b) and McGovern-Dole International Food for Education and Child Nutrition Program).

OMB Control Number: 0551–0035.

Summary of Collection: The U.S. Department of Agriculture's Foreign Agricultural Service (FAS) provides U.S. agricultural commodities to feed millions of hungry people in needy countries through direct donations and concessional programs. USDA Food aid may be provided through four program authorities: Food for Progress authorized by the Food for Progress Act of 1985, Section 416(b); and the McGovern-Dole International Food for Education and Child Nutrition Program is authorized by the Food, Conservation, and Energy Act of 2008 and Public Law 480.

Need and Use of the Information: FAS will collect information from Recipients desiring to receive grants under the programs to determine their ability to carry out a food aid program, to establish the terms under which the commodities will be provided, to monitor the progress of commodity distribution (including how transportation is procured), to monitor the progress of expenditure of monetization funds, and to evaluate both the program's success and the participant's effectiveness in meeting the agreed upon goals. Information is also collected from ship owners/brokers shipping the commodity to its destination.

Description of Respondents: Not for-profit institutions; Business or other for-profit.

Number of Respondents: 61.

Frequency of Responses: Recordkeeping; Reporting: Semi-annually; Quarterly; Monthly.

Total Burden Hours: 89,287.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–25206 Filed 11–21–17; 8:45 am]

BILLING CODE 3410–10–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission

on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Monday, December 4, 2017, at 3 p.m. EST for the purpose discussing civil rights concerns in the state.

DATES: The meeting will be held on Monday, December 4, 2017, at 3 p.m. EST.

Public Call Information: Dial: 888–811–5448, Conference ID: 1388168.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–811–5448, conference ID: 1388168. Any interested member of the public may call this number and listen to the meeting.

An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Michigan Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=255*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion: Civil Rights and Female Genital Mutilation in Michigan
Public Comment
Future Plans and Actions
Adjournment

Dated: November 16, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–25207 Filed 11–21–17; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Louisiana Advisory Committee for a Meeting To Hear Public Testimony Regarding Civil Rights and Voter Accessibility in the State

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 Louisiana Advisory Committee (Committee) will hold a meeting on Wednesday, December 6, 2017, from 9:00 a.m. to 4:00 p.m. CST, for the purpose of hearing public testimony regarding civil rights and voter access in the state.

DATES: The meeting will be held on Wednesday, December 6, 2017, from 9:00 a.m. to 4:00 p.m. CST.

Location: Louisiana State Capitol, House Committee Room 1, 900 North Third Street, Baton Rouge, LA 70802.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. Persons with disabilities requiring reasonable accommodations should contact the Midwest Regional Office prior to the meeting to make appropriate arrangements. Members of the public are invited to make statements during an open comment period. In addition, members of the public may submit written comments; the comments must be received in the regional office no later than December 31, 2017. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Louisiana Advisory Committee link (*https://www.facadatabase.gov/committee/meetings.aspx?cid=251*). Select ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Opening Remarks and Introductions (9:00 a.m.–9:15 a.m.)
Panel 1: Legal and Academic Research on Voting Rights (9:15 a.m.–10:30 a.m.)
Panel 2: Policy Makers/Community Organizations/Non-Profits (10:45 a.m.–12:00 p.m.)
Break (12:00 p.m.–1:00 p.m.)
Panel 3: TBD
Panel 4: TBD
Open Comment Period: (3:45–4:00 p.m.)
Closing Remarks (4:00 p.m.)

Dated: November 17, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–25265 Filed 11–21–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oregon Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Oregon Advisory Committee (Committee) to the Commission will be held at 1:00 p.m.

(Pacific Time) Tuesday, December 5, 2017. The purpose of the meeting is for the Committee to begin planning for a briefing focused on human trafficking in Oregon.

DATES: The meeting will be held on Tuesday, December 5, 2017, at 1:00 p.m. PT.

ADDRESSES: Public call information:
Dial: 800–946–0716.
Conference ID: 6754858.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–946–0716, conference ID number: 6754858. 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 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=270.* 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 Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Approve minutes from November 6, 2017
III. Discuss Briefing Logistics
  a. Location
  b. Date
IV. Discussion Briefing Agenda
  a. Speakers
  b. Panel Categories
V. Public Comment
VI. Next Steps
VII. Adjournment

Dated: November 17, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–25243 Filed 11–21–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 planning meeting of the South Dakota Advisory Committee to the Commission will convene at 4:00 p.m. (CST) on Monday, December 4, 2017, via teleconference. The purpose of the meeting is to discuss next steps after the subtle racism briefing in March 2017.

DATES: Monday, December 4, 2017, at 4:00 p.m. (CST).

ADDRESSES: To be held via teleconference:
Conference Call Toll-Free Number: 1–888–857–6930, Conference ID: 7342054.
TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: David Mussatt, DFO, *dmussatt@usccr.gov,* 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–857–6930; Conference ID: 7342054. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. 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 phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–888–857–6930, Conference ID: 7342054. Members of the public are invited to submit written comments; the comments must be received in the regional office by Thursday, January 4, 2017. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=274* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Roll-call.
- Brief update on Commission and Regional Activities.
- Discuss next steps after briefing held in Aberdeen, SD, on March 24, 2017.

Dr. Richard Braunstein, Chair, South Dakota Advisory Committee.

- Discuss Transcript, Sample Advisory Memorandums, Yankton Sioux Tribe Chairman testimony.
- Adjourn.

Dated: November 16, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–25239 Filed 11–21–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that the South Carolina Advisory Committee will hold a meeting on Monday, November 27, 2018, for the purpose of beginning work on its project regarding civil rights issues and policing in the state.

DATES: The meeting will be held on Monday, November 27, 2017 at 3:00 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 1–888–300–2343, conference ID: 3744301.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at *jhinton@usccr.gov* or 404–562–7006.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 1–888–300–2343, conference ID: 3744301. 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 1–800–977–8339 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 by November 22, 2017. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion on Policing Project
Open Comment
Adjournment

Dated: November 16, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–25208 Filed 11–21–17; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: National Sample Survey of Registered Nurses.

OMB Control Number: 0607–####.

Form Number(s): NSSRN.

Type of Request: OMB approval of new collection of information.

Number of Respondents: 65,000.

Average Hours per Response: 0.4 (Registered Nurses) 0.5 (Nurse Practitioners).

Burden Hours: 28,600.

Needs and Uses: Sponsored by the U.S. Department of Health and Human Services' (HHS) Health Resources and Services Administration's (HRSA) National Center for Health Workforce Analysis (NCHWA), the National Sample Survey of Registered Nurses (NSSRN) is designed to obtain the necessary data to determine the characteristics and distribution of Registered Nurses (RNs) throughout the United States, as well as emerging patterns in their employment characteristics. These data will provide the means for the evaluation and assessment of the evolving demographics, educational qualifications, and career employment patterns of RNs.

The Census Bureau will request survey participation from 100,000 RNs via one of two modes: Web survey or paper questionnaire. Half of respondents will receive a letter invitation with the Web URL and login ID included in the letter. The other half of respondents will be mailed a paper questionnaire with the Web URL and login ID included in the questionnaire package. Those RNs that receive a paper questionnaire in the first mailing will be randomized.

The 2018 NSSRN will include multiple contact strategy experiments to reduce both follow-up costs and nonresponse bias. There will be a non-monetary incentive experiment in the first mailing. Approximately half of the sample will be mailed an inscribed syringe pen and lanyard for the first contact attempt. Receiving a syringe pen and lanyard were discussed with the members of the nursing workforce and the feedback was that syringe pens are common in the nursing field due to the nature of the occupation. The syringe pen and lanyard will be experimentally tested again in the second follow-up mailing with a segment of the non-responding sampled RNs/NPs from the control group in strategy initial mailing. Half of the non-respondents will be mailed a syringe pen and lanyard.

Additionally, the 2018 NSSRN will include an experiment to test the efficacy of an infographic in the third contact attempt. Fifty percent of the RN sample will be randomly assigned the treatment group. Lastly, there will be logos of the several nursing groups that endorse the NSSRN. Higher response early in data collection can reduce follow-up costs and nonresponse.

Affected Public: Nurses, researchers, and policymakers.

Frequency: This 2018 collection is the first administration of the NSSRN since the redesign and the Bureau of the Census collecting the data. It is expected that this will be collected every four years, with a new sample drawn for each administration.

Respondent's Obligation: Voluntary.

Legal Authority: Census Authority: 13 U.S.C. Section 8(b), HRSA NCHWA Authority: Public Health Service Act 42 U.S.C. Section 294n(b)(2)(A) and 42 U.S.C. Section 295k(a)–(b).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *OIRA_Submission@omb.eop.gov* or fax to (202)395–5806.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–25312 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–54–2017]

Foreign-Trade Zone (FTZ) 277—Western Maricopa County, Arizona; Authorization of Production Activity; CornellCookson, Inc.; (Rolling Steel Doors); Goodyear, Arizona

On July 19, 2017, Greater Maricopa Foreign Trade Zone, Inc., grantee of FTZ 277, submitted a notification of proposed production activity to the FTZ Board on behalf of CornellCookson, Inc., within Site 11, in Goodyear, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 39759, August 22, 2017). On November 16, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 17, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–25278 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–51–2017 and B–52–2017]

Foreign-Trade Zone (FTZ) 196—Fort Worth, Texas; Foreign-Trade Zone (FTZ) 247—Erie, Pennsylvania; Authorization of Production Activity; General Electric Transportation; (Underground Mining Vehicles); Fort Worth and Haslet, Texas; Erie and Grove City, Pennsylvania

On July 19, 2017, General Electric Transportation submitted a notification of proposed production activity to the FTZ Board for its facilities in Fort Worth and Haslet, Texas within Subzone 196B (Doc. B–51–2017) and Erie and Grove City, Pennsylvania, within Subzones 247A and 247B (Doc. B–52–2017).

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 37192, August 9, 2017). On November 16, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 17, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–25279 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–72–2017]

Foreign-Trade Zone 30—Salt Lake City, Utah; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Salt Lake City Corporation, grantee of FTZ 30, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 16, 2017.

FTZ 30 was approved by the FTZ Board on May 26, 1977 (Board Order 119, 42 FR 29324, June 8, 1977) and expanded on February 13, 2009 (Board Order 1606, 74 FR 9384–9385, March 4, 2009).

The current zone includes the following site: *Site 2* (55 acres)—Rockefeller Development Group Corporation, 1105 South 4800 West Street, Salt Lake City.

The grantee's proposed service area under the ASF would be Davis, Morgan, Salt Lake, Utah and Weber Counties, Utah and the cities of Brigham City, Corinne, Honeyville, Perry, Erda, Grantsville, Lake Point, Mills Junction, Rush Valley, Stansbury Park, Stockton, Terra, Tooele, Vernon, Heber City, Midway, Coalville, Deer Mountain, Echo, Francis, Henefer, Kamas, Kimball Junction, Oakley, Park City, Peoa, Samak, Silver Summit, Snyderville, Wanship, Woodland and Mantua, Utah, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Salt Lake City U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include the existing site as a ''magnet'' site. No subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 30's previously authorized subzones.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 22, 2018. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 5, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: November 17, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–25280 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–845]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Federal Republic of Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the Federal Republic of Germany (Germany) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Frances Veith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4295.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on May 16, 2017.[1] On September 12, 2017, the Department postponed the preliminary determination of this investigation until November 15, 2017.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum, dated concurrently with, and hereby adopted by this notice, is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is cold-drawn mechanical tubing from Germany. For a complete description of the scope of this investigation *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by the petitioners.[5] For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Constructed export prices were calculated in accordance with section 772(b) of the Act. Normal value (NV) was calculated in accordance with section 773 of the Act. In addition, pursuant to sections 776(a) and (b) of the Act, the Department has preliminarily relied upon facts otherwise available, with adverse inferences for Mubea Fahrwerksfedern GmbH (Mubea) and Salzgitter Mannesmann Line Pipe GmbH (Salzgitter). Also, for certain BENTELER Steel/Tube GmbH (BENTELER) sales transactions, we preliminarily relied upon facts available pursuant to section 776(a) of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

The Department calculated an individual estimated weighted-average dumping margin for BENTELER, the only individually examined exporter/producer that is participating in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for BENTELER is the margin assigned to all-other producers and exporters, pursuant to sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
BENTELER Steel/Tube GmbH/BENTELER Distribution International GmbH[7]	75.39
Mubea Fahrwerksfedern GmbH	209.06
Salzgitter Mannesmann Line Pipe GmbH	209.06
All-Others	75.39

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

[2] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 82 FR 42788 (September 12, 2017).

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

[4] *See Initiation Notic*e, 82 FR at 22492.

[5] ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Plymouth Tube Co. USA, Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners).

[6] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

[7] The Department preliminarily determines that BENTELER Steel/Tube GmbH and BENTELER Distribution International GmbH are a single entity. *See* Preliminary Decision Memorandum.

CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination with respect to BENTELER. Because mandatory respondents Mubea and Salzgitter did not respond to the Department's questionnaire and the Department preliminarily determined that they failed to cooperate by not acting to the best of their ability, the Department does not intend to conduct verification for these companies.

Public Comment

The Department is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than five days after the publication of the preliminary AD determinations for the PRC, Germany, India, Italy, Korea, and Switzerland in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of cold-drawn mechanical tubing, apply for both the on-going CVD and AD investigations. There is only one briefing schedule for scope case and rebuttal briefs in the CVD and AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing CVD and AD cold-drawn mechanical tubing investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary information should be submitted in the scope case briefs and rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling after the issuance of any such order.

Case briefs or other non-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 24, 2017, pursuant to 19 CFR 351.210(e), BENTELER requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[9] On November 13, 2017, the petitioners requested that we grant BENTELER's request to extend the deadline for the final determination of this investigation.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* letter from BENTELER, ''Antidumping Duty Investigation of Cold-Drawn Mechanical Tubing from Germany: Request for Postponement of Final Determination and Provisional Measures Period,'' dated October 24, 2017.

[10] *See* letter from Petitioners' ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China, Germany, India, Italy, Korea and Switzerland—Petitioners' Comments Regarding Extension of the Final Determination Deadline,'' date November 13, 2017.

(3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 15, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331 mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–3, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Affiliation/Collapsing
VI. Discussion of the Methodology
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
VII. Date of Sale
VIII. Product Comparisons
IX. Export Price and Constructed Export Price
  A. Export Price
  B. Constructed Export Price
X. Normal Value
  A. Home Market Viability
  B. Level of Trade
  C. Cost of Production (COP) Analysis
  D. Calculation of NV Based on Comparison Market Prices
  E. Calculation of NV Based on Constructed Value

XI. Application of Facts Available and Use of Adverse Inference
A. Application of Facts Available
B. Use of Adverse Inference
C. Selection and Corroboration of the AFA Rate
XII. Currency Conversion
XIII. Conclusion

[FR Doc. 2017–25291 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–838]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Carrie Bethea or Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1491 or (202) 482–2593, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on May 16, 2017.[1] On September 12, 2017, the Department postponed the preliminary determination of this investigation until November 15, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is cold-drawn mechanical tubing from Italy. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by the petitioners.[6] For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Constructed export prices were calculated in accordance with section 772(b) of the Act. Normal value (NV) was calculated in accordance with section 773 of the Act. In addition, the Department has relied on partial adverse facts available under sections 776(a) and (b) of the Act for Dalmine. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 733(e) of the Act and 19 CFR 351.206, the Department preliminarily finds that critical circumstances exist for Dalmine S.p.A. (Dalmine), and Metalfer S.p.A. (Metalfer), but not for all other exporters. For a full description of the methodology and results of the Department's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, the Department calculated estimated weighted-average dumping margins for Dalmine and Metalfer that are not zero, *de minimis,* or based entirely on facts otherwise available. The Department calculated the all-others' rate using a weighted average of the estimated weighted-

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

[2] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 82 FR 42788 (September 12, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination and Affirmative Determination of Critical Circumstances in the Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[5] *See Initiation Notic*e, 82 FR at 22492.

[6] ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Plymouth Tube Co. USA, Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners).

[7] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Dalmine S.p.A	36.80
Metalfer S.p.A	31.42
All-Others	33.75

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. The Department preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by Dalmine and Metalfer. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the producer(s) or exporter(s) identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

Public Comment

The Department is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than five days after the publication of the preliminary AD determinations for the PRC, Germany, India, Italy, Korea, and Switzerland in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of cold-drawn mechanical tubing, apply for both the on-going CVD and AD investigations. There is only one briefing schedule for scope case and rebuttal briefs in the CVD and AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing CVD and AD cold-drawn mechanical tubing investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary information should be submitted in the scope case briefs and rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling after the issuance of any such order.

Case briefs or other non-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each

[8] With two respondents under examination, the Department normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. The Department then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, the Department based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please *see* the All-Others' Rate Calculation Memorandum.

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 25, 2017, pursuant to 19 CFR 351.210(e), Dalmine and Metalfer requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] On November 13, 2017, the petitioners also requested pursuant to 19 CFR 351.210(e) that the Department postpone the final determination of this investigation.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 15, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–3, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of the investigation.

All products that meet the written physical description are within the scope of this

[10] *See* Letter from Dalmine ''Request for Postponement of Final Determination and Provisional Measures Period,'' dated October 25, 2017; Letter from Metalfer, ''Extension Request for Final Determination,'' dated October 25, 2017.

[11] Letter from the petitioners, ''Petitioners' Comments Regarding Extension of the Final Determination Deadline,'' dated November 13, 2017.

investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Discussion of the Methodology
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
VI. Date of Sale
VII. Product Comparisons
VIII. Export Price and Constructed Export Price
IX. Normal Value
  A. Home Market Viability
  B. Level of Trade
  C. Cost of Production (COP) Analysis
    1. Calculation of COP
    2. Test of Comparison Market Sales Prices
    3. Results of the COP Test
  D. Calculation of NV Based on Comparison Market Prices
  E. Calculation of NV Based on Constructed Value
X. Partial Application of Facts Available and Use of Adverse Inference
  A. Application of Facts Available
  B. Use of Adverse Inference
XI. Critical Circumstances
XII. Currency Conversion
XIII. Conclusion

[FR Doc. 2017–25289 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–892]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (mechanical tubing) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Annathea Cook or Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0250 or (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on May 16, 2017.[1] On September 12, 2017, the Department postponed the preliminary determination of this investigation until November 15, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is mechanical tubing from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

[2] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 82 FR 42788 (September 12, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination and Affirmative Determinaion of Critical Circumstances, in Part, in the Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[5] *See Initiation Notice*, 82 FR at 22491.

Scope Decision Memorandum.[6] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Normal value (NV) was calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, the Department has preliminarily relied upon facts otherwise available, with adverse inferences for Sang Shin Ind. Co., Ltd. (Sang Shin). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, we preliminarily find that critical circumstances do not exist for Yulchon Co., Ltd. (Yulchon) and for the companies subject to the ''all others'' rate. Additionally, because Sang Shin did not respond to the Department's questionnaire, we have determined pursuant to sections 776(a) and (b) of the Act, that critical circumstances exist for Sang Shin as adverse facts available (AFA). For a full description of the methodology and results of our critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Adverse Facts Available

Sang Shin was selected as a mandatory respondent, but failed to respond to the Department's questionnaire. Accordingly, we preliminarily determine to base Sang Shin's dumping margin on AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. As AFA, we applied the highest dumping margin calculated for Korean exports of subject merchandise contained in the petition,[7] 48.00 percent. For further discussion, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

The Department calculated an individual estimated weighted-average dumping margin for Yulchon, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Yulchon is the margin assigned to all-other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Sang Shin Ind. Co., Ltd.	48.00
Yulchon Co., Ltd.	5.10
All-Others	5.10

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. The Department preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by Sang Shin. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the producer or exporter identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

Public Comment

The Department is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than five days after the publication of the preliminary AD determinations for the PRC, Germany, India, Italy, Korea, and Switzerland in the **Federal Register**. Rebuttal scope

[6] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determinations'' (Preliminary Scope Decision Memorandum), dated November 15, 2017.

[7] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 22491 (May 16, 2017).

briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of cold-drawn mechanical tubing, apply for both the on-going CVD and AD investigations. There is only one briefing schedule for scope case and rebuttal briefs in the CVD and AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing CVD and AD cold-drawn mechanical tubing investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary information should be submitted in the scope case briefs and rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling after the issuance of any such order.

Case briefs or other non-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 13, 2017, pursuant to 19 CFR 351.210(e), ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co. USA, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc., (the petitioners) and Yulchon requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[9] [10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 15, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

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The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* Letter from ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co. USA, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc., ''Re: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China. Germany, India, Italy, Korea and Switzerland—Petitioners' Comments Resarding Extension the Final Determination Deadline,'' dated November 13, 2017.

[10] *See* Letter fromYulchon Co., Ltd., ''Re: Cold-Drawn Mechanical Tubing from Korea,'' dated November 14, 2017.

produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–3, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
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III. Period of Investigation
IV. Scope Comments
V. Particular Market Situation
VI. Discussion of the Methodology
A. Determination of the Comparison Method
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VII. Date of Sale
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B. Affiliated-Party Transactions and Arm's-Length Test
C. Level of Trade
D. Cost of Production (COP) Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
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A. Application of Facts Available
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[FR Doc. 2017–25290 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–873]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, in Part, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Omar Qureshi, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031 or (202) 482–5307, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended

(the Act). The Department published the notice of initiation of this investigation on May 16, 2017.[1] On September 12, 2017, the Department postponed the preliminary determination of this investigation until November 15, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is cold-drawn mechanical tubing from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by the petitioners.[6] For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Normal value (NV) was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, the Department preliminarily found a zero rate for Goodluck. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for TPI. Consequently, the rate calculated for TPI is also assigned for all-other producers and exporters.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:[8] [9]

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Goodluck India Limited	Goodluck India Limited	[8] 0.00	Not Applicable.
Tube Products of India, Ltd. a unit of Tube Investments of India Limited (collectively TPI).	Tube Products of India, Ltd. a unit of Tube Investments of India Limited (collectively TPI).	[9] 7.57	4.86.
All-Others		7.57	4.86.

Consistent with section 733(b)(3) of the Act, the Department disregards *de minimis* rates and preliminarily determines that these individually examined respondents with *de minimis* rates have not made sales of subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

[2] *See Certain Cold-Drawn Mechanical tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determination in the Less-Than-Fair Investigations,* 82 FR 42788 (September 12, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Plymouth Tube Co. USA, Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners).

[7] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

[8] *See* Memorandum, ''Calculations Performed for Goodluck India Limited for the Preliminary Determination in the Antidumping Duty Investigation of Cold Drawn Mechanical Tubing,'' dated concurrently with this notice.

[9] *See* Memorandum, ''Calculations Performed for Tube Investments of India Ltd. and Tube Products of India, (collectively, TPI) for the Preliminary Determination in the Antidumping Duty Investigation of Cold Drawn Mechanical Tubing,'' dated concurrently with this notice.

equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise except as explained below; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where the Department preliminarily made an affirmative determination for countervailable export subsidies, the Department offset the estimated weighted-average dumping margin by the appropriate CVD rate. The adjusted cash deposit rate may be found in the Preliminary Determination section above. Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, the Department will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Because the estimated weighted-average dumping margin for Goodluck India Limited is zero or *de minimis,* entries of shipments of subject merchandise from this company will not be subject to suspension of liquidation or cash deposit requirements. In such situations, the Department applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, the Department is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Goodluck India Limited. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combinations identified above, entries of shipments of subject merchandise from these producer/exporter combinations will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by these respondents in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combinations.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

Public Comment

The Department is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than five days after the publication of the preliminary AD determinations for the PRC, Germany, India, Italy, Korea, and Switzerland in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of cold-drawn mechanical tubing, apply for both the on-going CVD and AD investigations. There is only one briefing schedule for scope case and rebuttal briefs in the CVD and AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing CVD and AD cold-drawn mechanical tubing investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary information should be submitted in the scope case briefs and rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling after the issuance of any such order.

Case briefs or other nons-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce,

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 31, 2017 and November 12, 2017 Goodluck and TPI, pursuant to 19 CFR 351.210(e) and 19 CFR 351.210(b)(2)(ii), respectively requested that the Department postpone the final determination.[11] On November 13, 2017, pursuant to 19 CFR 351.210(e), the petitioners also requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative, in part; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination by no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 15, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331 mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–3, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

[11] *See* Letter from Goodluck, ''Goodluck Request to Extend the Final Determination: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India (A–533–873),'' dated October 31, 2017; *see also* Letter from TPI, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Request for Extension to Section ABC Supplemental Questionnaire,'' dated

[12] *See* Letter from the petitioners, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China, Germany, India, Italy, Korea and Switzerland—Petitioners' Comments Regarding Extension of the Final Determination,'' dated November 13, 2017.

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Discussion of the Methodology
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
VI. Date of Sale
VII. Product Comparisons
VIII. Export Price and Constructed Export Price
IX. Normal Value
  A. Home Market Viability
  B. Level of Trade
  C. Cost of Production (COP) Analysis
  1. Calculation of COP
  2. Test of Comparison Market Sales Prices
  3. Results of the COP Test
  D. Calculation of NV Based on Comparison Market Prices
  E. Calculation of NV Based on Constructed Value
X. Currency Conversion
XI. Conclusion

[FR Doc. 2017–25292 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–441–801]

Cold-Drawn Mechanical Tubing From Switzerland: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Switzerland is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III or Amanda Brings, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–3927, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on May 16, 2017.[1] On September 12, 2017, the Department postponed the preliminary determination of this investigation until November 15, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is cold-drawn mechanical tubing from Switzerland. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Constructed export prices were calculated in accordance with section 772(b) of the Act. Normal value (NV) was calculated in accordance

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

[2] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigation*s, 82 FR 42788 (September 12, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*.

[6] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel (Cold-Drawn Mechanical Tubing) from Full Country Name: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

with section 773 of the Act. In addition, the Department has relied on partial facts available under section 776(a)(1) of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.[7]

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, the Department calculated estimated weighted-average dumping margins for Benteler Rothrist and Mubea that are not zero, *de minimis,* or based entirely on facts otherwise available. The Department calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Benteler Rothrist AG (Benteler Rothrist)	34.15
Mubea Präzisionsstahlrohr AG (MPST)	68.59
All-Others	36.17

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

Public Comment

The Department is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than five days after the publication of the preliminary AD determinations for the PRC, Germany, India, Italy, Korea, and Switzerland in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of cold-drawn mechanical tubing, apply for both the on-going CVD and AD investigations. There is only one briefing schedule for scope case and rebuttal briefs in the CVD and AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing CVD and AD cold-drawn mechanical tubing investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary information should be submitted in the scope case briefs and rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling after the issuance of any such order.

Case briefs or other non-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after

[7] *See* the Preliminary Decision Memorandum.

[8] With two respondents under examination, the Department normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. The Department then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, the Department based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please see the All-Others' Rate Calculation Memorandum.

the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 24, 2017, pursuant to 19 CFR 351.210(e), Benteler Rothrist requested the Department to postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; (3) the petitioners support Benteler Rothrist's extension request; [11] and (4) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 15, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331 mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–3, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* Benteler Rothrist's letter, ''Antidumping Duty Investigation of Cold-Drawn Mechanical Tubing from Switzerland: Request for Postponement of Final Determination and Provisional Measures Period,'' dated October 24, 2017 (Benteler Rothrist's Extension Request).

[11] *See* the petitioners' letter, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China, Germany, India, Italy, Korea and Switzerland—Petitioners' Comments Regarding Extension of the Final Determination Deadline,'' dated November 13, 2017 (Petitioners' Extension Request).

origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Discussion of the Methodology
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
VI. Date of Sale
VII. Product Comparisons
VIII. Export Price and Constructed Export Price
IX. Normal Value
  A. Home Market Viability
  B. Affiliated-Party Transactions and Arm's-Length Test
  C. Level of Trade
  D. Cost of Production (COP) Analysis
  1. Calculation of COP
  2. Test of Comparison Market Sales Prices
  3. Results of the COP Test
  E. Calculation of NV Based on Comparison Market Prices
X. Applications of Facts Available
XI. Currency Conversion
XII. Conclusion

[FR Doc. 2017–25293 Filed 11–21–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–058]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the People's Republic of China (PRC) is being sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2016, through March 31, 2017.

DATES: Applicable November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Keith Haynes or Paul Stolz, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5139 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on May 16, 2017.[1] On September 12, 2017, the Department postponed the preliminary determination of this investigation until November 15, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is cold-drawn mechanical tubing from the PRC. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by the petitioners.[6] For a summary of the

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

[2] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 82 FR 42788 (September 12, 2017).

[3] *See* ''Decision Memorandum for Preliminary Determination for the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[5] *See Initiation Notic*e, 82 FR at 22492.

[6] ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Plymouth Tube Co. USA, Webco Industries, Inc., and

product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value (NV) was calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our determinations, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, the Department preliminarily determines that critical circumstances exist with respect to imports of cold-drawn mechanical tubing from the PRC for mandatory respondent Jiangsu Hongyi Steel Pipe Co., Ltd. (Hongyi), the separate-rate companies,[8] and the PRC-wide entity, but do not exist for mandatory respondent Zhangjiagang Huacheng Import & Export Co., Ltd. (Huacheng). For a full description of the methodology and results of the Department's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Use of Adverse Facts Available

The Department preliminarily determines that Hongyi and the PRC-wide entity, which includes certain PRC exporters and/or producers that did not respond to the Department's requests for information, withheld information requested by the Department and significantly impeded this proceeding by not submitting requested information. Specifically, all companies within the PRC-wide entity that failed to respond to the Department's request for quantity and value (Q&V) information failed to provide requested information, impeding the Department's investigation.[9] Furthermore, the Department finds that the PRC-wide entity's lack of participation, including the failure of certain parts of the PRC-wide entity to submit Q&V information, constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity as a whole failed to cooperate to the best of its ability to comply with the Department's request for information.[10] Additionally, the Department finds that the use of facts available with adverse inferences is warranted for Hongyi. For further discussion, *see* the Preliminary Decision Memorandum.

Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the PRC-wide entity and Hongyi in accordance with sections 776(a) and 776(b) of the Act and 19 CFR 351.308(a). As adverse facts available, we have preliminarily assigned the PRC-wide entity and Hongyi a rate of 186.89 percent. Further, with respect to critical circumstances, we have preliminarily determined, based on adverse facts available, that the PRC-wide entity and Hongyi dumped ''massive imports'' over a ''relatively short period.'' For further explanation and analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*,[11] the Department stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[12]

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Jiangsu Hongyi Steel Pipe Co., Ltd	Jiangsu Hongyi Steel Pipe Co., Ltd	186.89	186.89
Zhangjiagang Huacheng Import & Export Co., Ltd	Zhangjiagang Huacheng Import & Export Co., Ltd	61.59	61.57
Anji Pengda Steel Pipe Co., Ltd	Anji Pengda Steel Pipe Co., Ltd	61.59	61.58
Changshu Fushilai Steel Pipe Co., Ltd	Changshu Fushilai Steel Pipe Co., Ltd	61.59	61.58
Changshu Special Shaped Steel Tube Co., Ltd	Changshu Special Shaped Steel Tube Co., Ltd	61.59	61.58
Jiangsu Liwan Precision Tube Manufacturing Co., Ltd	Suzhou Foster International Co., Ltd	61.59	61.58
Zhangjiagang Precision Tube Manufacturing Co., Ltd. (Zhangjiangang Tube).	Suzhou Foster International Co., Ltd	61.59	61.58
Wuxi Dajin High-Precision Cold-Drawn Steel Tube Co., Ltd.	Wuxi Huijin International Trade Co., Ltd	61.59	61.58
Zhangjiagang Shengdingyuan Pipe-Making Co., Ltd	Zhangjiagang Shengdingyuan Pipe-Making Co., Ltd	61.59	61.58
Zhejiang Minghe Steel Pipe Co., Ltd	Zhejiang Minghe Steel Pipe Co., Ltd	61.59	61.58
Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd	Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd	61.59	61.58
PRC-Wide Entity		186.89	186.89

Zekelman Industries, Inc. (collectively, the petitioners).

[7] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

[8] Anji Pengda Steel Pipe Co., Ltd., Changshu Fushilai Steel Pipe Co., Ltd., Changshu Special Shaped Steel Tube Co., Ltd., Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd, Suzhou Foster International, Hongyi, Zhangjiagang Shengdingyuan Pipe-Making Co., Ltd., Wuxi Huijin International Trade Co., Ltd., and Zhejiang Minghe Steel.

[9] *Id.*

[10] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.'')).

[11] *See Initiation Notice.*

[12] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05–1.pdf.*

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of PRC producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the PRC-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the PRC producer/exporter combination (or the PRC-wide entity) that supplied that third-country exporter

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. The Department preliminarily finds that critical circumstances exist for imports of cold-drawn mechanical tubing from the PRC from the following producer/exporter combinations: Jiangsu Hongyi Steel Pipe Co., Ltd./Jiangsu Hongyi Steel Pipe Co., Ltd., the separate rate respondents, and the PRC-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

To determine the cash deposit rate, the Department normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where the Department has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, the Department has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the Preliminary Determination Section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, the Department will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 27, 2017, and October 30, 2017, respectively, pursuant to 19 CFR 351.210(b) and (e), Hongyi and Huacheng requested that, contingent upon an affirmative preliminary determination of sales at LTFV for the respondents, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[13]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[14]

Disclosure

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

The Department is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than five days after the publication of the preliminary AD determinations for the PRC, Germany, India, Italy, Korea, and Switzerland in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of cold-drawn mechanical tubing, apply for both the on-going CVD and AD investigations. There is only one briefing schedule for scope case and rebuttal briefs in the CVD and AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing CVD and AD cold-drawn mechanical tubing investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary

[13] *See* Hongyi's letter, ''Hongyi's Request to Extend the Final Determination: Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China (A–570–058),'' dated October 27, 2017; *also see* Huacheng's letter, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Request to Extend the Final Determination,'' dated October 30, 2017.

[14] *See also* 19 CFR 351.210(e).

information should be submitted in the scope case briefs and rebuttal scope briefs. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling after the issuance of any such order.

Case briefs or other non-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[15] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the ITC of our preliminary affirmative determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 15, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331 mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–3, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to

an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Selection of Respondents
VI. Preliminary Affirmative Determination of Critical Circumstances, in Part
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Adjustment for Countervailable Export Subsidies
X. Adjustment Under Section 777A(f) of the Act
XI. Postponement of Preliminary Determination
XII. Verification
XIII. U.S. International Trade Commission Notification
XIV. Conclusion

[FR Doc. 2017–25294 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–071–2017]

Foreign-Trade Zone (FTZ) 52—Jamaica, New York; Notification of Proposed Production Activity; Advanced Optowave Corporation; (Diode Pumped Solid State Laser Systems/Manufacturing); Ronkonkoma, New York

Suffolk County, grantee of FTZ 52, submitted a notification of proposed production activity to the FTZ Board on behalf of Advanced Optowave Corporation (Advanced Optowave), located in Ronkonkoma, New York. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 8, 2017.

The Advanced Optowave facility is located within FTZ 52, Site 5. The facility will be used for the production of diode pumped solid state laser systems (including the controller and laser). Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Advanced Optowave from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Advanced Optowave would be able to choose the duty rates during customs entry procedures that apply to diode pumped solid state laser systems (including the controller) (duty-free). Advanced Optowave would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Optics (laser crystal—neodymium-doped yttrium orthovanadate (ND:YV04); lithium triborate crystal; laser mirror; window optics; optical lens; optical fiber); laser diode; radio frequency driver; thermistor; thermal electric cooler; printed circuit board (populated); computer power supply unit; aluminum mechanical parts (second harmonic generation (SHG) top cover; SHG bottom cover; third harmonic generation (THG) top cover; THG bottom cover; SHG base; THG base; harmonic base; clamp; mirror mount; lens barrel mount; lens barrel mount T-base; lens barrel; lens barrel spacer; laser crystal cover; laser base; desiccant guard; shutter mount; aperture base small; aperture disc; aperture base wide; wire adapter; windows mount; Q switch mount; heat sink; housing body; housing main cover; housing end cover; housing box umbilical adapter; housing leg double slit; housing leg single slit; housing diode cooling plate; housing duel fan cooling plate) (duty rate ranges from duty-free to 5.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 2, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or (202) 482–1378.

Dated: November 17, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–25281 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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.

SUMMARY: Notice is hereby given that permits or permit amendments 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 or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan (File No. 18786–02 and 21422) and Jennifer Skidmore (File No. 16305); 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 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.regulations.gov* and search on the permit number provided in the table below.

File No.	RIN	Applicant	Previous **Federal Register** notice	Permit or amendment issuance date
16305	0648–XA807	John Pierce Wise, Sr. Ph.D., Department of Pharmacology and Toxicology, School of Medicine, University of Louisville, Louisville, KY 40292.	77 FR 72829; December 6, 2012	October 30, 2017.
18786–02	0648–XD900	Marine Mammal Health and Stranding Response Program (Responsible Party: Teri Rowles, D.V.M., Ph.D.), 1315 East West Highway, Silver Spring, MD 20910.	80 FR 44939; July 28, 2015	October 18, 2017.
21422	0648–XF664	James Lloyd-Smith, Ph.D., University of California—Los Angeles, Los Angeles, CA 90095.	82 FR 43002; September 13, 2017	October 17, 2017.

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 for Permit Nos. 16305 and 21422 are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

An environmental assessment (EA) was prepared for the original permit (No. 18786) in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. Based on the analyses in the EA, NMFS determined that issuance of the original permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination was documented in a Finding of No Significant Impact (FONSI), signed on June 29, 2015. The activities in the amendment are consistent with the analyses in the original EA and no additional NEPA analysis was required for the issuance of this amendment. The original EA and FONSI are available upon request.

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 Marine Mammal Protection Act 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 Endangered Species Act of 1973, as amended (ESA; 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: November 17, 2017.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–25331 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF603

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Casitas Pier Fender Pile Replacement

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Venoco LLC (Venoco) to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with a fender pile replacement project in Carpinteria, California.

DATES: This authorization is applicable from November 1, 2017 to October 31, 2018.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS reviewed our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

We reviewed all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On June 13, 2017, NMFS received a request from Venoco for an IHA to take marine mammals incidental to replacement of fender piles at Casitas Pier in Carpinteria, California. Venoco's request is for take of harbor seal, California sea lions, and bottlenose dolphins by Level B harassment only. Neither Venoco nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Specified Activity

Venoco proposed to replace 13 fender piles during the fall of 2017 to minimize impact to the local harbor seal population which uses Carpinteria beach as a haulout. Work on the pier will take place over a period of 2 to 3 weeks during fall 2017. Any work that is not completed during this period will be deferred to late summer or fall 2018. Two and a half days of pile driving are needed to complete the work but these days may not be consecutive. The authorization effective dates are November 1, 2017 through October 31, 2018 to allow pile driving to occur when all of the necessary permits and permissions are acquired.

Up to 13 fender piles located on the end of the Pier will be replaced (six on west side, and seven on the east side). The replacement piles will consist of an upper section approximately 48 to 50 feet (15 meters) long consisting of 16-inch diameter x 0.50-inch wall thickness steel pipe pile with a 12-foot (4-meter) long driven lower section consisting of 14 inch x 73 pound H-pile spliced to the bottom of the upper pipe pile section. Epoxy coating will be used on the new fender piles. Installation will be accomplished utilizing impact and vibratory pile driving techniques supported from the Pier. The replacement piles will be installed slightly offset (about two feet) from the original fender pile positions. This spliced pile design has been in service for more than 60 years at the Pier.

Each pile will require approximately 25 minutes of vibratory driving, and up to 6 piles could be installed by this method in a single day (*i.e.,* up to 2.5 hours of vibratory pile driving per day). During this time the sound levels above and in water will be in excess of normal pier operations. Sound levels from various other fender pile construction activities will not be discernible from daily pier operations and are below NMFS' thresholds. In the unlikely event that an impact hammer is used, installation of a single pile will require an estimated 400 hammer strikes over 15 minutes, and up to 6 piles could be installed by this method in a single day (*i.e.,* up to 1.5 hours of pile driving per day). A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (82 FR 42306; September 9, 2017). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to Venoco was published in the **Federal Register** on September 9, 2017 (82 FR 42306). That notice described, in detail, Venoco's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission. These comments are details below.

Comment 1: The Commission noted several mitigation and monitoring measures were absent from the proposed IHA and recommends that NMFS include standard mitigation, monitoring, and reporting measures consistently for all authorizations involving pile-driving and -removal activities.

Response: NMFS included all standard mitigation measures that were appropriate and relevant to the activities proposed by Venoco. These mitigation measures include using delay and shutdown procedures for species that are not authorized and when the limit of take authorized is reached. Venoco is proposing a shutdown at 52 meters, which subsumes the standard 10 meter shutdown zone, but the 10 meter shutdown zone to avoid physical injury still applies for in-water work that is not pile driving or removal. The Commission noted inconsistency in pre and post-activity monitoring times, and the IHA reflects pre and post-activity monitoring periods of 30 minutes.

Comment 2: The Commission recommends that NMFS share the rounding criteria with the Commission such that this matter can be resolved expeditiously.

Response: NMFS will share the rounding criteria with the Commission soon (following the completion of internal edits) when available and looks forward to discussing the issue with them in the future.

Description of Marine Mammals in the Area of Specified Activities

There are three marine mammal species that may likely transit through the waters nearby the project area, and are expected to potentially be taken by the specified activity. These include harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and bottlenose dolphin (*Tursiops truncatus*). Multiple additional marine mammal species may occasionally enter coastal California waters but they are not be expected to occur in shallow nearshore waters of the action area (Table 1).

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species

(*e.g.,* physical and behavioral descriptions) may be found on NMFS's Web site (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 1 lists all species with expected potential for occurrence in coastal southern California and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific SARs (NMFS 2016). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2016 SARs (NMFS, 2016).

TABLE 1—MARINE MAMMAL POTENTIALLY PRESENT IN THE VICINITY OF CARPINTERIA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	Eschrichtius robustus	Eastern North Pacific	-;N	.05, 20,125, 2011	624	132
Family Balaenopteridae (rorquals):						
Bryde's whale	Balaenoptera edeni	Eastern Pacific	-;N	Unk, unk, unk, N/A	unk	unk
Humpback whale	Megaptera novaeangliae	California-Oregon-Washington.	-;N	.03, 1,876, 2014	11	6.5
Blue whale	Balaenoptera musculus	Eastern North Pacific	E;Y	.07, 1,551, 2011	2.3	0.9
Fin whale	Balaenoptera physalus	California-Oregon-Washington.	E;Y	.12, 8,127, 2014	81	2
Sei whale	Balaenoptera borealis	California-Oregon-Washington.	E;Y	0.4, 374, 2104	0.75	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	Physeter macrocephalus	California-Oregon-Washington.	E;Y	0.58, 1,332, 2008	2.7	1.7
Family Kogiidae:						
Pygmy sperm whale	Kogia breviceps	California-Oregon-Washington.	-;N	1.12, 1,924, 2014	19	0
Dwarf sperm whale	Kogia sima	California-Oregon-Washington.				
Family Ziphiidae (beaked whales):						
Baird's beaked whale	Berardius bairdii	Eastern North Pacific	-;N	0.81, 466, 2008	4.7	0
Cuvier's beaked whale	Ziphius cavirostris	California-Oregon-Washington.	-;N	Unk, unk, 2014	Unk	0
Mesoplodont beaked whales (six species).	Mesoplodon spp.	California-Oregon-Washington.	-;Y	0.65, 389, 2008	0.5	3.9
Family Delphinidae:						
Short-beaked common dolphin.	Delphinus delphis d.	California-Oregon-Washington.	-;N	0.17, 839,325, 2014	5,393	40
Long-beaked common dolphin.	Delphinus capensis c.	California	-;N	0.49, 88,432, 2014	657	35.4
Pacific white-sided dolphin.	Lagenorhynchus obliquidens.	California-Oregon-Washington northern and southern stocks.	-;N	0.28, 21,195, 2014	191	7.5
Striped dolphin	Stenella coeruleoalba	California-Oregon-Washington.	-;N	0.2, 24,782, 2014	238	0.8
Risso's dolphin	Grampus griseus	California-Oregon-Washington.	-;N	0.32, 4,817, 2014	46	3.7
Common bottlenose dolphin.	Tursiops truncatus t.	California-Oregon-Washington offshore stock.	-;N	0.54, 1,255, 2014	11	1.6
Common bottlenose dolphin.	Tursiops truncatus t.	California coastal stock	-;N	0.06, 346, 2011	2.7	2
Northern right whale dolphin.	Lissodelphis borealis	California-Oregon-Washington.	-;N	0.44, 18,608, 2014	179	3.8

TABLE 1—MARINE MAMMAL POTENTIALLY PRESENT IN THE VICINITY OF CARPINTERIA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Killer whale	Orcinus orca	Eastern North Pacific offshore.	-;N	0.49, 162, 2014	1.6	0
Killer whale	Orcinus orca	West Coast Transient	-;N	Unk, 243, 2009	2.4	0
Short-finned pilot whale.	Globicephala macrorhynchus.	California-Oregon-Washington.	-;N	0.79, 466, 2014	4.5	1.2
Family Phocoenidae (porpoises):						
Dall's porpoise	Phocoenoides dalli	California-Oregon-Washington.	-;N	0.45, 17,954, 2014	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Guadalupe fur seal	Arctocephalus townsendi	Guadalupe Island	E;Y	Unk, 15,830, 2010	542	3.2
California sea lion	Zalophus californianus	U.S. stock	-;N	Unk, 153,337, 2011	9,200	389
Steller sea lion	Eumetopias jubatus	Eastern	-;N	Unk, 41,638, 2015	2,498	108
Northern fur seal	Callorhinus ursinus	California stock	-;N	Unk, 7,524, 2013	451	1.8
Northern elephant seal	Mirounga angustirostris	California breeding stock	-;N	Unk, 81,368, 2010	4,882	8.8
Family Phocidae (earless seals):						
Pacific harbor seal	Phoca vitulina richardii	California stock	-;N	Unk, 27,348, 2012	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note—*italicized species are not expected to be taken.*

All species that could potentially occur in the construction area are included in Table 1. However, the temporal and spatial occurrence of all but three of the species listed in Table 1 with respect to the timing and location of the specified activity is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Most of the species included in Table 1 above are unlikely to occur during the construction work because they are not resident to this part of California during the late summer and early fall months. For those species that may occur in coastal southern California during that time, they are unlikely to occur at such close proximity to the shoreline and the construction work is conducted from a pier connected to a beach with maximum water depths of 4–8 meters. The long-beaked common dolphin may occasionally venture within one nautical mile of the project site but is unlikely. The short-beaked common dolphin is much less likely to appear in the vicinity than the long-beaked common dolphin. The gray whale occurs within one nautical mile of the project site, but it does not migrate through the region until late December through May, with most gray whales sighted near the project area in the spring. The other species generally occur farther offshore and have not been reported in the vicinity of this area of the Southern California Bight (SCB), so they will not be discussed further in this document.

Of the MMPA-listed species of marine mammals summarized in Table 1, only the Pacific harbor seal, the California sea lion, and the coastal stock of bottlenose dolphin are anticipated to be found in the immediate vicinity of the project site and subsequently may be taken by pile driving. Below are descriptions of those species and the relevant stock, as well as information regarding population trends and threats, and describe any information regarding local occurrence.

A detailed description of the of the species likely to be affected by the Casitas pier project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 42306; September 9, 2017); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from pile driving activities for the Casitas pier project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (82 FR 42306; September 9, 2017) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to the **Federal Register** notice (82 FR 42306; September 9, 2017) for that information.

Anticipated Effects on Habitat

The main impact associated with the Casitas pier construction project will be temporarily elevated sound levels and the associated direct effects on marine mammals. The project will not result in additional permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish, and minor impacts to the immediate substrate during installation and removal of piles, etc. The area is a known haulout with an existing pier, so temporary disturbance of the haulout may occur but the resulting structure will leave the same footprint as currently exists. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (82 FR 42036; September 9, 2017), therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the authorized take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 decibels (dB) re 1 microPascal (µPa) root mean square (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Venoco's project includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Venoco's construction activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: *219 dB;* $L_{E,LF,24h}$: *183 dB*	*Cell 2:* $L_{E,LF,24h}$: *199 dB.*
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted whithin the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF,MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * log10(R1/R2),

where

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as at the Biorka Island dock, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that will lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. These data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles, rather than the hybrid pile used by Venoco.

Reference sound levels used by Venoco were based on underwater sound measurements documented for a number of pile driving projects with similar pile sizes and types at similar sites in California (*i.e.,* areas of soft substrate where water depths are less than 16 feet (5 meters) (Caltrans 2009)). The noise energy will dissipate as it spreads from the pile at a rate of at least 4.5 dB per doubling of distance, which is practical spreading (Caltrans 2009). This is a conservative value for areas of shallow water with soft substrates, and actual dissipation rates would likely be higher. Using this information, and the pile information presented in Table 1 of the proposed IHA notice, distances to NMFS thresholds were estimated using measured sound levels and a practical spreading model.

Venoco used the NMFS Optional User Spreadsheet, available at *http://www.nmfs.noaa.gov/pr/acoustics/Acoustic%20Guidance%20Files/march_v1.1_blank_spreadsheet.xlsx,* to input project-specific parameters and calculate the isopleths for Level A and Level B zones from both impact and vibratory pile driving. These inputs include estimated duration of pile driving, estimated number of strikes per pile (for the impact hammer method); and maximum number of piles to be driven in a day. Each pile will require approximately 25 minutes of vibratory driving, and up to 6 piles could be installed by this method in a single day. During this time the sound levels above and below water will be in excess of normal pier operations. In the unlikely event that an impact hammer is used, installation of a single pile will require an estimated 400 hammer strikes over 15 minutes, and up to 6 piles could be installed by this method in a single day.

Venoco used the Caltrans (2015) guidelines for selection of an appropriate pile driving sound source level for a composite 50-foot, 16-inch pipe/12-foot,14-inch H-pile configuration, for both vibratory and impact driving methods, taking into consideration that only the H-pile segment of the pile (the bottom portion) will be driven below the mudline, thus the predominant underwater noise source will emanate from the steel pipe segment.

Source Levels

For the impact hammer method, the average sound pressure level measured in dB is based on the 16-inch steel pipe sound levels (Caltrans 2015, Table I.2–1), adjusted upward for the composite 16-inch pipe/14-inch H-pile design because the sound level for the composite pile is anticipated to be greater than the Caltrans reference sound level for 16-inch steel pipe (158 dB), but less than the Caltrans reference sound level for 14-inch steel H-pile (177 dB). As described above, the replacement piles will be a composite of two materials, pre-welded into a single pile prior to driving. The upper section will consist of 48 to 50 feet (15 meters) of 16-inch diameter x 0.50- inch wall thickness pipe pile and the bottom segment will consist of a 12-foot (4-meter) long 14 inch x 73 pound H-pile. The water depth ranges from 13 to 27 feet (4 to 8 meters) at the end of the Pier, with seasonal variations due to beach sand withdraw and return between the winter and summer seasons. When impact driving is initiated the H-pile will partially enter the mud substrate (*e.g.,* up to two to four feet) pushed by hammer weight and the weight of the pipe itself due to soft substrate (mud) at the seafloor surface. Thus, when impact driving begins only a portion of the 12-foot H pile will be exposed in the water column and most of the length of pile within the water column will be steel pipe pile. As pile driving progresses, the H-pile portion of the fender pile will continue to enter the seabed, and the proportion of H-pile to steel pipe exposed to the water column will decrease until the H-pile is entirely buried or until pile driving is suspended at a minimum depth of six feet. Consequently, the sound level for the

composite pile is anticipated to be greater than the Caltrans reference sound level for 16-inch steel pipe (158 dB), and less than the Caltrans reference sound level for 14-inch steel H-pile (177 dB).

Based on these factors, the reference sound level from composite pile was based on 16-inch steel pipe pile, with an upward adjustment of 6 dB (to 164 dB SEL). This 6 dB adjustment is divided into two parts: 3 dB (one doubling) adjustment for the H-pile itself (*i.e.,* the portion of H-pile being driven by impact hammer); and 3 dB (a second doubling) adjustment for the H-pile that is acting as a foundation, and thus providing some resistance to the pipe pile while it is being driven by impact hammer. This sound level, which represents two doublings of the reference sound level of the 16-inch steel pipe, is considered sufficiently conservative to account for the H-pile portion of the fender pile that will be exposed in the water column and serving as a foundation to the pipe pile during impact driving.

For the vibratory driving method, the average sound pressure level measured in dB is based on the 12-inch H-pile sound levels (Caltrans 2015, Table I.2–2), adjusted upward by 4 dB for composite 16-inch pipe/14-inch H-pile design. Caltrans data do not include specific vibratory reference sound levels for the 14- inch H-pile. Therefore, it was assumed that doubling the reference sound level for 12-inch H-pile plus 1 dB (*i.e.,* a 4 dB increase), will provide a sufficiently conservative assumption for a 14-inch H-pile.

TABLE 3—NMFS OPTION USER SPREADSHEET INPUTS

User spreadsheet input			
	Impact driver		Vibratory driver
Spreadsheet Tab Used	(E.1) Impact pile driving	Spreadsheet Tab Used	(A) Non-impulsive, continuous
Source Level (dB; SEL)	164	Source Level (RMS SPL)	154.
Weighting Factor Adjustment (kHz)	2	Weighting Factor Adjustment (kHz).	2.5.
(a) Number of strikes per pile	400	Activity duration within 24 hours (hrs).	N/A.
(a) Number of piles per day	6		N/A.
Activity duration within 24 hr period	N/A		2.5.
Propagation (xLogR)	15	Propagation (xLogR)	15.
Distance of source level measurement (meters) +	10		10.

+ Unless otherwise specified, source levels are referenced 1 m from the source.

Level A Isopleths

When NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed an Optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, NMFS Optional User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it will not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below. The inputs Venoco used to obtain the isopleths discussed below are summarized in Table 3 above.

TABLE 4—EXPECTED DISTANCES OF LEVEL A THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER

User spreadsheet output					
Source type	PTS isopleth (meters)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Impact driving	96.9	3.4	115.4	51.8	3.8
Vibratory driving	4.3	0.4	6.4	2.6	0.2

Level B Isopleths

Using 173 dB RMS as the source level for impact pile driving and 154 dB RMS for vibratory driving, the Level B distance was calculated for both impact and vibratory driving, assuming practical spreading. For vibratory driving, the Level B isopleth extends out to 1,848 meters (1.15 miles; 6,063 feet) from the pile driving site. For impact driving, the Level B isopleth extends out to 74 meters (112 feet) from the pile driving site.

TABLE 5—EXPECTED DISTANCES OF LEVEL B THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER

Level B isopleth (meters)		
Source type	160 dB (impact)	120 dB (vibratory)
Impact driving	74	N/A
Vibratory driving	N/A	1,848

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

At-sea densities for marine mammal species have not been determined for marine mammals in the coastal Carpinteria area; therefore, all estimates here are determined by using observational data from biologists, peer-reviewed literature, and information obtained from personal communication with other companies that have conducted activities on or near the Carpinteria beach area. Additionally, some harbor seal information was collected by the Carpinteria Seal Watch.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Level A take is not expected or authorized for this activity. Of the two types of pile driving, the largest Level A isopleth is from impact driving at 51.8 meters for harbor seals, 3.8 meters for California sea lion, and 3.45 meters for bottlenose dolphins. Neither bottlenose dolphins nor California sea lions are resident to this area and are not expected to remain in water near the beach for an extended duration of time. At 15 minutes per pile, this is equal to 90 minutes per day; however, those 90 minutes will be spread out over multiple hours to account for equipment re-sets, breaks, etc. Because dolphins and sea lions are not resident and not known to linger in the area, full exposure to all impact pile driving within a day is highly unlikely. It is even more unlikely that these species will remain within 4 meters of the sound source for a continuous period of two and a half hours in a day. Harbor seals are resident to the area and the beach at the base of the pier is a frequently used haulout. However, it is unlikely a harbor seal will remain in water during the total time of construction within a day, as they likely will be transiting out from the beach to forage and then returning to the beach. Therefore, it is estimated that no marine mammal of the three species most likely to occur will remain in close enough proximity for the duration of daily construction to be exposed to accumulated energy levels reaching the onset of PTS. Hence no Level A take is authorized.

Because of the lack of at-sea density information in the region of the project, estimated marine mammal takes were calculated using the following formula:

Level B exposure estimate = N (number of animals) in the ensonified area * Number of days of noise generating activities.

Harbor Seal

Harbor seals are the most abundant species found at the project site. This beach is a known rookery for the local population, although work will be conducted outside of the pupping season. Although a wealth of data exists from the Carpinteria Seal Watch, these data are sometimes incomplete and data from some periods are missing. Moreover, these data were gathered during the period the Carpinteria Seal Watch does its monitoring (about January 1 through May 30 of each year). From June 1 through December 30 of each year, such data are virtually absent. The project is scheduled to begin in the fall, when the seals have largely abandoned the beach because it is open to the public and disturbances are chronic. The seals switch to a nighttime haul-out pattern during this period, hauling out after sundown and before dawn, unless the tide is very high (Seagars 1988). In such cases, the amount of haul-out area is very restricted and the seals are largely absent during this season. Reliable density data are not available from which to calculate the expected number of harbor seals within the Level B harassment zone from pile driving. Based on review of the available observational data, similar past experience in the project vicinity, and project timing (fall season, daytime hours), an estimated range of 0 to 50 harbor seals is anticipated to be present within the project vicinity during work periods. Therefore, it is estimated that up to 50 seals may be taken per day by Level B harassment. Over two and a half days of activity, that results in a total of 125 instances of harbor seal takes during the project.

California Sea Lion

California sea lions are abundant throughout the SCB but do not regularly use Carpinteria as a haulout in large numbers. Individuals are usually observed hauled out on offshore structures approximately 0.75 miles southeast of the pier. Reliable density data are not available from which to calculate the expected number of sea lions within the Level B harassment impact zone for pile driving. Based on the available observational data and project timing (fall season), an estimated range of zero to 15 sea lions is anticipated to be present within the project vicinity during work periods. Therefore it is estimated that up to 15 California sea lions may be taken per day by Level B harassment in a day. Over two and a half days of activity, that results in a total of 38 California sea lions taken during the project as it is not known if the California sea lions that come to the beach are the same individuals.

Bottlenose Dolphin

Bottlenose dolphins may occur sporadically near the project area, but never in large numbers. Past projects have revealed anywhere from 2 to 32 animals present at any one time, with an average pod size of 8 (MMCG 1995; 1998a, b, d, and e; 2001a and b; 2006; 2011c, 2013b, and 2014b). Therefore, it is estimated that no more than 16 coastal bottlenose dolphins (two pods of average group size) may be taken by Level B harassment in a day. Over two and a half days of activity, that results in a total of 40 bottlenose dolphins taken during the project as it is not known if any of the animals sighted will be repeated individuals.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for

incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned). and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following measures will apply to Venoco's mitigation through shutdown and disturbance zones:

Shutdown Zone

For all pile driving activities, Venoco will establish a shutdown zone intended to contain the area in which SELs equal or exceed the auditory injury criteria for cetaceans and pinnipeds. The purpose of a shutdown zone is to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus further preventing injury of marine mammals (as described previously under Potential Effects of the Specified Activity on Marine Mammals, serious injury or death are unlikely outcomes even in the absence of mitigation measures). Venoco proposed a shutdown zone for the largest Level A isopleth, which is the phocid Level A isopleth of 52 meters. NMFS requires a 10 m minimum shutdown zone for construction activities, however Venoco proposed a more conservative minimum shutdown zone of 52 meters that will be established during all pile driving activities. The 52-meter output is the threshold if an animal were to remain within that distance from the source for all of the day's pile driving, which is over many hours.

Disturbance Zone

Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impact and vibratory pile driving, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones and identifying amount of take. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting instances of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see Monitoring and Reporting). Nominal radial distances for disturbance zones are shown in Table 5.

Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals will be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers stationed on the pier and bluff above the beach) will be observed. In order to document observed instances of harassment, observers record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes in the observable zone multiplied by the portion of the zone that is unseen to reach an approximate understanding of predicted total takes (Area seen/area unseen = takes observed/takes unobserved).

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Soft Start

The use of a soft start procedure provides additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then 2 subsequent 3 strike sets. This procedure is repeated two additional times. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of 30 minutes or longer.

Timing Restrictions

Venoco will only conduct construction activities during daytime hours. Construction will also be restricted to the fall and late summer months (July through November) to avoid overlap with harbor seal pupping.

Based on our evaluation of the Venoco's proposed measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine

mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring Protocols

- Monitoring will be conducted before, during, and after pile driving activities., Observers shall record all instances of marine mammal occurrence, regardless of distance from activity, and shall document any apparent behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted. Monitoring will take place from 30 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes. If pile driving ceases for more than 30 minutes, the 30 minute pre-pile driving monitoring effort will take place prior to onset of pile driving.
- Prior to the start of pile driving activity, the shutdown zone will be monitored for 30 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals. If the shutdown zone is not clear of a marine mammals, pile driving will not commence until the shut-down zone is clear. Any animals in the shut down zone prior to commencement of pile driving will be allowed to remain in the shutdown zone and their behavior will be monitored and documented. If the 52-meter shutdown zone is not entirely visible (*e.g.,* due to dark, fog, etc), pile driving will not commence or proceed if it is underway.
- If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 30 minutes have passed without re-detection.
- If a species for which authorization has not been granted, or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone, activities will shut down immediately and not restart until the animals have been confirmed to have left the area for 30 minutes. If pile driving has ceased for more than 30 minutes, the 30 minute pre- pile driving monitoring will begin.
- Venoco shall implement a minimum shutdown zone of 10 meter radius around each pile for all construction methods other than pile driving for all marine mammals.

Visual Marine Mammal Observations

Venoco will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All marine mammal observers (MMOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. A minimum of two MMOs will be required for all pile driving activities. Venoco will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, Venoco will implement the following procedures for pile driving:

- MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity will be halted; and
- The shutdown zone (52 m) and observable portion of the disturbance zone around the pile will be monitored for the presence of marine mammals 30 min before, during, and 30 min after any pile driving activity.

If any species for which take is not authorized is observed within or approaching the Level B zone by a MMO during pile driving, all construction will be stopped immediately. Pile driving will commence if the animal has not been seen inside the Level B zone for at 30 minutes of observation.

Data Collection

The IHA requires that observers use approved data forms. Among other pieces of information, Venoco will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, Venoco will attempt to distinguish between the number of individual animals taken and the number of incidences of take. At a minimum, the following information will be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report will be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities associated from the Casitas Pier project, as outlined previously in the proposed IHA, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance), from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving occurs.

No injury is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the implementation of the planned mitigation measures, as described in the Estimated Take section. Specifically, vibratory and impact hammers will be the primary methods of installation. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. Venoco will use a minimum of two MMOs stationed strategically to increase detectability of marine mammals, enabling a high rate of success in implementation of shutdowns to avoid injury.

Venoco's activities are localized and of relatively short duration (two and a half days of pile driving 16 piles). The project area is also very limited in scope spatially, as all work is concentrated on a single pier. These localized and short-term noise exposures may cause short-term behavioral modifications in harbor seals, California sea lions, and bottlenose dolphins. Moreover, the mitigation and monitoring measures are expected to further reduce the likelihood of injury, as it is unlikely an animal will remain in close proximity to the sound source with small Level A isopleths, as well as reduce behavioral disturbances. While the project area is known to be a rookery for harbor seals, the work will be conducted in seasons when few harbor seals are known to be present and no breeding activities occur.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the relatively small area of the habitat that may be affected, and the decreased potential of prey species to be in the Project area during the construction work window, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to temporary reactions such as increased swimming speeds, increased surfacing time, flushing, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; Lerma 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus will not result in any adverse impact to the stock as a whole.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No injury is anticipated or authorized;
- Level B harassment may consist of, at worst, temporary modifications in behavior (*e.g.,* temporary avoidance of habitat or changes in behavior);
- The lack of important feeding, pupping, or other areas in the action area during the construction window;
- The small impact area relative to species range size;
- The minimization of harassment likelihood and severity due to mitigation; and
- The small percentage of the stock that may be affected by project activities (< 9 percent for all stocks; Table 6).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the construction activity will have a negligible impact on

all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 6 details the number of instances (harbor seals) or individuals (California sea lions and bottlenose dolphins) that animals could be exposed to received noise levels that could cause Level B harassment for the construction work at the project site relative to the total stock abundance. The numbers of animals authorized to be taken for all species will be considered small relative to the relevant stocks or populations even if each estimated instance of take occurred to a new individual. The total percent of the population (if each instance was a separate individual) for which take is requested is less than nine percent for all stocks (Table 6). Based on the analysis contained herein of the construction activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

TABLE 6—ESTIMATED NUMBERS AND PERCENTAGE OF STOCK THAT MAY BE EXPOSED TO LEVEL B HARASSMENT

Species	Authorized Level B takes	Stock(s) abundance estimate [1]	Percentage of total stock (percent)
Harbor Seal (*Phoca vitulina*) *California stock*	125	30,968	.40
California sea lion (*Eumatopias jubatus*) *U.S. Stock*	38	296,750	.013
Bottlenose dolphin (*Tursiops truncatus*)	40	1,924	2.1
California-Oregon-Washington Stock California Coastal Stock	.....	453	8.83

[1] All stock abundance estimates presented here are from the 2016 Pacific Stock Assessment Report.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to Venoco LLC for the potential harassment of small numbers of three marine mammal species incidental to the Casitas Pier fender pile replacement project in Carpinteria, CA, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: November 16, 2017.

Catherine Marzin,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–25258 Filed 11–21–17; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Copies of Crop and Market Information Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the extension of a proposed collection of certain information by the agency. In compliance with the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments, as described below, on the proposed Information Collection Request (''ICR'') titled: Copies of Crop and Market Information Reports.

DATES: Comments must be submitted on or before January 22, 2018.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0015 by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Adam Charnisky, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 525 West Monroe, Chicago IL, 60661; (312) 596–0630; FAX: (312) 596–0711; email: *acharnisky@cftc.gov;* and refer to OMB Control No. 3038–0015.

SUPPLEMENTARY INFORMATION: Under the PRA, 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 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.

Title: ''Copies of Crop and Market Information Reports,'' OMB Control No. 3038–0015. This is a request for extension of a currently approved information collection.

Affected Entities: Entities potentially affected by this action include future commission merchants (''FCMs'') and members of contract markets.

Abstract: The information collected pursuant to this rule, 17 CFR 1.40, is in the public interest and is necessary for market surveillance. Manipulation of commodity futures prices is a violation of the Commodity Exchange Act (Act). Section 9(a)(2) of the Act (7 U.S.C. 13(a)(2)) prohibits the dissemination of false or misleading or knowingly inaccurate reports that affect or tend to affect the prices of commodities. In order to facilitate the enforcement of this provision, Commission regulation 1.40 requires that members of an exchange and FCMs provide upon request copies of any report published or given general circulation which concerns crop or market information that affects or tends to affect the price of any commodity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981).

The Commission would like to solicit comments to:

- Evaluate 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;
- Evaluate 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;
- Enhance the quality, usefulness, and clarity of the information to be collected; and
- 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://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 respondent burden for this collection is estimated to average 0.17 hours per response.

- *Respondents/Affected Entities:* 15.
- *Estimated Number of Responses:* 15.
- *Estimated Total Annual Burden on Respondents:* 2.5 hours.
- *Frequency of Collection:* On occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 17, 2017.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2017–25307 Filed 11–21–17; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0026, Gross Collection of Exchange-Set Margins for Omnibus Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) 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 of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on requirements relating to Gross Collection of Exchange-Set Margins for Omnibus Accounts.

DATES: Comments must be submitted on or before January 22, 2018.

ADDRESSES: You may submit comments, identified by OMB Control Number 3038–0026, by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *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.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Mark Bretscher, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (312) 596–0529; email: *mbretscher@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA,[1] 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(c) 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,

[1] 17 CFR 145.9.

[1] 44 U.S.C. 3501 *et seq.*

before submitting the collection to OMB for approval. 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 number. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Gross Collection of Exchange-Set Margins for Omnibus Accounts, OMB Control Number 3038–0026. This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 1.58 requires that FCMs margin omnibus accounts on a gross, rather than a net, basis. The regulation provides that the carrying FCM need not collect margin for positions traded by a person through an omnibus account in excess of the amount that would be required if the same person, instead of trading through an omnibus account, maintained its own account with the carrying FCM. To prevent abuse of this exception to the regulation, a carrying FCM must obtain and maintain a written representation from the originating FCM or foreign broker that the particular positions held in the omnibus account are part of a hedge or spread transaction. This collection of information is necessary in order to provide documentation that can be inspected with regard to questions of proper compliance with gross margining requirements. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Sections 4c, 4d, 4f, 4g and 8a of the Commodity Exchange Act, 7 U.S.C. 6c, 6d, 6f, 6g and 12a.

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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publically. 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 Section 145.9 of the Commissions regulations.[2]

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 *http://www.cftc.gov* that it any 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 Information Collection Request 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 due to the reduced number of futures commission merchants in the industry. The respondent burden for this collection is estimated to be as follows:

- *Estimated number of respondents:* 57.
- *Reports annually by each respondent:* 4.
- *Total annual responses:* 228.
- *Estimated average number of hours per response:* 0.08.
- *Estimated Total Annual Burden Hours:* 18.
- *Frequency of Collection:* On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 17, 2017.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2017–25304 Filed 11–21–17; 8:45 am]

BILLING CODE 6351–01–P

[2] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2017–OS–0037]

Notice of Availability for Finding of No Significant Impact for the Environmental Assessment Addressing Divestment of Military Family Housing at Defense Distribution Center, Susquehanna

AGENCY: Defense Logistics Agency (DLA), Department of Defense.

ACTION: Notice of availability (NOA).

SUMMARY: On August 9, 2017, DLA published a NOA in the **Federal Register** (82 FR 37199) announcing the publication of the Environmental Assessment (EA) Addressing Divestment of Military Family Housing (MFH) at Defense Distribution Center, Susquehanna. The EA was available for a 30-day public comment period that ended September 8, 2017. The EA was prepared as required under the National Environmental Policy Act (NEPA) of 1969. In addition, the EA complied with DLA Regulation 1000.22. No comments from the public were received during the EA public comment period.

FOR FURTHER INFORMATION CONTACT: Ira Silverberg at 703–767–0705 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EDT) or by email: *ira.silverberg@dla.mil.*

SUPPLEMENTARY INFORMATION: DLA consulted with the Pennsylvania State Historic Preservation Officer (SHPO) at the Pennsylvania Historical and Museum Commission and the Absentee-Shawnee Tribe of Oklahoma, Cayuga Nation, Delaware Nation-Oklahoma, Eastern Shawnee Tribe of Oklahoma, Onondaga Nation, Seneca-Cayuga Tribe of Oklahoma, Shawnee Tribe, Tuscarora Nation, St. Regis Mohawk Tribe, Seneca Nation of Indians, Tonawanda Band of Seneca, and Osage Nation for this Proposed Action. The SHPO determined that the Proposed Action would have no effect on historic properties, as identified on the returned Project Review Form Request to Initiate SHPO Consultation on State and Federal Undertakings. The Shawnee Tribe provided a response concurring that no known historic properties would be adversely impacted by the Proposed Action. The Shawnee Tribe indicated they have no issues or concerns about the Proposed Action, but requested they be notified in the event that archaeological materials are encountered during construction, use, or maintenance at the MFH area at

which time the tribe would resume consultation. DLA did not receive responses to the consultation requests with the other tribes. An appendix was added to the EA that includes the SHPO and tribal consultation documents, and the responses from the SHPO and the Shawnee Tribe. The revised EA is available electronically at the Federal eRulemaking Portal at *http://www.regulations.gov* within Docket ID: DOD–2017–OS–0037.

This FONSI documents the decision of DLA to divest MFH at Defense Distribution Center, Susquehanna. DLA has determined the Proposed Action is not a major federal action significantly affecting the quality of the human environment within the context of NEPA and no significant impacts on the human environment are associated with this decision.

DLA completed an EA to address the potential environmental consequences associated with the proposed divestment of MFH at Defense Distribution Center, Susquehanna. This FONSI incorporates the EA by reference and summarizes the results of the analyses in the EA.

Purpose of and Need for Action: The purpose of the Proposed Action is to eliminate real property that is no longer needed and reduce operational costs. The Proposed Action is needed because the MFH units are underutilized, outdated, and require a high level of maintenance. The current occupancy rate of the MFH is approximately 32 percent. A majority of the MFH buildings were constructed in the 1950s and are more than 55 years old, while other MFH buildings were constructed prior to 1950. These MFH units are costly to operate and maintain due to their age.

Proposed Action and Alternatives: Under the Proposed Action, DLA would divest all MFH operations at Defense Distribution Center, Susquehanna. DLA would vacate remaining Department of Defense occupants (estimated to be approximately 8 MFH units in 2018) from the installation's total 124 MFH units (39 buildings), demolish 110 MFH units (27 buildings), and retain 14 MFH units (12 buildings) for administrative purposes. Associated bus stops and playground equipment would be demolished; however, sheds would be offered for reuse or sale, as appropriate, prior to demolition. All utility infrastructure, including electric, water, wastewater, natural gas, and communication services, within the MFH area would be removed and capped at the utility mains within adjacent roadways. Sidewalks, driveways, and on-roadway parking spaces associated with demolished MFH buildings would be removed. Two garages, the roadways, and golf course areas within the MFH area would remain.

Description of the No Action Alternative: Under the No Action Alternative, DLA would not divest MFH operations at Defense Distribution Center, Susquehanna. All existing MFH buildings and infrastructure (*i.e.,* utilities, two garages, bus stops, playground equipment, and sheds) would remain in place and DLA would continue to operate the MFH. Because DLA stopped accepting MFH applications in December 2016, it is anticipated that eight MFH units would be occupied in 2018 and further attrition would eventually lead to an occupancy level of zero. Funding for operation and maintenance of the MFH would be applied only to the occupied units, utilities, two garages, playground equipment, and sheds associated with occupied units; the unoccupied MFH units, bus stops, and sheds associated with unoccupied units would continue to deteriorate. The No Action Alternative would not meet the purpose of and need for the Proposed Action.

Potential Environmental Impacts: No significant effects on environmental resources would be expected from the Proposed Action. Insignificant, adverse effects on noise, air quality, water resources, biological resources, infrastructure and transportation, hazardous materials and wastes, and socioeconomics—housing would be expected. Insignificant, beneficial effects on air quality, water resources, infrastructure and transportation, and hazardous materials and wastes also would be expected. No effects on cultural resources would be expected. Details of the environmental consequences are discussed in the EA, which is hereby incorporated by reference.

Determination: DLA has determined that implementation of the Proposed Action will not have a significant effect on the human environment. Human environment was interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. Specifically, no highly uncertain or controversial impacts, unique or unknown risks, or cumulatively significant effects were identified. Implementation of the Proposed Action will not violate any federal, state, or local laws. Based on the results of the analyses performed during preparation of the EA and consideration of comments received during the public comment period, Mr. Phillip R. Dawson, Acting Director, DLA Installation Management, concludes that divestment of MFH at Defense Distribution Center, Susquehanna, does not constitute a major federal action significantly affecting the quality of the human environment within the context of NEPA. Therefore, an environmental impact statement for the Proposed Action is not required.

Dated: November 17, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–25256 Filed 11–21–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Deputy Chief Management Officer, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board will take place.

DATES: Open to the public on Wednesday, December 6, 2017 from 11:00 a.m. to 12:00 p.m.

ADDRESSES: The address for the open meeting is Room 3E928 in the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roma Laster, (703) 695–7563 (Voice), (703) 614–4365 (Facsimile), *roma.k.laster.civ@mail.mil* (Email). Mailing address is Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, Web site: *http://dbb.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the Web site.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

For meeting information please contact Mr. Steven Cruddas, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *steven.m.cruddas.civ@mail.mil*, (703) 697–2168. To submit written comments or questions to the Defense Business Board (Board), send via email to mailbox address:

osd.pentagon.odam.mbx.defense-business-board@mail.mil. A copy of the public agenda and the terms of reference for the Task Group study may be obtained from the Board's Web site at *http://dbb.defense.gov/meetings.*

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD. The Board will receive an out brief, findings, and recommendations from its Task Group on the study ''Fully Burdened and Life Cycle Cost of the Workforce.''

Agenda: 11:00 a.m.–11:05 a.m. DFO Comments to Public Attendees; 11:05 a.m.–11:45 a.m. DBB Study Out brief on ''Fully Burdened and Life Cycle Cost of the Workforce''; 11:45 a.m.–11:50 a.m. Public Comments (if time permits); 11:50 a.m.–12:00 p.m. Board Deliberations and Vote.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space. Seating is limited and is on a first-come basis.

Written Statements: Written comments should be received by the Designated Federal Officer (DFO) at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the email address for public comments given in the **SUPPLEMENTARY INFORMATION** section in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated November 17, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–25259 Filed 11–21–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the Byram River Basin Flood Risk Management Study

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

ACTION: Notice of intent.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, New York District (Corps) in partnership with the Town of Greenwich as the non-federal sponsor, is preparing an integrated Feasibility Report/Environmental Impact Statement (FR/EIS) for the proposed Byram River Basin Flood Risk Management Feasibility Study. The study is assessing the feasibility of flood risk management alternatives to be implemented within the congressionally authorized study area with a specific emphasis on the Town of Greenwich, Fairfield County, Connecticut and Port Chester, Westchester County, New York.

ADDRESSES: U.S. Army Corps of Engineers, New York District, Programs and Project Management Division, Civil Works Programs Branch, 26 Federal Plaza, Room 2127, New York, NY 10279–0090. Pertinent information about the study can be found at: *www.nan.usace.army.mil/Byram.* Send written comments and suggestions concerning the scope of issues to be evaluated within the EIS to: *byram.river@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the overall Byram River Basin Flood Risk Management Feasibility Study should be directed to Rifat Salim, Project Manager, U.S. Army Corps of Engineers, New York District, Programs and Project Management Division, Civil Works Programs Branch, 26 Federal Plaza, Room 2127, New York, NY 10279–0090; Phone: (917) 790–8215; email: *Rifat.Salim@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Background

The U.S. Army Corps of Engineers (Corps), in partnership with the Town of Greenwich as the non-Federal sponsor, is undertaking this study. The Town of Greenwich and Village of Port Chester have been subjected to repeated, severe flooding caused by overflow of the Byram River due to precipitation of high intensity, large amounts, or prolonged duration. The Byram River Basin study was authorized by a resolution of the Committee on Transportation and Infrastructure, Docket 2779, dated May 2nd, 2007.

A Feasibility Cost Sharing Agreement (FCSA) was executed on August 29, 2012 with the Town of Greenwich. The preliminary alternative analyses was completed early 2015 and identified Alternative #2a—Nonstructural Within the 10-yr Floodplain, and Alternative #5—Replacement of the Route 1 Highway Bridges, as each having a Benefit Cost Ratio over one and are being moved forward for further evaluation for eventual identification of the Tentatively Selected Plan.

2. Project Area

The project area encompasses the portion of the Byram River located from southern section of the Pemberwick neighborhood to the Rt. 1 bridges in the Town of Greenwich, Fairfield County, Connecticut and Village of Port Chester, Westchester County, New York.

Public Participation

The Corps and the Town of Greenwich are currently anticipating hosting a NEPA Scoping Meeting in November 2017. Public notices announcing the meeting date, time, location and agenda will be published in the appropriate local newspapers, the Town of Greenwich Web page and on the Corps' New York District Web page (see the **ADDRESSES** section) and will be distributed to the local stakeholders and known interested parties.

A scoping comment period of 30 days will be established from the scheduled date of the meeting to allow agencies, organizations and individuals to submit comments, questions and/or concerns regarding the Feasibility Study. Comments, concerns and information submitted to the Corps will be evaluated and considered during the development of the Draft EIS.

Lead and Cooperating Agencies

The Corps is the lead federal agency for the preparation of the FR/EIS and meeting the requirements of the National Environmental Policy Act and the NEPA Implementing Regulations of the President's Council on Environmental Quality (40 CFR 1500–1508). Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel Thomas D. Asbery, District Engineer (see **ADDRESSES**). The preparation of the FR/EIS will be coordinated with the States of New York and Connecticut, Town of Greenwich and local municipalities with discretionary authority relative to the

proposed actions. The Draft FR/EIS is currently scheduled for distribution to the public in June 2018.

Dated: November 14, 2017.

Peter M. Weppler,

Chief, Environmental Analysis Branch, Planning Division.

[FR Doc. 2017–25273 Filed 11–21–17; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of a Public Meeting for The Great Lakes and Mississippi River Interbasin Study—Brandon Road Draft Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois and Extension of Public Comment Period

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

ACTION: Public meeting and extension of public comment period.

SUMMARY: The Rock Island and Chicago Districts, U.S. Army Corps of Engineers (USACE), will host a public meeting in New Orleans, Louisiana to discuss the draft report titled The Great Lakes and Mississippi River Interbasin Study—Brandon Road Draft Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois and receive input regarding this study.

DATES: The meeting will be held on December 5, 2017, from 1:00 to 4:00 p.m. in New Orleans, Louisiana. USACE is also extending the public comment period for the original notice that published in the **Federal Register** on September 27, 2017 (82 FR 45008) until December 8, 2017.

ADDRESSES: The meeting will be held at USACE, New Orleans District, 7400 Leake Ave, New Orleans, Louisiana, 70118.

FOR FURTHER INFORMATION CONTACT: *Andrew Leichty, Program Manager, by mail:* U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building (ATTN: Leichty), P.O. Box 2004, Rock Island, IL 61204–2004, by phone: 309–794–5399; or by email: *Andrew.L.Leichty@usace.army.mil.*

SUPPLEMENTARY INFORMATION: *Web Participation:* A Facebook Live format web audio/video broadcast will be available for the meeting. Visit *http://glmris.anl.gov/brandon-rd/* for details on how to participate in these virtual meetings. Phone and web conference access is as follows: *Phone:* Toll-Free: 877–848–7030, access code 9079541, security code 1111, *Web Conference URL: https://www.webmeeting.att.com,* Meeting number 877–848–7030, Access Code 9079541.

Written comments are accepted until December 8, 2017. Written comments may be submitted in the following ways:

Mail and Hand Delivery: to U.S. Army Corps of Engineers, Chicago District, ATTN: GLMRIS-Brandon Road Comments, 231 S. LaSalle St., Suite 1500, Chicago, IL 60604. Comments must be postmarked by December 8, 2017 *GLMRIS Project Web site:* Use the web comment function found at *http://glmris.anl.gov.*

A Facebook Live participants can use the ''Live Chat'' feature. However, these comments will not be recorded in the official record.

The draft report/EIS and additional information regarding this meeting can be found at *http://glmris.anl.gov/brandon-rd/.*

Authority: This action is being undertaken pursuant to the Water Resources and Development Act of 2007, Section 3061(d), Public Law 110–114 and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.,* as amended.

Dated: November 15, 2017.

Andrew Barnes,

Assistant Chief, Programs and Project Management Division.

[FR Doc. 2017–25272 Filed 11–21–17; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

[OE Docket No 371]

Record of Decision for Issuing a Presidential Permit to Northern Pass Transmission LLC for the Northern Pass Transmission Line Project

AGENCY: Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to issue a Presidential permit to Northern Pass Transmission LLC (Northern Pass or Applicant) to construct, operate, maintain, and connect an electric transmission line across the U.S./Canada international border in northern New Hampshire. The potential environmental impacts associated with the transmission line are analyzed in the *Final Northern Pass Transmission Line Project Environmental Impact Statement* (DOE/EIS–0463). The transmission line would cross the U.S./Canada international border into Pittsburg, NH and extend approximately 192 miles to an existing substation located in Deerfield, NH.

ADDRESSES: The final Environmental Impact Statement (EIS) and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Web site at *https://energy.gov/nepa/*and the Northern Pass Transmission Line Project EIS Web site at *http://www.northernpasseis.us/.* The EIS Web site also includes a list of libraries where the final EIS is available for review. Copies of the final EIS and this ROD may be requested by contacting Mr. Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; phone 202–586–8267; email *Brian.Mills@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on the Northern Pass Transmission Line Project EIS, contact Mr. Brian Mills as indicated in the **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION:

Background

Executive Order (EO) 10485 (Sept. 3, 1953), as amended by EO 12038 (Feb. 3, 1978), delegates to DOE the authority to issue Presidential permits for the construction, operation, maintenance, or connection of electricity transmission facilities at the U.S. international borders. DOE may issue a permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense. In determining whether issuance of a permit would be in the public interest, DOE assesses the potential environmental impacts of the proposed project, the potential impact of the proposed project on electric reliability, and any other factors that DOE considers relevant to the public interest. Issuance of a Presidential permit is a Presidential action, carried out by DOE pursuant to delegated Presidential authority. Accordingly, DOE has no legal obligation to prepare an EIS when it considers a Presidential permit application, since NEPA does not apply to acts of the President. Nonetheless, DOE opts to comply with NEPA and other Federal statutes as part of its ''public interest'' review of Presidential permit applications, pursuant to DOE's long-standing Presidential permit regulations.

On October 14, 2010, Northern Pass applied to the DOE for a Presidential permit to construct, operate, maintain, and connect a high voltage direct current (HVDC) electric transmission

line with a bidirectional 1,200-megawatt (MW) transfer rating across the U.S./Canada international border. This application was amended in July 2013 and August 2015. The August 2015 amendment represents DOE's Preferred Alternative (proposed Northern Pass Project or proposed Project). It includes burial of an additional 52 miles of the transmission line over what was proposed in the original application, a minor shift in the international border crossing location, two new transition stations, a change in project size from 1,200 MW to 1,000 MW with a potential transfer capacity of up to 1,090 MW, and other design changes. The proposed Northern Pass Project would cross the international border from Canada into the U.S. in Pittsburg, NH, and extend approximately 158 miles, from the U.S. border to a new DC-to-Alternating Current (AC) converter station to be constructed in Franklin, NH. From Franklin, the 345-kV AC electric transmission line would extend for approximately 34 miles to the proposed Project terminus at an existing substation in Deerfield, NH. The proposed Northern Pass Project would be constructed and owned by Northern Pass. Portions of the proposed Project would cross the White Mountain National Forest (WMNF), requiring a Special Use Permit (SUP) from the U.S. Forest Service (USFS). The USFS issued a draft ROD in September 2017 related to the SUP. In order to construct the proposed Project, Northern Pass is required to obtain a Certificate of Site and Facility (Certificate) from the New Hampshire Site Evaluation Committee (NHSEC). The NHSEC is responsible for evaluating, issuing and determining the terms and conditions of any Certificate for an energy facility in NH. The NHSEC is in the process of evaluating the proposed Northern Pass Project.

As proposed, the Project would include both overhead and underground line along with six aboveground transition stations, one new converter station, and substation upgrades.

Consultation

Consistent with Section 7 of the Endangered Species Act, DOE has consulted with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impacts on federally listed threatened or endangered species in the area of the proposed Northern Pass Project, and DOE has prepared a Biological Assessment (BA). On April 14, 2017, DOE sent USFWS a letter requesting initiation of formal Section 7 consultation under the Endangered Species Act. DOE prepared a final BA and submitted it to USFWS on June 16, 2017. The USFWS on October 19, 2017, submitted a Biological Opinion (BO) to DOE which concluded formal consultation. In the BO, USFWS concurred with DOE's determination that the proposed Northern Pass Project ''may affect, but is not likely to adversely affect the federally threatened small whorled pogonia (*Isotria medeoloides*), Canada lynx (*Lynx canadensis*), and northern long-eared bat (*Myotis septentrionalis*); and the federally endangered dwarf wedgemussel (*Alasmidonta heterodon*) and Indiana bat (*Myotis sodalist*).'' DOE determined in the BA that the proposed Northern Pass Project ''may affect, and is likely to adversely affect the Karner blue butterfly (*Lycaeides melissa samuelis*).'' In the BO, USFWS concluded that ''the Project, as proposed, is not likely to jeopardize the continued existence of the Karner blue butterfly'' but likely will result in incidental take of some Karner blue butterfly and, therefore, included an enforceable incidental take statement. DOE is conditioning its Presidential permit to require the Applicant to comply with all requirements set forth by USFWS in the BO. The BA and the BO are available on the Northern Pass Transmission Line Project EIS Web site at *https://www.northernpasseis.us/consultations/section-7/*.

Consistent with Section 106 of the National Historic Preservation Act (NHPA), DOE consulted with the New Hampshire and Vermont State Historic Preservation Officers (SHPOs) regarding the potential adverse effects to historic properties from the proposed Northern Pass Project. This consultation is continuing in accordance with a Section 106 Programmatic Agreement (PA) executed between DOE, the New Hampshire and Vermont SHPOs, the Advisory Council on Historic Preservation, and Northern Pass. The PA is available on the Northern Pass Transmission Line Project EIS Web site at *https://www.northernpasseis.us/consultations/section106/*. DOE is conditioning its Presidential permit to require the Applicant to comply with the terms of the PA. The PA includes processes for identifying National Register of Historic Places (NRHP)-eligible historic properties, assessing effects of the proposed Northern Pass Project on historic properties, and resolving any adverse effects of the proposed Northern Pass Project on historic properties. The PA requires Northern Pass to prepare a Historic Properties Treatment Plan, which will establish specific treatment measures to avoid, minimize, and mitigate adverse effects.

NEPA Review

On February 11, 2011, DOE issued a Notice of Intent (NOI) in the **Federal Register** (76 FR 7828) to prepare an EIS for the Northern Pass Project and conduct public scoping. Seven public scoping meetings were held March 14 through 20, 2011. On September 6, 2013, DOE issued an Amended NOI (78 FR 54876) in which DOE announced its intention to modify the scope of the EIS (based on an amended application from the Applicant), to conduct additional public scoping meetings, and to end the previously indefinitely extended public scoping period. Four additional public scoping meetings were held September 23 through 26, 2013. The scoping period closed on November 5, 2013. During the entire scoping period, the DOE received 7,560 oral and written comments.

On July 31, 2015, the Environmental Protection Agency (EPA) issued a Notice of Availability (NOA) for the draft EIS in the **Federal Register** (80 FR 45652), which began a 90-day public comment period. On September 30, 2015, following receipt of the August 2015 amended application from Northern Pass, DOE issued an NOI to Prepare a Supplement to the Draft Northern Pass EIS (80 FR 58725), and extended the public comment period to December 31, 2015. EPA issued the NOA for the supplement to the draft EIS (80 FR 72719) on November 20, 2015. DOE ultimately extended the public comment period for the draft EIS and the supplement to the draft EIS through April 4, 2016 (81 FR 5995). DOE held four public hearings on the draft EIS and the supplement to the draft EIS March 7 through 11, 2016. DOE received 1,037 comments on the draft EIS and the supplement to the draft EIS. The comments raised concerns related to the following aspects of the draft EIS and supplement to the draft EIS, among others: purpose and need statement, project objectives, alternatives, visual resources, socioeconomics, historic and cultural resources and the Section 106 process, water resources, and the NEPA process. See Section 1.5.4.1 of the final EIS for additional information regarding these comments. DOE considered all comments received on the draft EIS and the supplement to the draft EIS in the preparation of the final EIS, including those received after the close of the public comment period. Comment letters and detailed responses are included in Appendix L of the final EIS. EPA issued a NOA for the final EIS on August 18, 2017 (82 FR 39424).

The DOE invited several federal and state agencies to participate in the preparation of the draft and final EIS as cooperating agencies because of their special expertise or jurisdiction by law. The USFS—WMNF, EPA—Region 1, the U.S. Army Corps of Engineers (USACE)—New England Region, and the New Hampshire Office of Energy and Planning (NHOEP) participated as cooperating agencies in the preparation of the EIS. The WMNF Forest Supervisor will use the EIS to inform its decision regarding the SUP. In September 2017, the WMNF Forest Supervisor issued a draft ROD related to the SUP.

Alternatives Considered

In the EIS, DOE analyzed the No Action Alternative, the Proposed Action, and ten additional action alternatives. Under the No Action Alternative, DOE would not issue a Presidential permit and the USFS would not issue a SUP for the proposed Project, the proposed transmission system would not be constructed, and the potential impacts from the proposed Project would not occur. Under the Proposed Action of granting the Presidential permit (DOE's Preferred Alternative, Alternative 7), the transmission line would cross the U.S./Canada international border in Pittsburg, NH and extend approximately 192 miles to an existing substation located in Deerfield, NH. The ten additional action alternatives (Alternatives 2 through 6, with variations) involve variations in route and total length, including varying lengths of overhead and underground line and are described in detail in Chapter 2 of the final EIS.

DOE's Presidential permitting authority is limited to the international border crossing; however, it is DOE's policy to analyze not only the border crossing, but also the alignment of new infrastructure required between the border crossing and connection to the existing U.S. electricity system as a ''connected action'' under NEPA. The EIS analyzed the potential environmental impacts associated with the Applicant's proposed route (Alternative 7) and ten alternative routes that were proposed by the Applicant, agencies and the public during scoping and development of the EIS.

Analysis of Potential Environmental Impacts

The EIS analyzed potential environmental impacts associated with the alternatives for each of the following resource areas: visual resources, socioeconomics, recreation, health and safety, traffic and transportation, land use, noise, historic and cultural resources, environmental justice, air quality, wildlife, vegetation, water resources, geology and soils, and cumulative impacts. Chapter 4 of the final EIS contains the analysis of the potential environmental impacts of the alternatives. Analysis of the impacts assumed the implementation of Applicant-proposed impact avoidance and minimization measures contained in Appendix H of the final EIS.

Floodplain Statement of Findings

DOE prepared this Floodplain Statement of Findings in accordance with DOE's regulations, entitled ''Compliance with Floodplain and Wetland Environmental Review Requirements'' (10 CFR part 1022). The Floodplain Statement of Findings addresses the proposed Northern Pass Project that would cross the U.S./Canada international border into Pittsburg, NH and extend approximately 192 miles to an existing substation located in Deerfield, NH. As described above and in Chapter 2 of the EIS, DOE analyzed the proposed Project as well as the No Action Alternative and ten action alternatives. Appendix A of the final EIS contains maps of the proposed Northern Pass Project, and Appendix A of the Water Resources Technical Report contains maps of the proposed Northern Pass Project, including watershed, surface water and wetlands locations. The required floodplain and wetland assessment was conducted during development and preparation of the EIS (see Sections 4.1.13, 4.2.13, 4.3.13, 4.4.13 and 4.5.13 of the final EIS and the final EIS' Water Resources Technical Report). Federal Emergency Management Agency (FEMA) data were used to determine the influence of flood zones. According to the Water Resources Technical Report, construction and operation activities (*e.g.* trenchless installation, structure construction, converter/transition substations, access roads, clearing activities, etc.) associated with the proposed Northern Pass Project would potentially affect approximately 1,449 acres of floodplains, resulting in increased erosion and sedimentation. The majority of the effected acres would be in the 500-year floodplain, rather than the 100-year floodplain. Each of the action alternatives analyzed in the FEIS would involve disturbance of floodplains; given the nature of the proposed Project and its geographic expanse, disturbance of floodplains was found to be unavoidable. However, DOE determined that the potential harm to floodplains from the proposed Project will be avoided or minimized by implementing the Applicant-Proposed Measures listed in Appendix H of the final EIS and Appendix B of the Water Resources Technical Report. These measures include: Minimizing impacts through route selection, siting and design, complying with permit requirements and EO 11988 for Floodplain Management, implementing best management practices, installing erosion and sediment controls prior to construction, and ensuring that construction within the White Mountain National Forest will be carried out consistent with the Forest Plan. The Water Resources Technical Report concluded that by complying with New Hampshire best management practices, adverse impacts to floodplains would be minimized and be indirect, localized, short-term and minor. DOE has determined that the project would comply with applicable floodplain protection standards.

Environmentally Preferable Alternative

Implementation of the No Action Alternative would not result in changes to the existing condition in the above-listed resource areas and is, therefore, the environmentally preferable alternative.

Comments Received on the Final EIS

Comments on the final EIS were received from the EPA, the Appalachian Mountain Club, the Pessamit lnnu First Nation, New Hampshire Department of Environmental Services, Hydro Quebec, the Conservation Law Foundation, and one individual. These comments may be viewed on the Northern Pass Transmission Line Project EIS Web site at *http://www.northernpasseis.us/.* DOE considered all comments received on the final EIS and concluded that those comments do not identify a need for further NEPA analysis. The Appendix to this ROD summarizes DOE's consideration of those comments.

Decision

DOE has decided to issue Presidential permit PP–371 to authorize Northern Pass to construct, operate, maintain, and connect a HVDC transmission line capable of transmitting up to 1,090 MW of power across the U.S./Canada international border in Pittsburg, NH at Latitude 45.017719 N, Longitude -71.500028 W. The permit will include conditions requiring Northern Pass to implement the impact avoidance and minimization measures identified in the final EIS, the requirements set forth by USFWS in the BO, and the terms of the PA.

Basis for Decision

DOE determined that issuance of a Presidential permit for the proposed Northern Pass Project is consistent with the public interest. The decision by DOE to grant a Presidential permit is based on consideration of the potential environmental impacts, impacts on the reliability of the U.S. electric power supply system, and the favorable recommendations of the U.S. Departments of State and Defense provided, respectively, on May 24 and June 27 of 2016.

Notwithstanding DOE's analysis of alternatives in the final EIS, DOE does not have siting or alignment authority for projects proposed in applications for Presidential permits. In this case, the siting authority is the NHSEC. DOE has evaluated the Preferred and reasonable alternatives and has determined that the Preferred Alternative meets the project objectives and is consistent with the project being reviewed by the NHSEC.

DOE determined that the proposed international electric transmission line would not have an adverse impact on the reliability of the U.S. electric power supply system. In reaching this determination, DOE considered the operation of the electrical grid with a specified maximum amount of electric power transmitted over the proposed line. DOE reviewed the reliability studies conducted by RLC Engineering for Independent System Operator (ISO) New England (ISO–NE). A summary of the study is available on the EIS Web site at *http://www.northernpasseis.us.* DOE also considered ISO–NE's interconnection standards and its restrictions on any requested transmission service to and from the proposed interconnection.

Mitigation

All practicable means to avoid or minimize environmental harm from the proposed Northern Pass Project have been, or will be, adopted. Applicant-proposed measures to avoid and minimize adverse impacts are described in Appendix H of the final EIS and Appendix B of the Water Resources Technical Report. The Applicant will be responsible for implementing these avoidance and minimization measures as well as applicable measures required through ongoing consultations and other Federal, State and local permitting processes.

Issued in Washington, DC on November 16, 2017.

Catherine Jereza,

Deputy Assistant Secretary, Transmission Permitting and Technical Assistance Division, Office of Electricity Delivery and Energy Reliability.

Appendix: Comments Received on the Final EIS

DOE received seven comment documents on the final EIS—from the Appalachian Mountain Club, the EPA, Pessamit Innu First Nation, Hydro-Quebec, New Hampshire Department of Environmental Services, the Conservation Law Foundation, and one individual. These comment documents may be viewed on the Northern Pass Transmission Line Project EIS Web site at *http://www.northernpasseis.us/.* DOE considered all comments contained in these comment documents. The comments address a variety of topics; however, many of the comments reiterated issues already raised during the comment period for the draft EIS and supplement to the draft EIS. All prior comments submitted on the draft EIS and supplement to the draft EIS and DOE responses to those comments have been published in the final EIS, Appendix L, *Comment Response Document,* and are not being revisited in the ROD.

Appalachian Mountain Club

Appalachian Mountain Club stated that ''NH DOT has determined that burial under the roadway is contrary to their policy and burial would need to take place outside of the road surface.'' DOE reviewed the NHSEC session cited by Appalachian Mountain Club but did not find a conclusion by NHDOT. Burial in the roadway and necessary authorizations was addressed in the final EIS. The final EIS explained that ''[t]he Applicant would be required to secure an authorization in order to construct the Project within any roadway corridor . . . Areas of the Project located within a NHDOT ROW would be reviewed by NHDOT and are also subject to the provisions of the NHDOT Utility Accommodation Manual.'' (Section 4.1.6.1 of final EIS.) Also, for ''portions of the Project located underground adjacent to or beneath state and federal highways, the Applicant would be required to comply with direction outlined in the NHDOT Utility Accommodation Manual. Required permits and authorizations would not be acquired through this EIS process, but rather through a separate, subsequent process'' (Section 1.7.3.2). In addition, the final EIS analyzed potential impacts not only within the roadway, but in adjacent areas. For example, for assessing potential impacts on historic and cultural resources, DOE defined a direct area of potential affects for Alternative 7 (Proposed Action/Preferred Alternative) as a ''20-foot-wide area extending away from the edge of pavement on both sides of existing roads in which portions of the Project may be buried'' (Table 3–7 of final EIS).

Environmental Protection Agency

In commenting on potential impacts to bedrock aquifers, EPA said ''the updated [Water Resources technical] report fails to capture potential impacts to bedrock aquifers,'' and referenced statements in the technical report such as ''No bedrock aquifers are within the study area.'' EPA said such statements ''do not appear to comport'' with other information in that technical report and general knowledge of New Hampshire aquifers.

In response to EPA's comment that the Water Resources Technical Report includes statements such as ''[n]o bedrock aquifers are within the study area,'' DOE clarifies that this conclusion applies to particular segments of the route alternatives, as delineated in the technical report. In total, DOE identified less than 1 acre of bedrock aquifer in the study area for all of the route alternatives assessed in the Water Resources Technical Report. For example, DOE identified approximately 0.1 acres of bedrock aquifer in the study area for Alternative 7 (DOE's Preferred Alternative) (0.1 acres in the Central section). DOE also explained in the technical report that ''once more detailed plans are in place, a coordinated effort with the NHDES, local communities, and well owners would need to occur to verify the location of nearby wells and ensure that they are protected during construction of the Project.'' The technical report describes the process for reviewing well data including that a ''GIS-based review of data supplied by NH GRANIT was completed to identify locations of private water supply wells along the existing transmission line ROW. This data layer identifies private wells established for a variety of uses, including drinking water, industrial, agricultural, and commercial, among others.''

In commenting on protection of drinking water in the study area, EPA said ''[t]he FEIS response to EPA's comments does not indicate whether the Public Drinking Water Suppliers for these communities were notified about the proximity of the project to their public supply wells. Also, there do not appear to be any applicant proposed

measures (APMs) that apply directly to groundwater or any that apply specifically to drinking water or drinking water protection areas. We recommend the DOE condition the Record of Decision (Presidential permit) to require the Applicant to avoid or minimize impacts to these resources, including specific steps for contacting well owners (both private and public), conducting water quality testing, and monitoring for impacts to well yield in areas near blasting and HDD. These steps would represent practicable means to avoid or minimize environmental harm from the project.'' The Water Resources Technical Report (Section 3) of the final EIS acknowledges the potential impacts of blasting on groundwater, including on wells. The report states that blasting ''could temporarily increase turbidity in groundwater wells and infiltration of material spills or leaks near the blast zone.'' DOE believes that the issues raised by EPA have been addressed in the mitigation measures incorporated in the final EIS. The Water Resources Technical Report (Section 3) goes on to state that ''BMPs would be implemented to prevent the contamination of groundwater and to identify private and public water supply wells in advance.'' In addition, the APMs listed in Table H–1 of Appendix H (noise), include the following measures, ''[f]or any required project blasting activities, a blasting plan will be developed that addresses, among other things, . . . pre-blast surveys, notification protocols, and safety analysis. Blasting in any sensitive areas will be coordinated with the community and addressed in the construction planning phase.'' Should the project be approved, specific standards and methods required by the New Hampshire Department of Environmental Services would be established during the subsequent state permitting process.

Regarding wetland issues, EPA commented that ''the FEIS does not analyze the viability of the hybrid alternative and additional narrative comparing the hybrid with the other alternatives would have made the EIS more valuable for future state and federal permitting. Regardless, the information provided will help focus the upcoming analysis of project design alternatives and determination of the least environmentally damaging practicable alternative by the Corps of Engineers. EPA intends to continue to work closely with the applicant and the Corps of Engineers regarding project routing, impact minimization throughout the balance of the design and permitting process for the project.'' DOE thanks EPA for its commitment to work with the applicant and the Corps regarding project routing and impact minimization.

Pessamit Innu First Nation and Hydro-Quebec

In an August 30, 2017 letter, the Pessamit Innu First Nation provided information about its past experiences with Hydro-Quebec and ongoing concerns related to Hydro-Quebec's operations including planned modifications, operational changes, Canadian environmental review and potential effects on the Pessamit Innu First Nation and its territory. Hydro-Quebec submitted a letter to DOE on October 11, 2017 in which it responded to points raised in the letter from the Pessamit Innu First Nation. DOE acknowledges the differing viewpoints of the commenters. However, the issues raised relate to impacts and processes in Canada. As DOE explained in its response to similar comments in Appendix L of the final EIS, potential impacts in Canada are beyond the scope of the NEPA analysis, and ''NEPA does not require an analysis of potential environmental impacts that occur within another sovereign nation that result from actions approved by that sovereign nation.'' As the final EIS noted, DOE does not analyze the impacts in Canada of Hydro-Québec power generation and transmission line projects because these impacts are analyzed in accordance with the sovereign laws of Canada and because DOE (nor any other U.S. federal agency) has no authority over development of the Hydro-Québec system.''

New Hampshire Department of Environmental Services

In its September 22, 2017 letter to DOE, the New Hampshire Department of Environmental Services (NHDES) provided recommended conditions that ''represent NHDES' detailed technical comments relative to the potential environmental impacts (and proposed mitigation measures) related to this project.'' NHDES attached a March 1, 2017 letter and set of conditions it sent to the NHSEC and characterized them as ''conditions . . . that are to be incorporated into the decison-making process by the NHSEC during it upcoming deliberations.'' DOE has reviewed the recommended conditions provided by NHDES. DOE notes that Appendix H (Applicant-Proposed Impact Avoidance and Minimization Measures) of the final EIS references the March 2017 NHDES conditions. Specifically, Appendix H states ''this analysis assumes that the Applicant will adhere to all stipulations defined in all permits issued by the State of New Hampshire, including those defined by the New Hampshire Department of Environmental Services in their March 2017 approval recommendation to the SEC (NHDES 2017a).''

[FR Doc. 2017–25254 Filed 11–21–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–301–000]

Ormesa LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Ormesa LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 6, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25328 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10253–032]

Pelzer Hydro Company, LLC; Consolidated Hydro Southeast, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 10253–032.

c. *Date filed:* November 30, 2015.

d. *Applicant:* Pelzer Hydro Company, LLC (Pelzer Hydro), Consolidated Hydro Southeast, LLC (Consolidated Hydro).

e. *Name of Project:* Lower Pelzer Hydroelectric Project.

f. *Location:* The existing project is located on the Saluda River near the Towns of Pelzer and Williamston, in Anderson and Greenville Counties, South Carolina. The project does not affect federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Beth E. Harris, P.E., Regional Operations Manager, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; Telephone—(864) 846–0042; Email—*beth.harris@enel.com,* OR Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810; Telephone—(978) 681–1900; Email—*kevin.webb@enel.com.*

i. *FERC Contact:* Navreet Deo, (202) 502–6304, or *navreet.deo@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–10253–032.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The Lower Pelzer Project consists of: (1) A 696-foot-long by 40-foot-high granite masonry dam, consisting of (i) a 310-foot-long spillway section topped with 4-foot-high wooden flashboards, (ii) a 40-foot-long non-overflow section with two 10-foot-wide by 6-foot-high gates, and (iii) a 236-foot-long non-overflow section; (2) an 80-acre impoundment at a normal pool elevation of 693 feet mean sea level; (3) a 110-foot-long by 14-foot-wide intake, protected by a trashrack structure with 2-inch clear bar spacing, controlling flow to the powerhouse through five, 10.5-foot-wide square gates; (4) a 110-foot-long by 68-foot-wide brick powerhouse integral with the dam, containing 5 horizontal Francis turbine generating units that total 3,300 kilowatts (kW); (5) a 600-foot-long by 110-foot-wide tailrace; (6) a 3-mile-long, 3,300-volt transmission line connecting the powerhouse to the grid via a 7.2/12.47 kilovolt transformer; and (7) appurtenant facilities.

Pelzer Hydro and Consolidated Hydro (co-licensees) operate the project in a run-of-river mode using automatic pond level control, with no storage or flood control capacity. A continuous minimum flow of 140 cubic feet per second (cfs) or inflow, whichever is less, is released into the bypassed reach. The minimum flow is achieved via a sluice gate in the non-overflow section of the dam. The project operates under an estimated average head of 40 feet, including the 4-foot-high spillway flashboards. The impoundment water surface elevation is maintained at 693 feet. River flows between 159 and 1,408 cfs are used for power generation, while flows in excess of 1,408 cfs are passed over the flashboards and spillway. Flow to the generating units is controlled by five manually operated square slide gates. The total installed capacity of the project is 3,300 kW between the five generating units. The project generates approximately 8,784 megawatt-hours annually, which are sold to a local utility.

The co-licensees propose to continue to operate and maintain the Lower Pelzer Project as is required in the existing license, and to develop canoe portage facilities. The co-licensees also propose to remove the previous three-mile-long, 3,300-volt overhead transmission line, which is no longer in use, from the project boundary under a new license. Instead, the project uses a 165-foot-long, 3,300-volt transmission line that interconnects with the grid at an applicant-owned transformer.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site 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 Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b).

Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25319 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2428–007]

Aquenergy Systems, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2428–007.

c. *Date filed:* December 30, 2015.

d. *Applicant:* Aquenergy Systems, LLC (Aquenergy).

e. *Name of Project:* Piedmont Hydroelectric Project.

f. *Location:* The existing project is located on the Saluda River in the Town of Piedmont, in Anderson and Greenville Counties, South Carolina. The project does not affect federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Beth E. Harris, P.E., Regional Operations Manager, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; Telephone—(864) 846–0042; Email—*beth.harris@enel.com,* OR Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810; Telephone—(978) 681–1900; Email—*kevin.webb@enel.com.*

i. *FERC Contact:* Navreet Deo, (202) 502–6304, or *navreet.deo@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2428–007.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The Piedmont Project consists of: (1) A 600-foot-long by 25-foot-high stone masonry dam, consisting of (i) a 200-foot-long non-overflow section, (ii) a 200-foot-long central overflow spillway topped with 16-inch-high wooden flashboards, and (iii) a 200-foot-long non-overflow spillway housing the inoperable J.P. Stevens Canal intake; (2) a 22-acre impoundment at a normal pool elevation of 774 feet mean sea level; (3) a 140-foot-long by 81-foot-wide intake canal consisting of eight gates at the head of the canal controlling flow to the powerhouse; (4) a 52-foot-long by 52-foot-wide brick masonry powerhouse protected by a trashrack structure with 2-inch clear bar spacing, located 120 feet downstream of the dam, containing one vertical Francis turbine generating unit that totals 1,000 kilowatt (kW); (5) a 180-foot-long by 38-foot-wide tailrace; (6) a 263-foot-long, 600-volt transmission line connecting the powerhouse to the non-project substation; and (7) appurtenant facilities.

Aquenergy operates the project in a run-of-river mode using automatic pond level control, with no useable storage or flood control capacity. A continuous minimum flow of 15 cubic feet per second (cfs) or inflow, whichever is less, is released into the bypassed area. The minimum flow is achieved via an 8-foot-wide by 1-foot-deep weir on the spillway crest. The project operates under an estimated average head of 26 feet, including the 16-inch-high spillway flashboards. The impoundment water surface elevation is maintained at 774 feet. River flows between 159 cfs and 535 cfs are used for power generation, while flows in excess of 535 cfs are passed over the flashboards and spillway. The total installed capacity of the project is 1,000 kW from the single generating unit. The project generates approximately 5,369 megawatt-hours annually, which are sold to a local utility.

Aquenergy proposes to continue to operate and maintain the Piedmont Project as is required in the existing license, and to develop canoe portage facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site 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 Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on

the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: November 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25318 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1585–010; ER10–1594–010; ER16–733–001; ER10–1617–010; ER16–1148–001; ER12–60–012; ER10–1632–012; ER10–1626–007; ER10–1628–010.

Applicants: Alabama Electric Marketing, LLC, California Electric Marketing, LLC, LQA, LLC, New Mexico Electric Marketing, LLC, Tenaska Energía de Mexico, S. de R. L. d, Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC.

Description: Supplement to June 28, 2016 Updated Market Power Analysis of the Tenaska Northeast MBR Sellers.

Filed Date: 11/16/17.

Accession Number: 20171116–5099.

Comments Due: 5 p.m. ET 12/7/17.

Docket Numbers: ER18–295–001.

Applicants: Louisville Gas and Electric Company.

Description: Tariff Amendment: Refiling EKPC NITSA Under Correct Record ID to be effective 10/16/2017.

Filed Date: 11/16/17.

Accession Number: 20171116–5059.

Comments Due: 5 p.m. ET 12/7/17.

Docket Numbers: ER18–302–000.

Applicants: Tampa Electric Company.

Description: § 205(d) Rate Filing: Section 205 Requirements Depreciation Rates—Polk 2 Buildout to be effective 2/1/2017.

Filed Date: 11/16/17.

Accession Number: 20171116–5060.

Comments Due: 5 p.m. ET 12/7/17.

Docket Numbers: ER18–303–000.

Applicants: South Jersey Energy ISO_2, LLC.

Description: Tariff Cancellation: Cancel market-based rate tariff to be effective 11/17/2017.

Filed Date: 11/16/17.

Accession Number: 20171116–5061.

Comments Due: 5 p.m. ET 12/7/17.

Docket Numbers: ER18–304–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: LGIA Sienna Solar Farm Project SA No. 199 to be effective 11/17/2017.

Filed Date: 11/16/17.

Accession Number: 20171116–5063.

Comments Due: 5 p.m. ET 12/7/17.

Docket Numbers: ER18–305–000.

Applicants: Bishop Hill Energy LLC.

Description: § 205(d) Rate Filing: Revised Rate Schedule to be effective 10/15/2017.

Filed Date: 11/16/17.

Accession Number: 20171116–5109.

Comments Due: 5 p.m. ET 12/7/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25325 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3297–011.

Applicants: Powerex Corp. .

Description: Notice of Change in Status and Request for Confidential Treatment of Powerex Corp.

Filed Date: 11/15/17.

Accession Number: 20171115–5236.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER11–3417–013; ER11–2292–019; ER11–3942–018; ER11–2293–019; ER10–2917–018; ER11–2294–017; ER12–2447–017; ER13–1613–011 ER10–2918–019; ER10–2920–018; ER11–3941–016; ER10–2921–018; ER10–2922–018; ER13–1346–009; ER10–2966–018; ER11–2383–013; ER10–3178–010; ER12–161–018; ER12–2068–014; ER12–645–019; ER10–2460–014; ER10–2461–015; ER12–682–015; ER10–2463–014; ER11–2201–018; ER13–1139–017; ER13–17–012; ER14–25–014; ER14–2630–010; ER12–1311–014; ER10–2466–015; ER11–4029–014; ER10–2895–018; ER14–1964–009; ER16–287–004; ER13–2143–011; ER10–3167–010; ER13–203–010; ER17–482–003.

Applicants: Alta Wind VIII, LLC, Bear Swamp Power Company LLC, BIF II Safe Harbor Holdings, LLC, BIF III Holtwood LLC, Black Bear Development Holdings, LLC, Black Bear Hydro Partners, LLC, Black Bear SO, LLC, BREG Aggregator LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US LLC, Brookfield Smoky Mountain Hydropower LLC, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Mesa Wind Power Corporation, Rumford Falls Hydro LLC, Safe Harbor Water Power Corporation, Windstar Energy, LLC, Bishop Hill Energy LLC, Blue Sky East, LLC, California Ridge Wind Energy LLC, Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, Imperial Valley Solar 1, LLC, Niagara Wind Power, LLC, Prairie Breeze Wind Energy LLC, Regulus Solar, LLC, Stetson Holdings,

LLC, Stetson Wind II, LLC, Vermont Wind, LLC.

Description: Notice of Change in Status of the Brookfield Companies and TerraForm Companies.

Filed Date: 11/15/17.

Accession Number: 20171115–5251.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER17–1657–000.

Applicants: Armstrong Power, LLC.

Description: Report Filing: Refund Report—Informational Filing (EL16–79) to be effective N/A.

Filed Date: 11/15/17.

Accession Number: 20171115–5227.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER17–1658–000.

Applicants: Calumet Energy Team, LLC.

Description: Report Filing: Refund Report—Informational Report (EL16–80–000) to be effective N/A.

Filed Date: 11/15/17.

Accession Number: 20171115–5217.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER17–1659–000.

Applicants: Northeastern Power Company.

Description: Report Filing: Refund Report—Informational Filing (EL16–81–000) to be effective N/A.

Filed Date: 11/15/17.

Accession Number: 20171115–5220.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER17–1660–000.

Applicants: Pleasants Energy, LLC.

Description: Report Filing: Refund Report—Informational Filing (EL16–82–000) to be effective N/A.

Filed Date: 11/15/17.

Accession Number: 20171115–5228.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER17–1661–000.

Applicants: Troy Energy, LLC.

Description: Report Filing: Refund Report—Informational Filing (EL16–83–000) to be effective N/A.

Filed Date: 11/15/17.

Accession Number: 20171115–5229.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER17–1663–000.

Applicants: Elwood Energy LLC.

Description: Report Filing: Refund Report—Informational Report (EL16–98–000) to be effective N/A.

Filed Date: 11/15/17.

Accession Number: 20171115–5192.

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER18–299–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4841; Queue No. AC2–136 (WMPA) to be effective 10/25/2017.

Filed Date: 11/16/17.

Accession Number: 20171116–5004.

Comments Due: 5 p.m. ET 12/7/17.

Docket Numbers: ER18–300–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Limited waiver request of Midcontinent Independent System Operator, Inc. under ER18–300.

Filed Date: 11/15/17.

Accession Number: 20171115–5240..

Comments Due: 5 p.m. ET 12/6/17.

Docket Numbers: ER18–301–000.

Applicants: Ormesa LLC.

Description: Baseline eTariff Filing: Petition for Approval of Initial Market-Based Rate Tariff to be effective 11/30/2017.

Filed Date: 11/16/17.

Accession Number: 20171116–5017.

Comments Due: 5 p.m. ET 12/7/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25326 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL18–30–000]

South Texas Electric Cooperative, Inc.; Notice of Petition for Partial Waiver

Take notice that on November 16, 2017, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, 18 CFR 292.402 (2017) South Texas Electric Cooperative, Inc. (South Texas), on behalf of itself and three of its member-distribution cooperatives, Jackson Electric Cooperative, Inc., Magic Valley Electric Cooperative, Inc. and Medina Electric Cooperative, Inc. (collectively, Member Cooperatives), submitted a request for waivers of certain obligations imposed on them by Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and Commission's regulations, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on December 7, 2017.

Dated: November 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25320 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–296–000]

Phibro Americas LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Phibro Americas LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 6, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25327 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10254–026]

Pelzer Hydro Company, LLC; Consolidated Hydro Southeast, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 10254–026.

c. *Date filed:* November 30, 2015.

d. *Applicant:* Pelzer Hydro Company, LLC (Pelzer Hydro), Consolidated Hydro Southeast, LLC (Consolidated Hydro).

e. *Name of Project:* Upper Pelzer Hydroelectric Project.

f. *Location:* The existing project is located on the Saluda River in the Town of Pelzer, in Anderson and Greenville Counties, South Carolina. The project does not affect federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Beth E. Harris, P.E., Regional Operations Manager, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; Telephone—(864) 846–0042; Email—*beth.harris@enel.com,* OR Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810; Telephone—(978) 681–1900; Email—*kevin.webb@enel.com.*

i. *FERC Contact:* Navreet Deo, (202) 502–6304, or *navreet.deo@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–10254–026.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. *The Upper Pelzer Project consists of:* (1) A 505-foot-long by 29.7-foot-high granite masonry dam, consisting of (i) a 150-foot-long non-overflow section, (ii) a 280-foot-long ungated overflow spillway topped with 4-foot-high wooden flashboards, and (iii) a 75-foot-long gated intake section containing six gates; (2) a 25-acre impoundment at a normal pool elevation of 718.7 feet mean sea level, as measured at the top of the flashboards; (3) a 260-foot-long by 52-foot-wide forebay canal channeling flow from 6 canal gates to the project's 2 powerhouses; (4) a 43-foot-long by 24-foot-wide upstream concrete powerhouse, protected by a 65-foot-long trashrack structure with 5.5-inch clear bar spacing for 38 feet of length, and 2-inch clear bar spacing for 27 feet of length, containing two vertical Francis turbine generating units that total 1,500 kW (kW); (5) a 70-foot-long by 55-foot-wide downstream powerhouse, protected by a trashrack structure with 2-inch clear bar spacing, containing one vertical Francis turbine generating unit that totals 450 kW; (6) a 95-foot-long by 74-foot-wide tailrace extending from the upstream powerhouse, and a 132-foot-long by 24-foot-wide tailrace extending from the downstream powerhouse; (7) a 65-foot-long, 3,300-volt transmission line, connecting the upper and lower powerhouses with the grid via a 7.2/12.47 kilovolt transformer; and (8) appurtenant facilities.

Pelzer Hydro and Consolidated Hydro (co-licensees) operate the project in a

run- of-river mode using automatic pond level control, with no useable storage or flood control capacity. There are no minimum flow requirements downstream of the dam. The project operates under an estimated average head of 25 feet, including the 4-foot-high spillway flashboards. The impoundment water surface elevation is maintained at 718.7 feet. River flows between 159 cubic feet per second (cfs) and 1,200 cfs are used for power generation, while flows in excess of 1,200 cfs are passed over the spillway. A single manually operated, low level outlet gate located in the unregulated spillway portion of the dam is used to drain the impoundment during maintenance activities. The total installed capacity of the project is 1,950 kW between the three generating units. The project generates approximately 6,223 megawatt-hours annually, which are sold to a local utility.

The co-licensees propose to continue to operate and maintain the Upper Pelzer Project as is required in the existing license, and to develop canoe portage facilities. The co-licensees also propose to release a continuous minimum flow of 15 cfs or inflow, whichever is less, from a new weir on the spillway crest in order to maintain aquatic habitat and water quality conditions in the 115-foot-long reach between the dam and the upstream powerhouse tailrace.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site 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 Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: November 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25317 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–409–000]

Notice of Availability of the Environmental Assessment for the Proposed Birdsboro Pipeline Project, DTE Midstream Appalachia, LLC

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Environmental Assessment (EA) of the Birdsboro Pipeline Project (Project) proposed by DTE Midstream Appalachia, LLC (DTE Midstream) in the above-referenced docket. DTE Midstream requests authorization to construct, operate, and maintain new natural gas facilities in Berks County, Pennsylvania, consisting of 13.2 miles of 12-inch-diameter pipeline, a new meter station, and appurtenant facilities.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers and U.S. Environmental Protection Agency participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law and/or have special expertise with respect to resources potentially affected by a proposal.

The proposed Birdsboro Pipeline Project includes the following facilities:

- About 13.2 miles of new, 12-inch-diameter pipeline;
- a new meter station associated facilities at the Texas Eastern Transmission Company Pipeline right-of-way and pig launcher facility; [1]
- a new pig receiver facility; and
- four mainline valve sites.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A,Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before December 15, 2017.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP17–409–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and

[1] A pig is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

Filings. An eComment is an easy method for interested persons to submit text-only comments on a Project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. 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 may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (Title 18 Code of Federal Regulations 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372), or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search, and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP17–409). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact 1–202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription, which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

[2] See the previous discussion on the methods for filing comments.

Dated: November 15, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–25234 Filed 11–21–17; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate the Receivership of 10352, Western Springs National Bank and Trust, Western Springs, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for Western Springs Bank and Trust, Western Springs, Illinois, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Western Springs Bank and Trust on April 8, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 16, 2017.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2017–25212 Filed 11–21–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of the Receivership of 10345, Habersham Bank, Clarkesville, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC and Receiver) as Receiver for Habersham Bank, Clarkesville, Georgia, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Habersham Bank on February 18, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 16, 2017.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2017–25214 Filed 11–21–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate the Receivership of 10075, Rock River Bank, Oregon, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for Rock River Bank, Oregon, Illinois, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Rock River Bank on July 2, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the

Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 17, 2017.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–25262 Filed 11–21–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate the Receivership of 10350, The Bank of Commerce, Wood Dale, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for The Bank of Commerce, Wood Dale, Illinois, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of The Bank of Commerce on March 25, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 16, 2017.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2017–25211 Filed 11–21–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent to Terminate the Receivership of 10253, Peninsula Bank, Englewood, Florida

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for Peninsula Bank, Englewood, Florida, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Peninsula Bank on June 25, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 17, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–25263 Filed 11–21–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission

ACTION: Notice and request for comments.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval the continuing information collection (extension with no changes) described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted at the addresses below on or before December 22, 2017.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Shannon Joyce, Desk Officer for Federal Maritime Commission, 725 17th Street NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV,* Fax (202) 395–5167.

and to:

Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, Telephone: (202) 523–5800, *omd@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the information collections and instructions, or copies of any comments received, may be obtained by contacting Donna Lee by phone at (202) 523–5800 or email at *omd@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Commission invites the general public and other Federal agencies to comment on proposed information collections. On August 2, 2017, the Commission published a notice and request for comments in the **Federal Register** (82 FR 35946) regarding the agency's request for continued approval from OMB for information collections as required by the Paperwork Reduction Act of 1995. The Commission received no comments on the request for extension of OMB clearance. The Commission has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (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.

Information Collections Open for Comment

Title: 46 CFR part 565—Controlled Carriers.

OMB Approval Number: 3072–0060 (Expires December 31, 2017).

Abstract: Section 9 of the Shipping Act of 1984, 46 U.S.C. 40701–40706, requires that the Commission monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor establish, maintain, or enforce unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. 46 CFR part 565 establishes the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Shipping Act of 1984. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

Frequency: The submission of notifications from carriers is not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant.

Type of Respondents: Ocean common carriers when a majority portion of the carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

Number of Annual Respondents: Based on filings over the past three years, the Commission estimates one respondent annually.

Estimated Time per Response: The estimated time for each notification is 2 hours.

Total Annual Burden: For purposes of calculating total annual burden, the Commission assumes one response annually. The Commission thus estimates the total annual burden to be 2 hours (1 response × 2 hours per response).

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–25255 Filed 11–21–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012370–001.

Title: Volkswagen Konzernlogistik GmbH & Co. OHG/Hyundai Glovis Co., Ltd. Soace Charter Agreement.

Parties: Volkswagen Konzernlogistik GmbH & Co. OHG and Hyundai Glovis Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment expands geographic scope of the agreement to include all of the U.S. and clarifies that the agreement applies to the movement of vehicles and other ro-ro cargo.

By Order of the Federal Maritime Commission.

Dated: November 17, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–25305 Filed 11–21–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the mandatory disclosure requirements associated with CFPB's Regulation DD (Truth in Savings Act) (FR DD; OMB No. 7100–0271).

DATES: Comments must be submitted on or before January 22, 2018.

ADDRESSES: You may submit comments, identified by *FR DD,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once

approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal prior to giving final approval.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Disclosure Requirements Associated with CFPB's Regulation DD (Truth in Savings Act (TISA)).

Agency form number: FR DD.

OMB control number: 7100–0271.

Frequency: Monthly.

Respondents: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Estimated number of respondents: 936.

Estimated average hours per response: Account disclosures, 1 hour; Change in terms notices, 1.5 hours; Notices prior to maturity, 1.5 hours; Periodic statement disclosure, 8 hours; and Advertising, 30 minutes.

Estimated annual burden hours: Account disclosures: 11,232 hours; Change in terms notices: 16,848 hours; Notices prior to maturity: 16,848 hours; Periodic statement disclosure: 89,856 hours; and Advertising: 5,616 hours.

General description of report: TISA was contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The purpose of TISA and its implementing regulation is to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield (APY), and other account terms. TISA requires depository institutions to disclose key terms for deposit accounts at account opening, upon request, when certain changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. TISA does not provide exemptions from compliance for small institutions.

Legal authorization and confidentiality: The Board's Legal Division has determined that section 269 of TISA specifically authorizes the CFPB ''to prescribe regulations'' to carry out the purposes and provisions of the Act, as well as to adopt model forms and clauses for common disclosures to facilitate compliance (12 U.S.C. 4308). FR DD implements this statutory provision (12 CFR part 1030). The Board's imposition of the disclosure requirements on Board-supervised institutions is authorized by Section 270 of TISA, 12 U.S.C. 4309, and the provisions of Regulation DD (12 CFR 1030.1(a), 1030.2(j)). An institution's disclosure obligations under Regulation DD are mandatory. The Board does not collect any information; therefore, no issue of confidentiality arises.

Board of Governors of the Federal Reserve System, November 17, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–25247 Filed 11–21–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–17–0743; Docket No. CDC–2017–0086]

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 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 Monitoring Breastfeeding-Related Maternity Care—US hospitals. The Maternity Practices in Infant Nutrition and Care (mPINC) survey is a census of maternity care hospitals in the United States and Territories, that CDC has administered every other year since 2007 in order to monitor and examine changes in breastfeeding-related maternity care practices over time.

DATES: CDC must receive written comments on or before January 22, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2017–0086 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, 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 Leroy A. Richardson, 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

Monitoring Breastfeeding-Related Maternity Care—US Hospitals (OMB Control No. 0920–0743, Exp. 9/30/2016)—Reinstatement with change—Division of Nutrition, Physical Activity, and Obesity (DNPAO), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Substantial evidence demonstrates the social, economic, and health benefits of breastfeeding for both the mother and infant as well as for society in general. Breastfeeding mothers have lower risks of breast and ovarian cancers and type 2 diabetes, and breastfeeding better protects infants against infections, chronic diseases like diabetes and obesity, and even childhood leukemia and sudden infant death syndrome (SIDS). However, the groups that are at higher risk for diabetes, obesity, and poor health overall persistently have the lowest breastfeeding rates.

Health professionals recommend at least 12 months of breastfeeding, and Healthy People 2020 establishes specific national breastfeeding goals. In addition to increasing overall rates, a significant public health priority in the U.S. is to reduce variation in breastfeeding rates across population subgroups. Although CDC surveillance data indicate that breastfeeding initiation rates in the United States are climbing, rates for duration and exclusivity continue to lag, and significant disparities persist between African American and white women in breastfeeding rates.

The health care system is one of the most important and effective settings to improve breastfeeding. Recognition of the hospital stay as a crucial influence in later breastfeeding outcomes led to the addition of two objectives in Healthy People 2020 to allow national monitoring of improvements in support for breastfeeding during this time. In 2007, CDC conducted the first national survey of Maternity Practices in Infant Nutrition and Care (known as the mPINC Survey) in health care facilities (hospitals and free-standing childbirth centers). CDC designed this biennial survey to provide baseline information. CDC also conducted the survey in 2009, 2011, 2013, and 2015. The survey inquired about patient education and support for breastfeeding throughout the maternity stay as well as staff training and maternity care policies.

Prior to the fielding of the 2009 iteration, OMB requested that CDC provide a report to OMB on the results of the 2007 collection. In this report, CDC provided survey results by geographic and demographic characteristics and a summary of activities that resulted from the survey. A summary of mPINC findings was also the anchor of all activities related to the CDC August 2011 Vital Signs activity, marking the first time that CDC highlighted improving hospital maternity practices as the CDC-wide public health priority. A summary of mPINC findings provided the basis of the CDC October 2015 Vital Signs report, which updated the 2011 Vital Signs report and concluded that although maternity care policies and practices supportive of breastfeeding are improving nationally; more work is needed to ensure all women receive optimal breastfeeding support during the birth hospitalization.

The 2018 and 2020 mPINC surveys will closely match those used before (2007, 2009, 2011, 2013, and 2015) in methodology and administration but CDC updated the content of the survey to reflect changes in maternity care over time. A major strength of the mPINC survey is its structure as an ongoing national census, which does not employ sampling methods. CDC uses the American Hospital Association (AHA) Annual Survey of Hospitals to identify potential participating facilities. Facilities invited to participate in the survey include hospitals that participated in previous iterations and those that received an invite but did not participate in the previous iterations, as well as those that have become eligible since the most recent mPINC survey. CDC will screen all hospitals with one or more registered maternity beds via a brief phone call to assess their eligibility, identify additional satellite locations, and identify the appropriate point of contact. The high response rates to the previous iterations of the mPINC survey (82–83% in 2007, 2009, 2011, 2013, and 2015) indicate that the methodology is appropriate and reflects high interest among the study population.

As with the initial surveys, a major goal of the 2018 and 2020 follow-up surveys is to be fully responsive to hospitals' needs for information and technical assistance. CDC will provide direct feedback to hospital respondents in a customized benchmark report of their results. CDC will use information from the mPINC surveys to identify, document, and share information related to incremental changes in practices and care processes over time at the hospital, state, and national levels. Researchers also use the data to gain a better understanding of the relationships between hospital characteristics, maternity-care practices, state level factors, and breastfeeding initiation and continuation rates.

Participation in the survey is voluntary, and participants may submit responses through a Web-based system.

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 (in hours)
Maternity Hospital	Screening Call Script Part A	1,952	1	1/60	33
Maternity Hospital	Screening Call Script Part B	1,672	1	4/60	111
Maternity Hospital	mPINC Facility Survey	1,421	1	30/60	711
Total					855

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017–25260 Filed 11–21–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0914; Docket No. CDC–2017–0098]

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 *Workplace Violence Prevention Programs in NJ Healthcare Facilities.* Through nursing home administrator interviews, CDC seeks to continue measuring compliance to the state regulations for workplace violence prevention program: Violence prevention policies, reporting systems for violent events, violence prevention committee, written violence prevention plan, violence risk assessments, post incident response and violence prevention training.

DATES: CDC must receive written comments on or before January 22, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2017–0098 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, 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 Leroy A. Richardson, 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

Workplace Violence Prevention Programs in NJ Healthcare Facilities (OMB Control Number 0920–0914, Expiration 3/31/2018)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health (NIOSH) seeks to request an extension of it already approved information collection project to complete 20 nursing home interviews.

Healthcare workers are nearly five times more likely to become victims of violence than workers from all other industries combined. While healthcare workers are not at particularly high risk for job-related homicide, nearly 60% of

all nonfatal assaults occurring in private industry are experienced in healthcare. Six states have enacted laws to reduce violence against healthcare workers by requiring workplace violence prevention programs. However, little is understood about how effective these laws are in reducing violence against healthcare workers.

The long-term goal of the proposed project is to reduce violence against healthcare workers. The objective of the proposed study is: (1) To examine nursing home compliance with the New Jersey Violence Prevention in Health Care Facilities Act, and (2) to evaluate the effectiveness of the regulations in this Act in reducing assault injuries to nursing home workers. Our central hypothesis is that nursing homes with high compliance with the regulations will have lower rates of employee violence-related injury.

Previously under this OMB Control number, NIOSH received OMB approval to evaluate the legislation at 50 hospitals and at 40 nursing homes, to conduct a nurse survey, and to conduct a home healthcare aide survey (HHCAS). NIOSH completed the data collection activities for the hospitals, the nurse survey, and the HHCAS. However, NIOSH only completed 20 out of 40 nursing home interviews.

NIOSH seeks to conduct face-to-face interviews with the Chairs of the Violence Prevention Committees in 20 nursing homes (10 in New Jersey and 10 in Virginia) who are in charge of overseeing compliance efforts. The purpose of the interviews is to measure compliance to the state regulations: Violence prevention policies, reporting systems for violent events, violence prevention committee, written violence prevention plan, violence risk assessments, post incident response and violence prevention training. A contractor will conduct the interviews.

There are no costs to respondents other than their time. The total estimated burden hours are 40.

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)
Nursing Home Administrators	Interview	20	1	1	20
Nursing Home Administrators	Abstraction form	20	1	1	20
Total		40			

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017–25261 Filed 11–21–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10123 and CMS–10124]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by December 22, 2017.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) 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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is

publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Fast Track Appeals Notices: NOMNC/DENC; *Use:* Providers shall deliver a Notice of Medicare (Provider) Non-Coverage (NOMNC) to beneficiaries, enrollees, or both beneficiaries and enrollees no later than two days prior to the end of Medicare-covered services in skilled nursing facilities, home health agencies, comprehensive outpatient rehabilitation facilities, and hospices. Beneficiaries, enrollees or both beneficiaries and enrollees will use this information to determine whether they want to appeal the service termination to their Quality Improvement Organization (QIO). If the beneficiaries, enrollees or both beneficiaries decide to appeal, the Medicare provider or health plan will send the QIO and appellant a Detailed Explanation of Non-Coverage (DENC) detailing the rationale for the termination decision. *Form Number:* CMS–10123 and CMS–10124 (OMB control number: 0938–0953); *Frequency:* Occasionally; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 28,177; *Total Annual Responses:* 6,017,832; *Total Annual Hours:* 1,111,196. (For policy questions regarding this collection contact Janet Miller at 404–562–1799.)

Dated: November 17, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–25313 Filed 11–21–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0227]

Tobacco Product Manufacturing Practice; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting public input on updated recommendations for regulations on good manufacturing practice for electronic nicotine delivery systems (ENDS) that were submitted to FDA by a group of 13 tobacco companies (tobacco companies' ENDS recommendations). FDA is providing an opportunity for interested parties to comment on the tobacco companies' ENDS recommendations.

DATES: Submit electronic or written comments on the tobacco companies' ENDS recommendations by December 22, 2017.

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 December 22, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 22, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely 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–2013–N–0227 for ''Tobacco Product Manufacturing Practice; Establishment of a Public Docket.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Matthew Brenner, Center for Tobacco

Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act) was signed into law, amending the Federal Food, Drug, and Cosmetic Act (FD&C Act) and giving FDA authority to regulate tobacco product manufacturing, distribution, and marketing. The new provisions include, among other things, the authority to issue regulations related to tobacco product manufacturing practice in order to protect the public health and to assure that tobacco products are in compliance with the FD&C Act. Specifically, section 906(e) of the FD&C Act (21 U.S.C. 387f(e)) provides that in applying manufacturing restrictions to tobacco, the Secretary shall prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology.

On May 10, 2016, FDA published a final rule entitled ''Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products'' (81 FR 28974) (the deeming rule) that became effective on August 8, 2016. Under the deeming rule, newly deemed tobacco products, including ENDS, are now subject to the provisions of the Tobacco Control Act that apply automatically to all products that meet the statutory definition of a tobacco product in section 201(rr) of the FD&C Act (21 U.S.C. 321(r)).

On January 10, 2012, industry stakeholders submitted recommendations for good manufacturing practice requirements (and a draft preamble) for tobacco products that were immediately subject to FDA's jurisdiction when the Tobacco Control Act went into effect. This January 10, 2012, letter was posted to this Docket No. FDA–2013–N–0227 on March 12, 2013, as part of a request for comments on the recommendations contained in the letter. On June 7, 2017, a group of 13 tobacco companies submitted to FDA: (1) Recommendations for good manufacturing practice requirements for ENDS and (2) an attachment letter with a meeting request (Ref. 1). The tobacco companies' ENDS recommendations are intended to supplement an earlier letter dated January 10, 2012. According to the June 7, 2017, letter, the tobacco companies' ENDS recommendations seek to account for the differences in manufacturing ENDS.

FDA is providing an opportunity for all interested parties to comment only on the tobacco companies' ENDS recommendations submitted on June 7, 2017.

II. References

The following reference has been placed on display in the Dockets Management Staff (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday and is available electronically at *https://www.regulations.gov.*

1. Proposed Good Manufacturing Practices Regulation to Account for FDA's Deeming Regulation and Request for Meeting, submitted to FDA, June 7, 2017.

Dated: November 16, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–25245 Filed 11–21–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6330]

Bone, Reproductive and Urologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Bone, Reproductive and Urologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The public meeting will be held on January 9, 2018, from 8 a.m. to 5 p.m.

ADDRESSES: College Park Marriott Hotel and Conference Center, Chesapeake Ballroom, 3501 University Blvd. East, Hyattsville, MD 20783. The conference center's telephone number is 301–985–7300. Answers to commonly asked questions about FDA Advisory Committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2017–N–6330. The docket will close on January 8, 2018. Submit either electronic or written comments on this public meeting by January 8, 2018. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 8, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of January 8, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before December 22, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–6330 for ''Bone, Reproductive and Urologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *BRUDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 206089, oral testosterone undecanoate capsules, submitted by Clarus Therapeutics, for the proposed indication of testosterone replacement in males for conditions associated with a deficiency or absence of endogenous testosterone: Primary hypogonadism (congenital or acquired) and hypogonadotropic hypogonadism (congenital or acquired).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before December 22, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 14, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 15, 2017.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–25295 Filed 11–21–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–3001]

Modified Risk Tobacco Product Applications: Applications for IQOS System With Marlboro Heatsticks, IQOS System With Marlboro Smooth Menthol Heatsticks, and IQOS System With Marlboro Fresh Menthol Heatsticks Submitted by Philip Morris Products S.A.; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for public comment on modified risk tobacco product applications (MRTPAs) submitted by Philip Morris Products S.A. for its IQOS system with Marlboro Heatsticks, IQOS system with Marlboro Smooth Menthol Heatsticks, and IQOS system with Marlboro Fresh Menthol Heatsticks.

DATES: FDA is extending the comment period on the MRTPAs made available for public comment through the notice of availability that appeared in the **Federal Register** of June 15, 2017 (82 FR 27487).

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–3001 for ''Modified Risk Tobacco Product Applications: Applications for IQOS system with Marlboro Heatsticks, IQOS system with Marlboro Smooth Menthol Heatsticks, and IQOS system with Marlboro Fresh Menthol Heatsticks submitted by Philip Morris Products S.A.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Please note that FDA intends to establish a date on which the comment period will close by publishing a notice in the **Federal Register** (see **SUPPLEMENTARY INFORMATION**).

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paul Hart, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993, 1–877–CTP–1373, *AskCTP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 15, 2017 (82 FR 27487), FDA published a notice of availability of the first batch of documents from modified risk tobacco product applications (MRTPAs) submitted by Philip Morris Products S.A. and gave the public 180 days to comment on the applications. In that notice, FDA announced that it would post the remaining MRTPA documents on a rolling basis as they were redacted in accordance with applicable laws and that it would extend the comment period if fewer than 30 days remained when the last batch of application documents was posted. In this notice, FDA is extending the period for public comment. Once all documents from the MRTPAs, including amendments, are posted, FDA intends to issue a notice in the **Federal Register** announcing when the comment period will close, which will be no earlier than 30 days from the date the last batch of application documents is posted. As stated in the **Federal Register** notice of June 15, 2017, FDA believes that this comment period is appropriate given the volume and complexity of the applications being posted.

FDA is required by section 911(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 387k(e)) to make an MRTPA available to the public (except for matters in the application that are trade secrets or otherwise confidential commercial information) and to request comments by interested persons on the information contained in the application and on the

label, labeling, and advertising accompanying the application. The determination of whether an order is appropriate under section 911(g) of the FD&C Act is based on the scientific information submitted by the applicant as well as the scientific evidence and other information that is made available to the Agency, including through public comments.

II. Electronic Access

Persons with access to the Internet may access the application documents at: *http://www.fda.gov/TobaccoProducts/Labeling/MarketingandAdvertising/ucm546281.htm.*

Dated: November 16, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–25224 Filed 11–21–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0785]

General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products.'' This guidance is intended to assist a person who plans to develop and submit an abbreviated new drug application (ANDA) to seek approval of a generic version of a solid oral opioid drug product that references an opioid drug product with abuse-deterrent properties described in its labeling. The guidance recommends studies, including comparative in vitro and pharmacokinetic (PK) studies, that a potential ANDA applicant should conduct and submit to FDA to demonstrate that a generic solid oral opioid drug product is no less abuse deterrent than its reference listed drug (RLD) with respect to all potential routes of abuse.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions)*: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–0785 for ''General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drugs; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Gail Schmerfeld, Office of Generic Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–9291, email: *gail.schmerfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''General Principles for Evaluating the

Abuse Deterrence of Generic Solid Oral Opioid Drug Products.'' Prescription opioid analgesics are an important component of modern pain management. However, abuse and misuse of these drug products have created a serious and widespread public health problem. Addressing this public health crisis is an FDA priority. One potentially important step toward the goal of creating safer opioid analgesics has been the development of opioid drug products that are formulated to deter abuse. ''Abuse-deterrent properties,'' as that term is used in the guidance to which this notice applies are those properties shown to meaningfully *deter* abuse; abuse-deterrent properties do not fully *prevent* abuse or addiction. FDA considers the development of these products a high public health priority. It is important that less costly generic versions of opioids that reference listed drugs whose labeling describes abuse-deterrent properties are available to ensure access to safe and effective analgesics for patients who need them.

If the summary in section 9.2 of the approved labeling for the RLD indicates that FDA has concluded that the RLD has properties that are expected to (or have been shown through postmarketing studies to) deter abuse, the potential ANDA applicant should evaluate its proposed generic drug to show that it is no less abuse deterrent than the RLD with respect to *all* of the potential routes of abuse. This will ensure the generic drug is no less abuse-deterrent than the RLD with respect to all potential routes of abuse and minimize the risk of shifting abuse to other, potentially more dangerous routes. This guidance describes FDA's current thinking on the studies that should be conducted by a potential ANDA applicant and submitted to FDA in an ANDA to demonstrate that a generic solid oral opioid drug product is no less abuse deterrent than its RLD with respect to all potential routes of abuse. These studies are in addition to other studies that may be needed to support ANDA approval (*e.g.,* as described in product-specific guidances).

The final guidance, like the draft guidance, focuses on the general principles for developing and evaluating the abuse deterrence of generic solid oral opioid drug products formulated to incorporate physical or chemical barriers, agonist/antagonist combinations, aversive agents, or a combination of two or more of these technologies. FDA will continue to assess the state of science and, as novel technologies develop, will address them by issuing additional guidance, as appropriate.

In the **Federal Register** of March 25, 2016, FDA announced the availability of the draft guidance for industry ''General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products'' (81 FR 16186). FDA subsequently announced in the **Federal Register** of October 6, 2016, and held on October 31–November 1, 2016, a public meeting to discuss scientific and technical issues relating to formulation development and premarket evaluation of opioid drug products with abuse-deterrent properties (81 FR 69532). This final guidance reflects our consideration of comments made in the dockets for the draft guidance (Docket No. FDA–2016–D–0785) and for the public meeting (Docket No. FDA–2016–N–2896) and comments made during the public meeting, and provides the Agency's current thinking with respect to the general principles for evaluating the abuse deterrence of generic solid oral opioid drug products.

Among other changes, the final guidance eliminates the recommendation to use a control to identify discriminatory study conditions for comparing the proposed generic opioid drug product (the test (T) product) and the RLD (reference (R) product). Instead, FDA recommends that a potential ANDA applicant conduct extraction studies to assess the particular vulnerabilities of T and R products to inform the comparison of their abuse deterrence. The final guidance also provides more detailed recommendations regarding the conduct of in vivo studies, specifically comparative PK studies of manipulated T and R products to evaluate the potential for abuse by the oral and nasal routes of administration.

Appendix 1 of the final guidance continues to describe some of the ways in which the T and R products can be physically manipulated and provides recommendations for conducting extraction studies to assess the particular vulnerabilities of the T and R products to inform the comparison of their abuse deterrence. FDA continues to recommend potential ANDA applicants follow a tier-based approach to extractability testing to efficiently compare a T product to its R product and limit the number of tests required for evaluating the abuse deterrence of the T product, but has modified some of the initial recommendations regarding solvents.

Appendix 2 provides recommendations for evaluating abuse by ingestion. In the final guidance, FDA clarifies the circumstances under which a potential applicant should conduct a comparative oral PK study. Appendices 3, 4, and 5 provide modified recommendations for evaluating abuse by injection, insufflation, and smoking, respectively.

The guidance addresses the general principles for evaluating abuse deterrence in generic solid oral opioid drug products. FDA may provide additional testing recommendations in future product-specific guidances. For example, FDA may recommend in a product-specific guidance that a potential ANDA applicant evaluate human abuse potential (for example, evaluate a study subject's willingness to take drug again) if R product contains a known aversive agent. Further, FDA will continue to assess the state of the science and, as novel technologies develop, will address them by issuing revised or additional guidance, as appropriate.

Potential ANDA applicants may pose questions regarding evaluation of abuse deterrence for a generic solid oral opioid drug product through FDA's pre-ANDA program. The goals of the pre-ANDA program are to clarify regulatory expectations for prospective applicants early in the development process, assist applicants in developing more complete submissions, promote a more efficient and effective ANDA review process, and reduce the number of review cycles required to obtain ANDA approval, particularly for complex products. FDA considers abuse-deterrent opioids to be products that fall within the definition of *complex product* as that term has been defined in the GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2018–2022, which can be found at *https://www.fda.gov/downloads/ForIndustry/UserFees/GenericDrugUserFees/UCM525234.pdf.* The pre-ANDA program provides for, among other things, submission of controlled correspondence and requests for formal meetings between FDA and applicants on complex generic drug development issues.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: November 16, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–25248 Filed 11–21–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6230]

Tenth Annual Sentinel Initiative; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Tenth Annual Sentinel Initiative Public Workshop.'' The purpose of this 2-day public workshop is to bring the stakeholder community together to discuss a variety of topics on active medical product surveillance. Attendees will leave with a deeper understanding of how to use the Sentinel System tools to address safety questions.

DATES: The public workshop will be held on February 7 and 8, 2018. Day 1 of the public workshop will be held on February 7, 2018, from 9 a.m. to 4:30 p.m. Day 2 of the public workshop will be held on February 8, 2018, from 9 a.m. to 2 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at two separate locations. On Day 1 the public workshop will be held at the Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814. On Day 2 the public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 1503 (the Great Room), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Jamila Mwidau, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 22, Rm. 4481, Silver Spring, MD 20993; 301–796–4989, *Jamila.Mwidau@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this 2-day public workshop is to bring the stakeholder community together to discuss a variety of topics on active medical product surveillance. Day 1 will be convened by the Duke-Margolis Center for Health Policy at Duke University with support by a cooperative agreement with FDA. Key discussion topics will include an update on the state of FDA's Sentinel Initiative, key safety surveillance activities, and emerging uses of the Sentinel System. In addition, panelists, representing diverse stakeholder perspectives, will provide comments on Sentinel and opportunities to expand its analytic capabilities. This workshop will also provide an opportunity for stakeholder engagement and input on Sentinel's continued modernization.

Day 2 will be a public workshop sponsored by FDA targeting researchers who are experienced in using claims data and will build upon prior public training conducted by FDA on July 10, 2017 (82 FR 19063, April 25, 2017). This second day of the workshop will address more advanced training topics, including Sentinel's inferential analytic capabilities and methods of identifying unexpected safety concerns. Attendees will leave with a deeper understanding of how to use the Sentinel System tools to address safety questions. Attendees are encouraged to review the material FDA presented on July 10, 2017, by visiting the Web site: *https://www.sentinelinitiative.org/communications/sentinel-initiative-events/public-sentinel-training-fda.*

II. Participating in the Public Workshop

Registration: To attend the public workshop, you may register for one or both days, but you must register for each day of the workshop separately. The Duke-Margolis Center for Health Policy at Duke University will manage registration for Day 1 and FDA will manage registration for Day 2.

Day 1: To attend the public workshop on Day 1, you must register before February 6, 2018, by visiting *https://healthpolicy.duke.edu/events/10th-annual-sentinel-public-workshop.* You may also register for the live webcast by visiting this Web page. There will be no onsite registration.

When registering, please provide the following information: Your name, title, company or organization (if applicable), postal address, telephone number, and email address. There is no registration fee. However, registration will be on a first-come, first-served basis because seating is limited. A 1-hour lunch break is scheduled, but food will not be provided. There are multiple restaurants within walking distance of Hyatt Regency Bethesda. If you need special accommodations due to a disability, please contact Elizabeth Murphy at the Duke-Margolis Center for Health Policy (202–621–2801, email: *elizabeth.g.murphy@duke.edu*) no later than February 6, 2018.

Streaming Webcast for Day 1: The workshop will be webcast (archived video footage will be available following the workshop at *https://healthpolicy.duke.edu/events/10th-annual-sentinel-public-workshop*). Persons interested in viewing the live webcast must register online before February 6, 2018. Early registration is recommended because webcast connections are limited. Webcast participants will be sent technical system requirements in advance of the event. Prior to joining the streaming webcast of the public workshop, it is recommended that you review these technical system requirements.

All Day 1 event materials will be available to registered attendees via email before the workshop at the Duke-Margolis Web site at *https://healthpolicy.duke.edu/events/10th-annual-sentinel-public-workshop.*

Day 2: To register to attend Day 2 of the workshop in person or virtually via webcast, you must register before February 6, 2018, by visiting: *https://www.eventbrite.com/e/february-8-2018-training-at-fda-tickets-37914164286.*

Please provide complete contact information for each attendee, including name, title, affiliation, telephone number, and email address. Registration is free and based on space availability, with priority given to early registrants. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration will be provided beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Lieutenant Commander Jamila Mwidau no later than January 24, 2018.

Streaming Webcast of the Public Workshop Day 2: The FDA training

public workshop will also be webcast at *https://collaboration.fda.gov/sentinelworkshop.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Transcripts: Please be advised that transcripts of the 2-day public workshop will not be available.

Dated: November 16, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–25251 Filed 11–21–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Rehabilitation Sciences.

Date: December 1, 2017.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology, Ethical and Population Sciences II.

Date: December 11, 2017.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gniesha Yvonne Dinwiddie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, *dinwiddiegy@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: December 13–14, 2017.

Time: 10:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@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: November 16, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–25215 Filed 11–21–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Chemo/Dietary Prevention.

Date: December 4, 2017.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6195D, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Pulmonary Diseases.

Date: December 5–6, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: December 6–7, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 16, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–25216 Filed 11–21–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Cooperative Agreement Applications and Clinical Networks II.

Date: December 8, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 1300, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 16, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–25218 Filed 11–21–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, November 30, 2017, 1:00 p.m. to November 30, 2017, 3:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 6, 2017, 82 FR 51427.

The meeting is cancelled due to the re-assignment of applications.

Dated: November 16, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–25217 Filed 11–21–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2017–0897]

International Standards Pertaining to Maintenance, Repair, and Training of Servicing Technicians for Lifeboats, Rescue Boats, Launching Appliances, and Release Gear

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The United States Coast Guard (USCG) will hold a public town hall meeting to disseminate information related to the 2020 entry into force of international standards affecting the testing and maintenance of lifeboats, rescue boats, and launching appliances, and authorization of service providers. The International Maritime Organization (IMO) in 2016 adopted amendments to the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS) which contain new requirements related to maintenance of lifesaving equipment on vessels subject to SOLAS. The purpose of the public town hall meeting is to provide an opportunity for the public to obtain information and ask questions related to these new requirements and their implementation in the United States.

DATES: The public town hall meeting will be held on December 11, 2017, from 10 a.m. to 12 p.m.

Deadline for Registration To Attend the Meeting: Attendees must pre-register. Registration, and any requests for special accommodations, must be received no later than 5:00 p.m. on December 4, 2017.

Deadline for Submission of Comments: Comments must be submitted before 5:00 p.m. on December 18, 2017.

ADDRESSES:

Meeting Location: The town hall meeting will be held at the Department of Transportation Headquarters, 1200 New Jersey Ave. SE., Washington, DC 20590; Metro: Navy Yard station. In addition, we are providing an alternative to attending the meeting in person—the public may listen to the meeting via audio conference. Information on that option is provided in section III, D of the **SUPPLEMENTAL INFORMATION** portion of this notice. Any Coast Guard materials presented at the meeting will be posted to the public docket, which is accessible at *http://www.regulations.gov* by searching for docket USCG–2017–0897.

Registration and Special Accommodations: While there is no registration fee, individuals planning to attend the public town hall meeting in person must register to attend. Register by calling or emailing the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Non-US citizens/Foreign Nationals will be required to submit name, official title, date of birth, country of citizenship, passport number, and passport expiration date no later than one (1) week prior to the meeting. Registration to attend the town hall meeting will be accepted on a first-come, first-served basis. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Written Comments: You may submit comments identified by docket number USCG–2017–0897 using the 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. If you encounter technical difficulties with comments submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. The deadline for submission of comments is 5:00 p.m. on December 18, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning IMO Resolutions MSC.402(96) and MSC.404(96) or this meeting notice, please contact Ms. Stephanie Groleau, Commandant (CG–ENG–4), phone 202–372–1381; fax 202–372–8380; email *stephanie.m.groleau@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background on 2016 SOLAS Amendments

After several casualties involving lifeboats, IMO developed guidelines for periodic servicing and maintenance of lifeboats, launching appliances and on-load release gear (MSC.1/Circ.1206/Rev.1) and accompanying guidelines

with interim recommendations on conditions for authorization of service providers (MSC.1/Circ.1277). The USCG released the Navigation and Vessel Inspection Circular (NVIC) 04–07 ''Servicing and Maintenance of lifeboats, launching appliances and on-load release gear'' to provide guidance to US flag vessels subject to SOLAS. Subsequently, the Contracting Governments to SOLAS agreed to adopt mandatory requirements for servicing and service providers through IMO Resolution MSC.402(96), implemented by amendments to SOLAS Chapter III by Resolution MSC.404(96).

These SOLAS amendments enter into force on January 1, 2020. After that date, we expect that U.S. flag vessels subject to SOLAS could be subject to detention in foreign ports if their lifeboat service records do not comply with SOLAS Chapter III as amended.

The key substantive requirements are:

- That maintenance, thorough examination, operational testing, overhaul and repair on board its ships is conducted in accordance with relevant regulations in SOLAS Chapter III.
- Administrations (*i.e.* USCG) shall ensure that the thorough examination, operational testing, repair and overhaul of equipment shall be carried out in accordance with SOLAS regulation III/20 by authorizing service providers.
- That personnel carrying out maintenance, thorough examination, operational testing overhaul and repair as described above shall be certified by an authorized service provider.

II. Public Town Hall Meeting

A. Purpose of the Meeting

The public town hall meeting is intended to provide an opportunity for the public to obtain information related to the SOLAS Chapter III amendments, and create a setting for dialogue among USCG and stakeholders to discuss implementation of these obligations in the early stages of program consideration.

Public comments may be submitted electronically in accordance with Section III of the **SUPPLEMENTARY INFORMATION**. Public comments will be used as supplement to the dialogue at the meeting.

B. Format of the Town Hall Meeting

A panel of USCG officials will make a brief presentation on the SOLAS amendments, and take questions for 30 minutes. Other USCG officials will be available for informal discussion before and after the panel.

C. Security and Building Guidelines

Because the public town hall meeting will be located on federal property, for security reasons, any persons wishing to attend this meeting must register by the date specified in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive at the Department of Transportation Headquarters Building no later than 9:30 a.m. if you are attending the public meeting.

Security measures include the following:

- Presentation of government-issued photographic identification to the security personnel.
- Passing through a metal detector and inspection of items brought into the building. All items brought to the facility are subject to inspection.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting in person. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted while in the building.

D. Audio Information

Information on the option to listen live to the meeting will be available by request. Individuals who wish to listen to the meeting via audio conference should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The required information will be provided to all requestors on December 4, 2017.

III. Public Participation and Request for Comments

We value public participation and will consider all comments and material received during the comment period. If you submit a comment, please include the docket number for this notice, indicate the specific portion of the SOLAS amendments, IMO Resolutions MSC.402(96), MSC.404(96), or related guidelines to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through *http://www.regualtions.gov.* If our 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.regulationms.gov/privacynotice.*

All public comments and supplemental information will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments or supplemental information is made available.

Dated: November 16, 2017.

J.G. Lantz,

Director, Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2017–25225 Filed 11–21–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0030; OMB No. 1660–0142]

Agency Information Collection Activities: Proposed Collection; Comment Request; Survivor Sheltering Assessment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 a Survivor Sheltering Assessment extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA collecting information regarding the housing needs of individuals and families in shelters so that services and assistance can be provided to transition them out of shelters and into temporary housing solutions, as quickly as possible.

DATES: Comments must be submitted on or before January 22, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2017–0030. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, 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 read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Leah Davis, Program Manager, Disaster Management Support Environment, Recovery Technology Programs Division, 540–686–3227. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, is the legal basis for FEMA to provide financial assistance and services to individuals who apply for disaster assistance benefits in the event of a federally-declared disaster. 44 CFR 206.110 implements the policy and procedures set forth in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5174, as amended by the Disaster Mitigation Act of 2000. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured necessary expenses and serious needs and are unable to meet such expenses or needs through other means. Individuals and households that apply for this assistance must provide information detailing their losses and need.

FEMA requires the ability to collect information regarding the housing needs of survivors in shelters to provide services and assistance to transition them out of shelters and into temporary housing solutions as quickly as possible. Survivor-specific data collected in the shelters would be compared to survivor registration data to determine:

- Has the survivor in the shelter registered for FEMA assistance?
- If registered, what is the status of the survivor's registration? Do they have resources such as Transitional Sheltering Assistance (TSA) eligibility or financial rental assistance, available to them?
- If registered and not eligible for FEMA assistance, is there casework that could be performed to find eligibility?
- If not registered, information would be provided to the Joint Field Office (JFO) to have a registration strike team travel to the shelter and register the survivor.

Aggregated reports resulting from the individualized data collection will support JFO planning activities for shelter depopulation to ensure that survivors are transitioned as quickly as possible to housing solutions that best meet their need.

Collection of Information

Title: Survivor Sheltering Assessment.

Type of Information Collection: Currently approved information collection with change.

OMB Number: OMB No. 1660–0142.

FEMA Form(s): FEMA Form 09–0–42, Survivor Sheltering Assessment.

Abstract: When a Presidential federally declared disaster or emergency occurs, impacted survivors often find themselves temporarily housed in shelters until they are able to return to their homes or find other housing solutions while they recovery. A FEMA employee will interview individual survivors located in shelters regarding the registration status and housing situation using an electronic copy of FEMA Form 009–0–42 Survivor Sheltering Assessment to record the information in the Disaster Management Support Environment Cloud Environment (DMSE CE) database. The purpose of this survey is to help FEMA understand how best it can support survivors as they transition out of temporary shelters. No information given will be used to determine eligibility for assistance. Eligibility for assistance will only be determined through the separate registration process.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 31,200.

Estimated Number of Responses: 31,200.

Estimated Total Annual Burden Hours: 5,201.

Estimated Total Annual Respondent Cost: $181,203.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $273,356.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (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.

Dated: November 15, 2017.

Tammi Hines,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–25315 Filed 11–21–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1760]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in

accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 2, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case no.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community no.
Arizona:						
Maricopa	City of Avondale (17–09–1266P).	The Honorable Kenn Weise, Mayor, City of Avondale, 11465 West Civic Center Drive, Avondale, AZ 85323.	Development & Engineering Services Department, 11465 West Civic Center Drive, Avondale, AZ 85323.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2018	040038
Maricopa	City of Scottsdale (17–09–0349P).	The Honorable W.J. ''Jim'' Lane, Mayor, City of Scottsdale, City Hall, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2018	045012
Maricopa	Town of Paradise Valley (17–09–0349P).	The Honorable Michael Collins, Mayor, Town of Paradise Valley, 6401 East Lincoln Drive, Paradise Valley, AZ 85253.	Town Hall, 6401 East Lincoln Drive, Paradise Valley, AZ 85253.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2018	040049
Maricopa	Unincorporated Areas of Maricopa County (17–09–1266P).	The Honorable Denny Barney, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2018	040037
California:						
Los Angeles ..	City of Calabasas (17–09–0821P).	The Honorable Mary Sue Maurer, Mayor, City of Calabasas, 100 Civic Center Way, Calabasas, CA 91302.	City Hall, 100 Civic Center Way, Calabasas, CA 91302.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 5, 2018	060749

State and county	Location and case no.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community no.
Napa	Unincorporated Areas of Napa County (17–09–0456P).	The Honorable Belia Ramos, Chair, Board of Supervisors, Napa County, 1195 3rd Street, Suite 310, Napa, CA 94559.	Napa County Public Works Department, 1195 3rd Street, Suite 201, Napa, CA 94559.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 9, 2018	060205
Riverside	City of Corona (17–09–1498P).	The Honorable Dick Haley, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, CA 92882.	City Hall, 400 South Vicentia Avenue, Corona, CA 92882.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 1, 2018	060250
Illinois: Madison	City of Wood River (17–05–1811P).	The Honorable Cheryl Maguire, Mayor, City of Wood River, 111 North Wood River Avenue, Wood River, IL 62095.	City Hall, 111 North Wood River Avenue, Wood River, IL 62095.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 9, 2018	170451
Iowa: Polk	Unincorporated Areas of Polk County (17–07–0912P).	Councilman Robert Brownell Counselor, Polk County, District 1, Polk County Administration Building, 111 Court Avenue, Suite 300, Des Moines, IA 50309.	Polk County Planning Division, 5885 Northeast 14th Street, Des Moines, IA 50313.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 16, 2018	190901
Minnesota: Stearns	City of Melrose (17–05–3040P).	The Honorable Joe Finken, Mayor, City of Melrose, 225 1st Street Northeast, Melrose, MN 56352.	Administration Office, 225 East 1st Street Northeast, Melrose, MN 56352.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 18, 2018	270450
Missouri: St. Charles	City of Saint Peters (17–07–0905P).	The Honorable Len Pagano, Mayor, City of Saint Peters, 1 Saint Peters Centre Boulevard, St. Peters, MO 63376.	City Hall, 1 Saint Peters Centre Boulevard, Saint Peters, MO 63376.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 18, 2018	290319
Wisconsin: Milwaukee	Village of Greendale (17–05–5076P).	The Honorable James Birmingham, President, Village of Greendale, 6500 Northway Street, Greendale, WI 53129.	Village Hall 6500 Northway Street, Greendale, WI 53129.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 19, 2018	550276

[FR Doc. 2017–25316 Filed 11–21–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Nos. FWS–HQ–ES–2017–0074 and 170918907–7907–01; FF09E41000 178 FXES111609C0000]

Candidate Conservation Agreements With Assurances Policy

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), Commerce.

ACTION: Policy review; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services when referring to both, and Service when referring to an action taken by one agency), announce the intention to review and potentially revise the Candidate Conservation Agreements with Assurances policy under the Endangered Species Act of 1973, as amended. In a separate document published in today's **Federal Register**, the U.S. Fish and Wildlife Service announces the intention to review and potentially revise its regulations regarding Candidate Conservation Agreements with Assurances to make them consistent with any changes to the policy.

DATES: We will accept comments that we receive on or before January 22, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter docket number FWS–HQ–ES–2017–0074. Then, click on the Search button. On the resulting page, you may enter a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct document before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2017–0074; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike; MS: BPHC; Falls Church, VA 22041.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information, for additional information).

FOR FURTHER INFORMATION CONTACT: Jeff Newman, Chief, Division of Recovery and Restoration, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171); or Angela Somma, Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (telephone 301–427–8403, facsimile 301–713–0376). Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are charged with implementing the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA or Act); among the purposes of the ESA are to provide a means to conserve the ecosystems upon which species listed as endangered or threatened depend and a program for listed species conservation. Through its Candidate Conservation program, one of the FWS's goals is to encourage the public to voluntarily develop and implement conservation agreements for declining species prior to them being listed under the ESA. The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. The Services put in place a voluntary conservation program to provide incentives for non-Federal property owners to develop and implement conservation agreements for unlisted species: Candidate Conservation Agreements with Assurances (CCAAs). The policy for this type of agreement was finalized on June 17, 1999 (64 FR 32726), along with implementing regulations for FWS in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706). The Services finalized a revision of the CCAA policy on December 27, 2016 (81 FR 95164). The FWS revised the CCAA regulations in 2004 (69 FR 24084; May 3, 2004), to make them easier to understand and implement by, among other things, defining ''property owner'' and clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take. On December 27, 2016 (81 FR 95053), the FWS again revised the CCAA regulations to make the regulations consistent with the 2016 revisions to the policy.

To participate in a CCAA, non-Federal property owners agree to implement on their land the CCAA's specific conservation measures that reduce or eliminate threats to the species that are covered under the agreement. An ESA section 10(a)(1)(A) enhancement-of-survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner's agreed-upon conservation measures and routine property-management actions (*e.g.,* agricultural, ranching, or forestry activities) result in take of the covered species, if it is listed. Property owners receive assurances that they will not be required to undertake any other conservation measures than those agreed to, even if new information indicates that additional or revised conservation measures are needed for the species, and they will not be subject to additional resource use or land-use restrictions.

Under the 1999 policy, to approve a CCAA we had to ''determine that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.'' This language had led some property owners to believe that the Services expected each individual CCAA to provide enough conservation benefits to the species to remove any need to list the species. The confusion created by the hypothetical concept of conservation measures that need to be implemented on ''other necessary properties'' lead us to revise the CCAA standard to require a net conservation benefit to the covered species, specifically on the property to be enrolled, and eliminated references to ''other necessary properties.'' Although the policy states that this revision does not increase the conservation standard (but rather makes it easier to understand how we determine our standard), we are aware there has been some concern that this change is considered by some members of the public to be a higher standard while others considered it to be a lower standard than the previous standard. The Services are committed to strengthening the delivery of our voluntary conservation tools, such as CCAAs, by making it easier to work with us on conservation efforts, thus we are soliciting public review and comment on whether to revise the 2016 CCAA policy (and accompanying regulation).

Request for Information

During the comment period (see **DATES**), we will accept written comments and information on our 2016 CCAA policy (81 FR 95164; December 27, 2016). You may submit your comments and materials by one of the methods listed in **ADDRESSES**. 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—will be posted on *http://www.regulations.gov.* 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. All comments and recommendations, including names and addresses, will become part of the record for this review.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 4, 2017.

Gregory J. Sheehan,

Principal Deputy Director, U.S. Fish and Wildlife Service.

Dated: October 4, 2017.

Samuel D. Rauch III,

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

[FR Doc. 2017–25267 Filed 11–21–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX14EB00A181100; OMB Control Number 1028–0101]

Agency Information Collection Activities: The William T. Pecora Award; Application and Nomination Process

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the USGS is proposing to renew an information collection (IC).

DATES: Interested persons are invited to submit comments on or before January 22, 2018.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192 (mail); or *gs-help_infocollections@usgs.gov* (email). Please reference ''Information Collection 1028–0101, Pecora Award'' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Thomas Holm, USGS, EROS Center, 47914 252nd Street, Sioux Falls, SD 57198 (mail), by telephone (605)–594–6127, or *holm@usgs.gov* (email).

SUPPLEMENTARY INFORMATION: We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information.

This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed IC that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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.

Abstract: The William T. Pecora Award is presented annually to individuals or teams using satellite or aerial remote sensing that make outstanding contributions toward understanding the Earth (land, oceans and air), educating the next generation of scientists, informing decision makers or supporting natural or human-induced disaster response. The award is sponsored jointly by the Department of the Interior (DOI) and the National Aeronautics and Space Administration (NASA).

The award was established in 1974 to honor the memory of Dr. William T. Pecora, former Director of the USGS and Under Secretary, Department of the Interior. Dr. Pecora was a motivating force behind the establishment of a program for civil remote sensing of the Earth from space. His early vision and support helped establish what we know today as the Landsat satellite program. The purpose of the award is to recognize individuals or groups working in the field of remote sensing of the earth. National and international nominations are accepted from the public and private sector individuals, teams, organizations, and professional societies.

Nomination packages include three sections: (A) Cover Sheet, (B) Summary Statement, and (C) Supplemental Materials. The cover sheet includes professional contact information. The Summary Statement is limited to two pages and describes the nominee's achievements in the scientific and technical remote sensing community, contributions leading to successful practical applications of remote sensing, and/or major breakthroughs in remote sensing science or technology. Nominations may include up to 10 pages of supplemental information such as resume, publications list, and/or letters of endorsement.

Title: The Pecora Award; Application and Nomination Process

OMB Control Number: 1028–0101.

Form Number: NA.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; Businesses and other academic and non-profit institutions; State, local and tribal governments.

Respondent's Obligation: None. Participation is voluntary.

Frequency of Collection: Annually.

Estimated Total Number of Annual Responses: 10–15.

Estimated Time per Response: 6 hours.

Estimated Annual Burden Hours: 90.

Total Estimated Annual Non-hour Burden Cost: There are no ''non-hour cost'' burdens associated with this IC.

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

The authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Frank Kelly,

Director, Earth Resources Observation and Science Center, U.S. Geological Survey.

[FR Doc. 2017–25314 Filed 11–21–17; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560 L58530000 EU0000 241A; 14–08807; MO#4500109372; TAS: 17X]

Notice of Realty Action: Competitive Sale of 40 Parcels of Public Land in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer 40 parcels of public land totaling 754.78 acres in the Las Vegas Valley by competitive sale, sealed-bid and oral auction, at not less than the appraised fair market values (FMV) pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended. The proposed sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM land sale regulations. The BLM has also completed a Determination of National Environmental Policy Act Adequacy (DNA).

DATES: Interested parties may submit written comments regarding the proposed sale until January 8, 2018. The proposed sale is to occur by sealed bid and oral public auction on January 24, 2018, at 10 a.m., Pacific Time. The FMV for the parcels, the period to submit sealed-bids, and the sale date will be announced in local and online media at least 30 days prior to the sale. The BLM will start accepting sealed bids beginning on January 8, 2018. Sealed bids must be received by the BLM, Las Vegas Field Office (LVFO) by no later than 4:30 p.m. Pacific Time on January 19, 2018. The BLM will open the sealed bids on the day of the sale just prior to the oral bidding.

ADDRESSES: The proposed sale will occur at the City of Henderson Council Chambers, 240 Water Street, Henderson, Nevada 89009. Mail written comments and submit sealed bids to the BLM Las Vegas Field Office, Assistant Field Manager, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Joe Fields, Realty Specialist, BLM Las Vegas Field Office at email: *jfields@blm.gov,* or telephone: 702–515–5194. 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, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. General information on previous BLM public land sales go to: *https://www.blm.gov/snplma.*

SUPPLEMENTARY INFORMATION: The BLM proposes to offer 40 parcels of public land within the Clark County jurisdiction. Twenty-eight of the parcels are located in the northwest part of the valley, near Highway 95 and Interstate 215. Nine parcels are located in the southwest part of the valley, south of

Interstate 215 and west of Interstate 15. Two parcels are located in the northeast part of the valley, west of Interstate 15 and south of Interstate 215. One parcel is located on the north side of Interstate 215 and east of Interstate 15.

The subject public lands are legally described as:

Mount Diablo Meridian, Nevada

N–95251, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, NW¼NW¼NE¼.
N–95252, 10.00 acres
T. 19 S., R. 60 E.,
Sec. 31, SW¼NW¼NE¼.
N–95253, 10.00 acres
T. 19 S., R. 60 E.,
Sec. 31, SE¼NW¼NE¼.
N–95254, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, SW¼NE¼NE¼.
N–95255, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, NW¼NE¼NE¼.
N–95256, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, NE¼NE¼NE¼.
N–95257, 5.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, W½SE¼NE¼NE¼.
N–93589, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, NW¼NE¼SE¼.
N–93590, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 32, NE¼NE¼NW¼.
N–95260, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 32, NW¼NE¼NW¼.
N–95261, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 32, SW¼NE¼NW¼.
N–95263, 5.00 acres:
T. 19 S., R. 59 E.,
Sec. 25, W½SW¼NE¼SE¼.
N–95264, 5.00 acres:
T. 19 S., R. 59 E.,
Sec. 25, W½NW¼SE¼SE¼.
N–95265, 5.00 acres:
T. 19 S., R. 59 E.,
Sec. 25, W½SW¼SE¼SE¼.
N–79508, 27.50 acres:
T. 20 S., R. 60 E.,
Sec. 6, W½NW¼NW¼SE¼, W½SW¼NW¼SE¼, SE¼NE¼SW¼, W½NE¼SE¼SW¼, and SE¼NW¼SE¼SW¼.
N–95267, 20.00 acres:
T. 20 S., R. 60 E.,
Sec. 6, W½NE¼NE SE¼NE¼SE¼, and W½NE¼SE¼SE¼.
N–95268, 3.75 acres:
T. 22 S., R. 60 E.,
Sec. 13, SE¼SE¼NW¼SW¼, and E½SW¼SE¼NW¼SW¼.
N–95269, 2.50 acres:
T. 22 S., R. 60 E.,
Sec. 23, N½NE¼NW¼SE¼NW¼, and N½NW¼NW¼SE¼NW¼.
N–95270, 15.00 acres:
T. 22 S., R. 60 E.,
Sec. 30, SE¼SE¼NE¼, and E½SW¼SE¼NE¼.
N–95271, 23.75 acres:
T. 22 S., R. 60 E.,
Sec. 30, W½SW¼SE¼NE¼, S½NE¼NE¼SW¼NE¼, S½NW¼NE¼SW¼NE¼, S½NE¼SW¼NE¼, N½SE¼SW¼NE¼, SW¼SE¼SW¼NE¼, SE¼NW¼SW¼NE¼, and E½NE¼SW¼SW¼NE¼.
N–95272, 5.00 acres:
T. 22 S., R. 61 E.,
Sec. 24, S½SE¼NW¼NW¼.
N–92858, 1.25 acres:
T. 22 S., R. 61 E.,
Sec. 30, E½NE¼NE¼NE¼NE¼.
N–95274, 2.50 acres:
T. 22 S., R. 61 E.,
Sec. 30, SW¼NW¼NW¼SE¼.
N–92861, 2.50 acres:
T. 22 S., R. 61 E.,
Sec. 30, SW¼NE¼NW¼SE¼.
N–94212, 2.50 acres:
T. 22 S., R. 61 E.,
Sec. 30, SW¼SE¼NW¼SE¼.
N–95277, 5.00 acres:
T. 23 S., R. 61 E.,
Sec. 5, N½SE¼SW¼NE¼.
N–93587, 10.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, SW¼SW¼NE¼.
N–91842, 17.50 acres:
T. 20 S., R. 60 E.,
Sec. 6, NW¼SW¼SE¼, W½NE¼SW¼SE¼, and NE¼NE¼SW¼SE¼.
N–95279, 120.00 acres:
T. 19 S., R. 59 E.,
Sec. 36, E½SE¼NE¼NW¼, W½NE¼NW¼NE¼, SW¼NW¼NE¼, E¼NW¼NE¼, W½NW¼NE¼NE¼, E½NE¼NE¼NE¼, W½SW¼NE¼NE¼,E½ SE¼NE¼NE¼, NW¼SW¼NE¼, NE¼SW¼NE¼, SE¼SW¼NE¼, and SE¼NE¼.
N–95280, 10.00 acres:
T. 19 S., R. 59 E.,
Sec. 25, NE¼SE¼SW¼.
N–95281, 40.00 acres:
T. 19 S., R. 60 E.,
Sec. 31, NE¼NW¼SW¼, N½NE¼SW¼, E½SE¼NE¼SW¼, and E½SW¼NE¼SW¼.
N–95282, 5.00 acres:
T. 20 S., R. 60 E.,
Sec. 28, E½NW¼SW¼SE¼.
N–95283, 10.00 acres:
T. 20 S., R. 60 E.,
Sec. 28, NE¼SW¼SE¼.
N–95284, 5.00 acres:
T. 19 S., R. 59 E.,
Sec. 1, W½NW¼SW¼SW¼.
N–84158, 5.00 acres:
T. 19 S., R. 59 E.,
Sec. 1, E½SE¼SW¼SE¼.
N–95286, 5.00 acres:
T.19 S., R. 59 E.,
Sec. 1, E½SE¼SE¼SE¼.
N–95287, 5.00 acres:
T. 19 S., R. 59 E.,
Sec. 25, W½SW¼SW¼SW¼.
N–95288, 5.00 acres:
T. 19 S., R. 59 E.,
Sec. 36, W½NW¼NW¼NW¼.
N–95289, 188.88 acres:
T. 19 S., R 61 E.,
Sec. 24, lots 5, 6, 10, 13, 14, 15, 16, and 17 and that portion of lots 3 and 4 lying south of the southerly right-of-way line of BLM Grant N–61323.
N–95290, 97.16 acres:
T. 19 S., R. 62 E.,
Sec. 20, that portion of the N½ lying south of the southerly right-of-way line of BLM Grant N–61323.
The areas described contains 754.78 acres in Clark County.

A sales matrix is available on the BLM Web site at: *https://www.blm.gov/snplma.* The sales matrix provides information specific to each sale parcel, such as the legal description, physical location, encumbrances, acreage, and FMV. The FMV for each parcel will be available in the sales matrix as soon as approved by the BLM and no later than 30 days prior to the sale.

This proposed competitive sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP) and the decision LD–1, approved by the Record of Decision (ROD) on October 5, 1998, and complies with Section 203 of FLPMA. The proposed sale parcels were analyzed in the Las Vegas Valley Disposal Boundary Environmental Impact Statement (EIS) and ROD issued on December 23, 2004. A parcel-specific DNA, document number DOI–BLM–NV–S010–2017–0092–DNA, was prepared in connection with this Notice of Realty Action.

Submit comments on this sale notice to the address in the **ADDRESSES** section. 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 any 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. The BLM will also publish this Notice once a week for three consecutive weeks in the *Las Vegas Review-Journal.*

Sale procedures: Registration for oral bidding will begin at 8 a.m. Pacific Time and will end at 10 a.m. Pacific Time at the City of Henderson Council Chambers, 240 Water Street, Henderson, Nevada 89009, on the day of the sale, January 24, 2018. There will be no prior registration before the sale date. To participate in the competitive sale, all registered bidders must submit a bid guarantee deposit in the amount of $10,000 by certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior—Bureau of Land Management on the day of the sale or submit the bid guarantee deposit along with the sealed bids. The sale will be

conducted using both sealed and oral bids. In order to determine the high bids among the qualified bids received, sealed bids will be opened and recorded on the day of the sale. Sealed bids above the FMV will set the starting point for oral bidding on a parcel. Parcels that receive no qualified sealed bids will begin at the established FMV. Bidders who participate in and attend the oral auction on the day of the sale are not required to submit a sealed bid, but may choose to do so.

Sealed-bid envelopes must be clearly marked on the lower front left corner with the parcel number and name of the sale, for example: ''N–XXXXX, 40-parcel SNPLMA Winter Sale 2018.'' If multiple sealed bids are submitted, only the envelope that contains the bid guarantee needs to be noted with ''bid guarantee.'' Sealed bids must include an amount not less than 20 percent of the total bid amount and the $10,000 bid guarantee noted above by certified check, postal money order, bank draft, or cashier's check made payable to the ''Department of the Interior—Bureau of Land Management.'' The bid guarantee and bid deposit may be combined into one form of deposit; the bidder must specify the amounts of the bid deposit and the bid guarantee. If multiple bids are received, the first sealed bid of the group must include the $10,000 bid guarantee with the same bidder name. The BLM will not accept personal or company checks. The sealed bid envelope *must* contain the 20 percent bid deposit, bid guarantee, and a completed and signed ''Certificate of Eligibility'' form stating the name, mailing address, and telephone number of the entity or person submitting the bid. Certificate of Eligibility and registration forms are available at the BLM LVFO at the address listed in the **ADDRESSES** section and on the BLM Web site at: *https://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.* Pursuant to 43 CFR 2711.3–1(c), if two or more sealed bid envelopes containing valid bids of the same amount are received, oral bidding will start at the sealed bid amount. If there are no oral bids on the parcel, the authorized officer will determine the winning bidder. Bids for less than the federally approved FMV will not be qualified. The highest qualifying bid for any parcel will be declared the high bid. The apparent high bidder must submit a deposit of not less than 20 percent of the successful bid by 3 p.m. Pacific Time on the day of the sale in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Funds must be delivered by no later than 3 p.m. Pacific Time on the day of the sale to the BLM Collection Officers at the City of Henderson Council Chambers, 240 Water Street, Henderson, Nevada 89009. Funds will not be accepted at the BLM-Las Vegas Field Office location. The BLM will send the successful bidder(s) a high-bidder letter with detailed information for full payment.

All funds submitted with unsuccessful bids will be returned to the bidders or their authorized representative upon presentation of acceptable photo identification at the BLM Las Vegas Field Office or by certified mail. The apparent high bidder may choose to apply the bid guarantee toward the required deposit. Failure to submit the deposit following the close of the sale under 43 CFR 2711.3–1(d) will result in forfeiture of the bid guarantee. If the successful bidder offers to purchase more than one parcel and fails to submit the 20 percent bid deposit resulting in default on any single parcel following the sale, the BLM will retain the $10,000 bid guarantee, and may cancel the sale of all the parcels to that bidder. If a high bidder is unable to consummate the transaction for any reason, the BLM may offer the parcel to the second highest bidder. If there are no acceptable bids, a parcel may remain available for sale at a future date in accordance with competitive sale procedures without further legal notice.

Federal law requires that bidders must be: (1) A citizen of the United States who are 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) A State, State instrumentality, or political subdivision authorized to hold property; or (4) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of Nevada.

Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. Failure to submit the above documents to the BLM within 30 days from receipt of the high-bidder letter will result in cancellation of the sale and forfeiture of the bid deposit. Citizenship documents and Articles of Incorporation (as applicable) must be provided to the BLM Las Vegas Field Office for each sale. The successful bidder is allowed 180 days from the date of the sale to submit the remainder of the full purchase price.

According to SNPLMA, as amended, section 4 (c) of Public Law 105–263, lands identified within the Las Vegas Valley Disposal Boundary are withdrawn from location and entry under the mining laws, and from operation under the mineral leasing and geothermal leasing laws until such times as the Secretary terminates the withdrawal or the lands are patented. Any subsequent applications will not be accepted, will not be considered as filed, and will be returned to the applicant. The segregative effect of this Notice terminates upon issuances of a patent or other document of conveyance to such lands, publication in the **Federal Register** of a termination of the segregative effect, or two years after the date of this publication, whichever occurs first. The segregation period may not exceed two years unless extended by the BLM State Director, Nevada, in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Terms and Conditions: All minerals for the sale parcels will be reserved to the United States. The patents, when issued, will contain a mineral reservation to the United States for all minerals. To clarify a mineral reservation as it relates to mineral materials, such as sand and gravel, interested parties may refer to 43 CFR 3601.71(b). The regulation provides that the owner of the surface estate of lands with reserved Federal minerals may ''use a minimal amount of mineral materials for . . . personal use'' within the boundaries of the surface estate without a sales contract or permit. Further, the regulation provides that all other use, absent statutory or other express authority, requires a sales contract or permit. We refer interested parties to the explanation of this regulatory language in the preamble to the final rule published in the **Federal Register** on November 23, 2001, (66 FR 58891), which stated that minimal use ''would not include large-scale use of mineral materials, even within the boundaries of the surface estate.'' Further explanation is contained in BLM Instruction Memorandum No. 2014- 085 (April 23, 2014), available on BLM's Web site at *https://www.blm.gov/policy/woim-2014-085.*

The parcels are subject to limitations prescribed by law and regulation, and certain encumbrances in favor of third parties. Prior to patent issuance, a holder of any right-of-way (ROW) within the sale parcels will have the opportunity to amend the ROW for conversion to a new term, including perpetuity, if applicable, or conversion to an easement. The BLM will notify valid existing ROW holders of record of their ability to convert their compliant ROWs to perpetual ROWs or easements. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each

valid holder may apply for the conversion of their current authorization.

The following terms and conditions will appear on the conveyance documents for the sale parcels:

1. All minerals deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcels are subject to valid existing rights;

4. The parcels are subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans; and

5. An appropriate indemnification clause protecting the United States from claims arising out of the lessees/patentee's use, occupancy, or occupations on the leased/patented lands.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended, notice is hereby given that the lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of a parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

Designation of the escrow agent will be through mutual agreement between the BLM and the prospective patentee, and any costs associated with escrow will be borne by the prospective patentee, unless the BLM authorized officer approves other satisfactory arrangements in advance.

The BLM Las Vegas Field Office must receive the request for escrow instructions prior to 30 days before the prospective patentee has scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the BLM Las Vegas Field Office 30 days from the date on the high-bidder letter by 4:30 p.m. Pacific Time. There are no exceptions. To submit a name change, the apparent high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM Las Vegas Field Office.

The remainder of the full bid price for the parcel must be received no later than 4:30 p.m. Pacific Time, within 180 days following the day of the sale. Payment must be submitted in the form of a certified check, postal money order, bank draft, cashier's check, or made available by electronic fund transfer made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management'' to the BLM Las Vegas Field Office. The BLM will not accept personal or company checks.

Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. Failure to pay the full bid price within 180 days of the sale date will disqualify the high bidder and forfeit the entire 20 percent bid deposit to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM must receive the balance of the full bid price within 180 days after the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of such an exchange is the bidder's responsibility. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), within 30 days the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale if the BLM authorized officer determines consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Upon publication of this Notice and until completion of this sale, the BLM will no longer accept land use applications affecting the parcel identified for sale. The parcel may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Information concerning the sale, encumbrances of record, appraisals, reservations, procedures and conditions, CERCLA, and other environmental documents that may appear in the BLM public files for the sale parcels, are available for review during business hours, 8 a.m. to 4:30 p.m. Pacific Time, Monday through Friday, at the BLM Las Vegas Field Office, except during Federal holidays.

In order to determine the FMV through appraisal, certain extraordinary assumptions and hypothetical conditions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government.

It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations, and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It is the responsibility of the buyer to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should make themselves aware of any Federal or State law or regulation that may affect the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. The BLM Nevada State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in response to such comments, will review any comments regarding the sale.

In the absence of any comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2

Vanessa L. Hice,

Assistant Field Manager, Division of Lands.

[FR Doc. 2017–25264 Filed 11–21–17; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NHAP–24544; PPWOCRADI0, PCU00RP14.R50000; OMB Control No. 1024–NEW]

Agency Information Collection Activities; National Heritage Areas Program

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Request; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the National Park Service is proposing a new information collection for the National Heritage Areas Program. The National Park Service will ask the Office of Management and Budget (OMB) to approve the information collection request (ICR) described below.

DATES: Interested persons are invited to submit comments on or before January 22, 2018.

ADDRESSES: Send your comments on the Information Collection Request (ICR) by mail to Tim Goddard, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, MS–242, Reston, VA 20192 (mail); or by email to *tim_goddard@nps.gov.* Please reference OMB Control Number 1024–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Martha Raymond, National Coordinator, National Heritage Areas Program, National Park Service, by email at *martha_raymond@nps.gov* or by telephone at 202–354–2222.

SUPPLEMENTARY INFORMATION: We, the National Park Service, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the National Park Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the National Park Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the National Park Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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 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.

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 of Collection: National Heritage Areas Program Annual Reporting Forms.

OMB Control Number: 1024–NEW.

Form Number: NPS 10–320; NPS 10–321.

Type of Review: New.

Respondents/Affected Public: National Heritage Area Coordinating Entities*:* Not-for-profit entities; Federal Commissions; Institutions of Higher Education; State and local governments.

Total Estimated Number of Annual Responses: 98.

Total Estimated Number of Annual Burden Hours: ~2,500 hours.

Total Estimated Number of Annual Respondents: 49 (49 total National Heritage Area Coordinating Entities).

Estimated Completion Time per Response: Varies from 12 hours to 40 hours, depending on type of respondent and which form is being completed.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Abstract: National Heritage Areas (NHAs) are designated by Congress as places where natural, cultural, and historic resources combine to form a cohesive, nationally important landscape. Each National Heritage Area is governed by separate authorizing legislation and operates under provisions unique to its resources and desired goals. Through their resources, NHAs tell nationally important stories that celebrate our nation's diverse heritage. The NHA program, which currently includes 49 heritage areas, is administered by National Park Service (NPS) coordinators in Washington, DC and six regional offices—Anchorage, San Francisco, Denver, Omaha, Philadelphia and Atlanta—as well as local park unit staff.

The NPS intends to track the progress of each heritage area on implementing its management plan and meeting performance goals. In order to reduce paperwork burden on the public, we are proposing the below listed new forms to collect the information needed to assist us in monitoring the progress of each heritage area:

- *Annual Program Report—Part I Funding Report.* The information collected on this form is used by the NPS NHA Program Office for allocating funds to heritage area management or coordinating entities (coordinating entities) and preparing the annual NPS Budget Justification and responses to directives from Congress. The information gathered on this form relates to funding from the Heritage Partnership Program (HPP) fund; required non-federal match sources; organizational sustainability planning; and Heritage Area accomplishments and challenges in using the HPP funds.

- *Annual Program Report—Part II Progress Report.* The information collected through this form will be used by the NPS NHA Program Office and regional program offices to track each heritage area management or coordinating entity's (coordinating entity) progress on management plan implementation. The progress measures outlined on this form capture information about the diverse heritage area activities and approaches to these activities (process measures), direct products or services offered (output measures), and the results of the products or services (outcome measures). The NPS will use the responses to the questions reported here in annual program reports and publications and to inform individual heritage area evaluations.

The authorities for this action come from the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Historic Sites Act of 1935, as amended (54 U.S.C. Ch. 3201), and the individual pieces of legislation and associated amendments that enable the National Park Service, on behalf of the Secretary of the Interior, to provide federal financial, technical, and other assistance for the preservation of natural, cultural, historic, and scenic resources. Each

National Heritage Area is designated by its own authorizing legislation.

Tim Goddard,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2017–25238 Filed 11–21–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–564]

U.S. Trade and Investment With Sub-Saharan Africa: Recent Developments

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request dated October 23, 2017 from the United States Trade Representative (USTR) under the section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission (Commission) has instituted investigation No. 332–564, *U.S. Trade and Investment with Sub-Saharan Africa: Recent Developments,* for the purpose of preparing the report requested by the USTR. The Commission has scheduled a public hearing in connection with this investigation for January 23, 2018.

DATES:

January 9, 2018: Deadline for filing requests to appear at the public hearing.

January 11, 2018: Deadline for filing pre-hearing briefs and statements.

January 23, 2018: Public hearing.

January 30, 2018: Deadline for filing post-hearing briefs and statements.

February 6, 2018: Deadline for filing all other written submissions.

April 30, 2018: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leaders Joann Peterson (*joann.peterson@usitc.gov or* 202–205–3032) or Wen Jin (Jean) Yuan *(wenjin.yuan@usitc.gov* or 202–205–2383) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (*william.gearhart@usitc.gov* or 202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (*margaret.olaughlin@usitc.gov* or 202–205–1819). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Commission instituted this investigation following receipt of a request from the USTR dated October 23, 2017. The request asked the Commission to provide a report on U.S. trade and investment with sub-Saharan Africa (SSA). It asked that the Commission's report focus primarily on the years 2010–2016, to the extent information is available, but examine longer-term trends since 2000 where appropriate. The request also asked that, to the extent practical, the report provide the most recent 2017 data on U.S. trade flows of goods with SSA and include the following:

1. An overview of the U.S. exports of goods and services to SSA, which should, to the extent information is available:

a. Identify the sectors in which U.S. exports of goods and services to SSA have increased the most, in both value and percentage terms, and indicate the key factors behind this growth.

b. Identify the countries to which U.S. exports of goods and services to SSA have increased the most, in both value and percentage terms, and indicate the key factors behind this growth.

c. Based on a review of available quantitative and qualitative information, identify non-crude petroleum sectors and SSA markets that present the greatest potential for U.S. exports of goods and services and for U.S. foreign direct investment (FDI). Also, identify significant factors impacting U.S. exports and FDI in these sectors, as well as principal third-country suppliers and investors in these sectors and SSA markets.

d. Provide a brief description of the exports of goods and services from U.S. small and medium-sized enterprises (SMEs) to SSA and describe the challenges that U.S. SMEs face when exporting to SSA.

2. An overview of U.S. imports of goods and services from SSA, which should, to the extent information is available:

a. Identify sectors in which SSA exports of goods and services to the United States have increased the most, in both value and percentage terms, and indicate the key factors behind this growth. Data on goods should include both AGOA and non-AGOA imports.

b. Identify the SSA countries from which imports of goods and services to the United States have increased the most, in both value and percentage terms, and indicate the key factors behind this growth. Data on goods should include both AGOA and non-AGOA imports.

c. Based on a review of available quantitative and qualitative information, identify non-crude petroleum sectors and SSA markets that present the greatest potential to increase exports of goods under AGOA to the United States. Identify sectors and SSA markets that present the greatest potential to increase services exports and FDI, and indicate significant factors impacting SSA companies achieving such exports and FDI.

3. Provide profiles of the markets in Cameroon, Cote d'Ivoire, Ethiopia, Kenya, Mauritius, Nigeria, and South Africa that include information on macroeconomic indicators, goods and services trade, and FDI flows in those countries.

4. Provide a summary of recent developments of regional integration efforts in SSA, including progress on the negotiation of Continental Free Trade Agreement.

5. Briefly summarize the AGOA strategies that have been developed by SSA countries.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on January 23, 2018. Requests to appear at the hearing should be filed with the Secretary no later than 5:15 p.m., January 9, 2018, in accordance with the requirements in the ''written submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., January 11, 2018; and all post-hearing briefs and statements addressing matters raised at the hearing should be filed not later than 5:15 p.m., January 30, 2018. In the event that, as of the close of business on January 9, 2018, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the

Secretary to the Commission (202–205–2000) after January 9, 2018, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., February 6, 2018. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf* require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential business information must be deleted (see the following paragraphs for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

Confidential Business Information. Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In his request letter, the USTR stated that his office intends to make the Commission's report available to the public and asked that the Commission not include any confidential business information or national security information in the report. The Commission will not include any confidential business information in the report that it sends to the USTR or makes available to the public. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons. Persons wishing to have a summary of their position included in the report should include a summary with their written submission. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: November 16, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–25237 Filed 11–21–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–570 and 731–TA–1346 (Final)]

Aluminum Foil From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–570 and 731–TA–1346 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of aluminum foil from China, provided for in subheadings 7607.11.30, 7607.11.60, 7607.11.90, and 7607.19.60 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized and sold at less-than-fair-value.

DATES: November 2, 2017.

FOR FURTHER INFORMATION CONTACT: Justin Enck (202–205–3363), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''. . . aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on only one side of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS)

subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of aluminum foil, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 9, 2017, by The Aluminum Association Trade Enforcement Working Group and its individual members.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the Investigations and Public Service List.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on January 25, 2018, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Thursday, February 8, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 1, 2018. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on February 6, 2018, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written Submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 1, 2018. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 15, 2018. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before February 15, 2018. On March 9, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 13, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 16, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–25240 Filed 11–21–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–34]

Arnold E. Feldman, M.D.; Decision and Order

On May 24, 2017, the Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to Arnold E. Feldman, M.D. (Respondent), of Natchez, Mississippi. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. AF2451261, on the ground that he ''do[es] not have authority to handle controlled substances in the State of Mississippi, the [S]tate in which [he is] registered with . . . DEA.'' Show Cause Order, at 1.

As to the jurisdictional basis for the proceeding, the Show Cause Order alleged that Respondent is ''registered as a practitioner in [s]chedules II–V pursuant to [Registration No.] AF2451261 with a registered address at 114 Jefferson Davis [Blvd.], Natchez, Mississippi.'' *Id.* The Order also alleged that this registration does not expire until ''September 30, 2018.'' *Id.*

As to the substantive ground for the proceeding, the Show Cause Order alleged that Respondent's ''[a]uthority to prescribe and administer controlled substances in the State of Mississippi was suspended effective March 16, 2017.'' *Id.* The Order then asserted that as a consequence of Respondent's ''lack of authority to handle controlled substances in the State of Mississippi,'' his registration is subject to revocation. *Id.*

The Show Cause Order notified Respondent of his right to request a hearing on the allegation or to submit a written statement while waiving his right to a hearing and the procedure for electing either option. *Id.* at 2 (citing 21 CFR 1301.43). In addition, the Order notified Respondent of his right to submit a corrective action plan pursuant to 21 U.S.C. 824(c)(2)(C). *Id.* at 2–3.

On June 15, 2017, Respondent, through his counsel, requested a hearing on the allegation. Letter from Respondent's Counsel to Hearing Clerk, Office of Administrative Law Judges (June 15, 2017). The same day, the matter was assigned to Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ), who issued an order (also on June 15) directing the Government to file evidence supporting the allegation by June 28, 2017 at 2 p.m., as well any motion for summary disposition. Briefing Schedule For Lack Of State Authority Allegations, at 1. The ALJ's order also provided that if the Government moved for summary disposition, Respondent's opposition was due by July 12, 2017 at 2 p.m. *Id.*

On June 20, 2017, the Government filed its Motion for Summary Disposition. As support for its motion, the Government provided, *inter alia:* (1) A copy of Respondent's registration; (2) the Determination of the Mississippi State Board of Medical Licensure (Mar. 16, 2017) which ordered the suspension of his medical license ''to run concurrently'' with the suspension of his Louisiana medical license that was imposed by the Louisiana Board of Medical Examiners' Order of August 15, 2016; [1] and (3) a Declaration of a Diversion Investigator. Mot. for Summ. Disp., Appendices A, B, C. In its motion, the Government argued that it was undisputed that Respondent's Mississippi medical license is suspended and that because ''Respondent no longer meets the statutory definition of a practitioner'' and ''possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for both obtaining and maintaining a practitioner's registration,'' the revocation of Respondent's registration for his Mississippi office is warranted. Mot. for Summ. Disp., at 3–4.

On July 10, 2017, Respondent filed his Reply to the Government's Motion. Therein, ''Respondent acknowledge[d] that his license to practice medicine in . . . Mississippi has been suspended in accordance with the . . . Mississippi State Board of Medical Licensure's Order.'' Resp. Reply, at 1. Respondent contended, however, ''that there are material questions of fact and law that require resolution in a plenary, evidentiary proceeding.'' *Id.*

According to Respondent, these issues are that he possesses ''an active and unrestricted license to practice medicine in'' Alabama and ''a full and unrestricted Alabama Controlled Substance Certificate.'' *Id.* at 2. Respondent argued that ''none of the cases cited by the Government'' address the situation ''where a physician has lost authority to practice in one state, while retaining unrestricted authority in another.'' *Id.* at 3. He also argued that the Agency's longstanding rule that a practitioner must possess authority under the laws of the State in which he engages in professional practice ''is based on the indiscriminate intermingling of'' 21 U.S.C. 823 and 824, ''each of which deals with different aspects of the control and enforcement authority to dispense controlled substances.'' *Id.* He further contended that while section 823 mandates that the Attorney General ''register the applicant'' if he ''is authorized to dispense controlled substances under the laws of the State in which he practices,'' ''[t]he term 'practitioner' does not appear in'' section 824 and the latter provision ''does not speak to a physician's authorization to practice or dispense under the laws of the state in which the registrant practices.'' *Id.* at 4.

In Respondent's view, section 824 authorizes revocation ''only if the registrant *is no longer authorized by State law* to engage in the dispensing of controlled substances [under] any state law.'' *Id.* at 5. He also maintained that ''[t]he fact that Congress employed the term 'practitioner' in'' section 823(f) but not in section 824 ''is a clear indication that it did not intend to authorize revocation or suspension of a [registration] where a registrant has continued to maintain authority to practice and dispense under the laws of any state.'' *Id.; see also id.* at 5 & n.14 (''Where Congress includes particular language in one section of a statute but omits it in another . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'') (quoting *Keene Corp.* v *United States,* 508 U.S. 200, 208 (1993) (other citation omitted)).

Finally, Respondent contended that ''[t]he Government, and the cases cited by it, indiscriminately (and erroneously) intermingle'' sections 823 and 824, and this intermingling along with ''its misinterpretation of 21 U.S.C. 824(a)(3) amount to a violation of [his] constitutional right to travel.'' *Id.* at 6–7. He argued that ''[t]heoretically, [he] should be able to pack up and remove himself and his practice from Louisiana to . . . Alabama, where he is authorized to practice medicine and dispense controlled substances. But[] his constitutional right to do so is impaired by the Government's misinterpretation of its authority to revoke'' his registration. *Id.* at 7.

On July 25, 2017, the ALJ granted the Government's Motion. The ALJ found

[1] The Government also included various other documents from the Mississippi Board proceeding, including an Order of Continuance, an Order of Temporary Action Pending Hearing, a Summons issued to Respondent, an Affidavit of a Board Investigator, and a copy of the Louisiana Board's Decision and Order which was an exhibit in the Mississippi Board proceeding. *See generally* Mot. for Summ. Disp., at Appendix B. Based on the suspension of his Louisiana medical license, on August 14, 2017, the former Acting Administration revoked Respondent's DEA registration for his practice in Baton Rouge, Louisiana. *See Arnold E. Feldman,* 82 FR 39614, 39618 (2017).

that ''Respondent conceded in his Reply that his Mississippi medical license is currently suspended'' and that ''it is undisputed that . . . Respondent lacks state authorization to handle controlled substances in Mississippi, where [his Registration] Number AF2451261[] is registered.'' ALJ's Recommended Decision (R.D.), at 6. Because Respondent is registered in Mississippi, the ALJ found it irrelevant that Respondent holds a license to practice medicine in Alabama. *Id.* at 4 (citing cases). The ALJ noted that ''both the CSA's 'definition of the term ''practitioner'' and the registration provision applicable to practitioners make clear that a practitioner must be currently authorized to dispense controlled substances by the State in which he practices in order to obtain and maintain a registration,''' and that the Agency's interpretation has been upheld by the Fourth Circuit. *Id.* (quoting *Rezik A. Saqer,* 81 FR 22122, 22125 (2016) and citing *Hooper* v. *Holder,* 481 Fed. App'x 826 (4th Cir. 2012)). The ALJ further reasoned that ''Respondent's analysis is counter to the way the DEA has interpreted the CSA for nearly forty years.'' *Id.* at 5 (citing *Saqer,* 81 FR at 22126 (citing *Frederick Marsh Blanton,* 43 FR 27616 (1978))).

The ALJ also rejected Respondent's contention that the Agency's interpretation impairs his constitutional right to travel. *Id.* at 5–6. The ALJ noted that under DEA's regulation, '' '[a] separate registration is required for each principal place of business.' '' *Id.* at 5 (quoting 21 CFR 1301.12(a)). The ALJ also noted that in 2006, the Agency issued a final rule which ''clarif[ied] that a practitioner must obtain a separate DEA registration for each [S]tate in which he or she practices,'' and that '' '[j]ust as a license to practice medicine in one State does not authorize a practitioner to practice in any other State, a DEA registration based on a particular State's license cannot authorize dispensing controlled substances in another State.' '' *Id.* at 6 (quoting *Clarification of Registration Requirements for Individual Practitioners,* 71 FR 69478, 69479 (2006) and citing *Joe W. Morgan,* 78 FR 61961, 61965 n.13 (2013)). The ALJ thus explained that ''Respondent is able to pack up and remove himself and his practice from [Mississippi] to Alabama—he just cannot dispense or prescribe controlled substances there unless he first obtains a separate DEA registration for his Alabama location in accordance with 21 CFR 1301.12(a).'' *Id.* The ALJ thus recommended that I revoke Respondent's registration. *Id.* at 7.

Neither party filed Exceptions to the ALJ's Recommended Decision. Thereafter, on August 22, 2017, the ALJ forwarded the record to me for Final Agency Action.[2]

Having considered the record, I reject Respondent's various contentions and adopt the ALJ's Recommended Decision. I will therefore also adopt the ALJ's recommendation that I revoke Respondent's registration. I make the following findings.

Findings of Fact

Respondent is the holder of DEA Certificate of Registration No. AF2451261, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of: Southwest MS Anesthesia PA, 114 Jefferson Davis Blvd., Natchez, Mississippi. Mot. for Summ. Disp., Appendix A. This registration does not expire until September 30, 2018. *Id.*

Respondent also holds a medical license issued by the Mississippi State Board of Medical Licensure. *See* Mot. for Summ. Disp., Appendix B, Determination and Order, at 2. However, on March 16, 2017, the Board issued a Determination and Order which suspended his medical license for a period ''to run concurrently with'' the suspension of his Louisiana medical license, ''that is, until October 14, 2018, at which time [he] shall petition the Board for removal of the suspension''; the Mississippi Board's Order was effective on April 17, 2017. *Id.* at 4. Accordingly, I find that Respondent currently lacks authority to dispense controlled substances under the laws of the State of Mississippi.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining *and maintaining* a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton,* 43 FR 27616 (1978).

Respondent acknowledges that the Agency's precedents ''do indeed reveal a consistent [and in his view] uncritical repetition of th[is] claim, to an extent . . . that the proposition has come to attain near sacrosanct status.'' Resp. Reply, at 3. Before the ALJ, he contended that the Agency's rule ''is based on the indiscriminate intermingling of'' the registration requirements of section 823 and the suspension/revocation authority of section 824. *Id.* He also argued that because ''the term 'practitioner' is employed solely in 21 U.S.C. 823'' and ''does not appear in section 824'' this ''is a clear indication that [Congress] did not intend to authorize an automatic, summary revocation . . . where a registrant has continued to maintain authority to practice and dispense under the laws of any state.'' *Id.* at 4.

Respondent is mistaken. As the Agency has repeatedly noted, the Agency's rule actually derives from the text of section 802(21), which defines the term ''practitioner,'' and section 823(f), which sets forth the requirements for obtaining a practitioner's registration. Notably, in section 802(21), Congress defined ''the term 'practitioner' [to] mean[ ] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). The text of this provision makes clear that a physician is not a practitioner within the meaning of the CSA if he is not ''licensed, registered or otherwise permitted, by the jurisdiction in which he practices . . . to dispense [or] administer . . . a controlled substance in the course of professional practice.'' *Id.*

To the same effect, Congress, in setting the requirements for obtaining a practitioner's registration, directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Thus, based on these provisions, the Agency held nearly 40 years ago that ''[s]tate authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance *and maintenance* of a Federal controlled substances registration.'' *Blanton,* 43 FR

[2] Subsequent to the ALJ's issuance of his Recommended Order, Respondent has not filed a motion based on newly discovered evidence to the effect that his state licensed has been restored.

at 27617 (revoking physician's registration based on one-year suspension of his state license) (emphasis added).

As the ALJ recognized, the CSA also provides that ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant . . . dispenses controlled substances.'' 21 U.S.C. 822(e).[3] Based on this provision, the Agency has further explained that, because the issuance of a registration is dependent on a practitioner having authority to dispense controlled substances under the laws of a particular State, a registration issued for a location in one State cannot authorize the practitioner to engage in controlled substance dispensing in another State. *See Clarification of Registration Requirements for Individual Practitioners,* 71 FR 69478 (2006); 21 CFR 1301.12(a) & (b)(3). *See also United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (''Registration of physicians and other practitioners is mandatory if the applicant is authorized to dispense drugs . . . under the law of the State in which he practices. [21 U.S.C.] Sec. 823(f). In the case of a physician, this scheme contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice.'').[4]

Notably, while Respondent holds a medical license in Alabama, the registration at issue in this proceeding authorizes him to dispense controlled substances only in the State of Mississippi. Moreover, the Show Cause Order proposes only the revocation of this registration.[5] Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, and Respondent is no longer authorized to dispense controlled substances under the laws of Mississippi, the State of the registration at issue here, revocation of this registration is the appropriate sanction. *See, e.g., Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *Blanton,* 43 FR at 27616.

As noted above, Respondent contends that Congress' use of the word ''registrant'' rather the word ''practitioner'' in section 824 ''is a clear indication that it did not intend to authorize an automatic revocation of a [registration] where a registrant has continued to maintain authority to practice and dispense under the laws of any state.'' Resp. Reply, at 5. A practitioner is, however, a particular category of registrant and thus falls within section 824(a). Given the provisions of section 802(21) and 823(f), it is not clear why Congress needed to use the word ''practitioner'' in section 824(a) to authorize the Agency to effectuate the policy expressed by sections 802(21) and 823(f). Moreover, Respondent ignores that there is a good reason for why Congress used different language in sections 823(f) and 824(a) to describe the class of persons who are subject to each provision, and this reason provides no support for Respondent's contention.

Section 823(f) is specifically applicable to those applicants seeking registration as a practitioner, which is just one of eight different categories of registration under the CSA. *See generally* 21 U.S.C. 823. By contrast, section 824(a), which authorizes the imposition of sanctions against a registrant based on any one of five findings, is applicable to *all categories* of registrants under the CSA, including Respondent. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied Hooper* v. *Holder,* 481 Fed. Appx. 826, 829 (4th Cir. 2012).

As explained above, the Agency's rule that revocation is warranted whenever a practitioner is no longer authorized to dispense controlled substances under the laws of the State in which he engages in professional practice is derived from the specific provisions of the Act which define the term ''practitioner'' and set forth the registration requirements which are specifically applicable to practitioners.[6] *Hooper,* 76 FR at 71371–72. Indeed, were I to adopt Respondent's view, he would be allowed to maintain his registration even though his lack of state authority bars him from obtaining a registration in Mississippi in the first place. 21 U.S.C. 823(f).

Moreover, under DEA regulations, a practitioner's registration is good for a period of three years, after which a practitioner must submit a renewal application. Yet that renewal application remains subject to section 823(f), which requires that ''the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' Respondent's view leads to the illogical result that a practitioner would need to hold state authority to obtain his initial registration and any subsequent renewal of the registration, but would not need to hold state authority during the intervening period between the granting of his initial application and the granting of his renewal application.

I reject Respondent's contention and adhere to the Agency's longstanding and consistent interpretation of the Act, which has been affirmed by two courts of appeals. *See Hooper* v. *Holder,* 481 Fed. Appx. at 828; *Maynard* v. *DEA,* 117 Fed. Appx. 941, 945 (5th Cir. 2004). As the Fourth Circuit explained in *Hooper,* in rejecting the practitioner's contention that the Agency's revocation of his registration ignored the discretion granted by section 824 and read the suspension option out of the statute:

> We find Hooper's contention unconvincing. Section 824(a) does state that the [Agency] may ''suspend or revoke'' a registration, but the statute provides for this sanction in five different circumstances, only one of which is loss of a State license. Because § 823(f) and § 802(21) make clear that a practitioner's registration is dependent upon the practitioner having state authority to dispense controlled substances, the [Agency's] decision to construe § 824(a)(3) as mandating revocation upon suspension of a state license is not an unreasonable interpretation of the CSA. The [Agency's] decision does not ''read[ ] the suspension option'' out of the statute, because that option may still be available for the other circumstances enumerated in § 824(a).

481 Fed. Appx., at 828. *See also Maynard,* 117 Fed. Appx. at 945 (5th Cir. 2004) (upholding revocation of DEA registration after Texas DPS summarily suspended practitioner's controlled substance registration, noting that the Agency ''has construed the CSA to

[3] *See also* 21 U.S.C. 822(b) (''Persons registered by the Attorney General . . . to . . . dispense controlled substances . . . are authorized to possess . . . or dispense such substances . . . to the extent authorized by their registration and in conformity with the other provisions of this subchapter.'').

[4] While the CSA was amended in 1984 to provide the Agency with authority to deny a practitioner's registration on public interest grounds, the requirement that a practitioner be ''authorized to dispense . . . controlled substances under the laws of the State in which he practices,'' 21 U.S.C. 823(f), was unaltered by this legislation.

[5] There is no evidence in the record as to whether Respondent holds a DEA registration in Alabama. Nor does this matter, because the Government proposes only the revocation of his Mississippi registration.

[6] Section 824(a)(3) grants authority applicable to all categories of DEA registrants (and not only practitioners) as well as each of the enumerated findings. As explained in *Hooper,* this general grant of authority in imposing a sanction must be reconciled with the CSA's specific provisions which mandate that a practitioner hold authority under state law in order to obtain and maintain a DEA registration. 76 FR, at 71371–72 (quoting *Gozlon-Peretz* v. *United States,* 498 U.S. 395, 407 (1991) (''A specific provision controls over one of more general application.'') and *Bloate* v. *United States,* 130 S.Ct. 1345, 1354 (2010) (quoting *D. Ginsberg & Sons, Inc.,* v. *Popkin,* 285 U.S. 204, 208 (1932) (''General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.'')).

require revocation when a registrant no longer possesses valid state authority to handle controlled substances''; ''We agree with [the] argument that it may have been arbitrary and capricious had the DEA failed to revoke [the physician's] registration under the circumstances.'').

In his Reply to the Government's Motion, Respondent made an additional argument beyond that made in *Hooper.* He contended that ''[it] is noteworthy that [section] 824(a) . . . employs the word *'may'* in authorizing the Attorney General to revoke or suspend a registration, when *among other factors,* the registrant *is no longer authorized by State law* to engage in the dispensing of controlled substances.'' Resp. Reply, at 6. In Respondent's view, ''under [section] 824(a), the loss of state authority is only one of several factors that may result in suspension or revocation of a practitioner's DEA registration.'' *Id.* He maintained that ''[t]he correct interpretation is that [section] 802(21) and [section] 823(f) require state authority in order for the Administrator to *grant* an application for registration, but [section] 824(a)(3) only renders a loss of state authority a *discretionary factor* in determining whether to suspend or revoke an existing registration.'' *Id.* Based on his view that the loss of state authority is simply a discretionary factor, Respondent suggests that the use of summary disposition to resolve this matter is improper. *Id.*

Respondent, however, cites no authority for his contention that the various grounds set forth in section 824(a) pursuant to which the Agency is authorized to suspend or revoke a registration are merely ''discretionary factors'' in the same manner as are the public interest factors of section 823. Indeed, his argument is refuted by the texts of section 823(f) and 824(a) and the history of the CSA.

Notably, section 823(f) instructs that ''[i]n determining the public interest, the following factors shall be considered'' and then lists the five factors. 21 U.S.C. 823(f). By contrast, section 824(a) makes no reference to ''factors.'' Rather, the provision begins with the word ''Grounds'' and then states that ''[a] registration pursuant to section 823 of this title . . . may be suspended or revoked by the Attorney General upon a finding that'' one of the five different grounds apply to the registrant.[7] *Id.* § 824(a).

Had Congress intended that the various findings set forth in section 824(a) be treated as ''discretionary factors,'' it would have done so by using language similar to that it used in section 823(f). *See Jama* v. *ICE,* 543 U.S. 335, 341 (2005) (''We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest.'').

Rather, the findings enumerated in section 824(a) are grants of authority, each of which provides an independent and adequate ground to impose a sanction on a registrant. *See Alfred S. Santucci,* 67 FR 68688 (2002) (''Loss of state authority is an independent ground to revoke a practitioner's registration under 21 U.S.C. 824(a)(3).''); *VI Pharmacy, Rushdi Z. Salem,* 69 FR 5584, 5585 (2004) (''Pursuant to 21 U.S.C. 824(a)(1), falsification of a DEA application constitutes independent grounds to revoke a registration.''); *Lazaro Guerra,* 68 FR 15226, 15227 (2003) (''mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a) . . . is an independent ground for revoking a DEA registration'' (citing 21 U.S.C. 824(a)(5)). *See also Richard B. Lynch, Jr.,* 50 FR 7844, 7845 (1985) (Agency made findings under section 824(a)(1), 824(a)(2), and 824(a)(3); ''The Administrator concludes that there are three independent statutory grounds for denial of the subject application.'').

The Agency's interpretation is buttressed by the CSA's legislative history. As originally enacted, the CSA granted the Attorney General authority to suspend or revoke a registration:

> Upon a finding that the registrant—
>
> (1) has materially falsified any application filed pursuant to or required by this title [the CSA] or title III [the Controlled Substance Import Export Act (CSIEA), 21 U.S.C. 951–971];
>
> (2) has been convicted of a felony under [the CSA or CSIEA] or any other law of the United States, or of any State, relating to any substance defined in this title as a controlled substance; or
>
> (3) has had his state license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.

Public Law 91–513, § 304, 84 Stat. 1255 (codified at 21 U.S.C. 824(a)).[8]

Describing this provision, the House Report explained that ''[s]ubsection (a) of this section empowers the Attorney General to revoke or suspend any registration issued under this title if it is found that the holder has falsified his application, lost his State license, or has been convicted of a felony violation relating to any controlled substance.'' H. Rep. No. 91–1444 (1970), *as reprinted in* 1970 U.S.C.C.A.N. 4566, 4608–09. Absent from this statement is any discussion that in determining the sanction, the Attorney General was required to consider not only whether a registrant had lost his state authority, but also whether he had also materially falsified his application or had been convicted of a felony related to a controlled substance.

Moreover, while in 1984, Congress amended the CSA by granting the Attorney General authority to deny an application for a practitioner's registration and to revoke an existing registration on public interest grounds, it did so to increase the Agency's authority to respond to the ''[i]mproper diversion of controlled substances by practitioners,'' which Congress explained ''is one of the most serious aspects of the drug abuse problem.'' H. Rep. No. 98–1030, at 266 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3448. The House Report explained that ''effective Federal actions against practitioners has been severely inhibited by the limited authority in current law to deny or revoke practitioner registrations'' and that ''the current limited grounds for revoking or denying a practitioner's registration have been cited as contributing to the problem of diversion of dangerous drugs.'' *Id.* Finding that ''the overly limited bases in current law for denial or revocation of a practitioner's registration do not operate in the public interest,'' Congress amended section 823(f) ''*to expand the authority* of the Attorney General to deny a practitioner's registration application'' based upon a finding ''that registration would be 'inconsistent with the public interest.''' *Id.* (emphasis added).

[7] As noted above, Respondent invokes the canon of statutory construction that ''[w]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion''; he argues that it is significant that while Congress used the word ''practitioner'' in section 823, it used the word ''registrant'' in section 824(a). Resp.'s Reply, at 5 & n.14 (quoting *Keene Corp.,* 508 U.S. at 208 (other citation omitted)). Contrary to Respondent's contention, the correct comparison is between the language of section 823(f), which states that ''[i]n determining the public interest, the following factors shall be considered,'' and the language of section 824(a), which authorizes the Agency to suspend or revoke a registration upon making one of the five enumerated ''finding[s].''

[8] *Cf. Reiter* v. *Sonotone Corp.,* 442 U.S.C. 330, 339 (1979) (''Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise[.]'') (citing *FCC* v. *Pacifica Foundation,* 438 U.S. 726, 739–40 (1978)).

While Congress also amended section ''824(a) to add to the current bases for denial, revocation, or suspension of registration a finding that registration would be inconsistent with the public interest on the grounds specified in [section] 823, which will include consideration of the new factors added by'' the amendment, *id.* at 266–67, Congress did not otherwise alter the text of section 824(a), which makes clear that the various paragraphs of this provision are findings, each of which provides an independent and adequate ground to support agency action against a registration, and not discretionary factors to be considered by the Agency. Indeed, Respondent points to nothing in the language of section 824 or the CSA's legislative history to support his position, which would fundamentally alter the scope of the Agency's authority under section 824.

I therefore reject Respondent's contentions. Based on the ALJ's finding that Respondent is not currently authorized to dispense controlled substances in Mississippi, the State in which he holds the DEA registration at issue in this proceeding, I will adopt the ALJ's recommended order that I revoke his registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. AF2451261 issued to Arnold E. Feldman, M.D., be, and it hereby is, revoked. This *Order* is effective immediately.[9]

Dated: November 13, 2017.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2017–25287 Filed 11–21–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration as importers of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

Company	FR Docket	Published
Almac Clinical Services Incorp (ACSI)	82 FR 37114	August 8, 2017.
Stepan Company	82 FR 41054	August 29, 2017.
Fresenius Kabi USA, LLC	82 FR 41053	August 29, 2017.
Cambrex Charles City	82 FR 41055	August 29, 2017.
Spex Certiprep Group, LLC	82 FR 42120	September 6, 2017.
Akorn, Inc	82 FR 42117	September 6, 2017.
Fisher Clinical Services, Inc	82 FR 42121	September 6, 2017.
Siegfried USA, LLC	82 FR 42117	September 6, 2017.
Mylan Pharmaceuticals, Inc	82 FR 42120	September 6, 2017.
KVK-Tech, Inc	82 FR 42119	September 6, 2017.
Cerilliant Corporation	82 FR 43404	September 15, 2017.
Unither Manufacturing LLC	82 FR 43571	September 18, 2017.
Mylan Pharmaceuticals, Inc	82 FR 43572	September 18, 2017.
Catalent Centers, LLC	82 FR 43569	September 18, 2017.
Specgx LLC	82 FR 43571	September 18, 2017.
Sharp Clinical Services, Inc	82 FR 43572	September 18, 2017.
Cody Laboratories, Inc	82 FR 45612	September 29, 2017.
Bellwyck Clinical Services	82 FR 45613	September 29, 2017.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed persons.

Dated: November 16, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–25284 Filed 11–21–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Linda M. Shuck, D.O.; Decision and Order

On July 25, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, issued an Order to Show Cause to Linda M. Shuck (Registrant), of Dobson, North Carolina. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration, on the ground that she

[9] While the Mississippi Board Order was based on the Louisiana Board's Order, as noted in the former Acting Administrator's Decision and Order which revoked Respondent's Louisiana registration, the Louisiana Board found proved the sixth charge of the Administrative Complaint in that proceeding, in that Respondent violated state law by ''[p]rescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification thereof or in other than a legal or legitimate manner.'' *See* 82 FR at 39618 n.8 (2017); *see also* Mot. for Summ. Disp., Appendix B, at 22, 24 (Louisiana Board Order at 12, 14). For the same reasons as those cited by the former Acting Administrator, I find that the public interest necessitates that this Order be effective immediately. *See also* 21 CFR 1316.67.

''do[es] not have authority to handle controlled substances in the State of North Carolina, the [S]tate in which [she is] registered with the'' Agency. GX 2, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

As to the jurisdictional basis for the proceeding, the Show Cause Order alleged that Registrant is the holder of a practitioner's registration with authority in schedules II through V, under Certificate of Registration No. BP4154023, at the registered location of Carolina Heart Care, 651 S. Main Street, Dobson, North Carolina. *Id.* The Order further alleged that this registration ''expires . . . on February 28, 2018.'' *Id.*

As to the substantive ground for the proceeding, the Show Cause Order alleged that on June 23, 2017, the North Carolina Medical Board suspended Registrant's medical license for six months. *Id.* The Order alleged that because of the Board's action, Registrant is ''without authority to handle controlled substances in . . . North Carolina, the [S]tate in which [she is] registered,'' and that as a consequence, her registration is subject to revocation. *Id.* at 1–2 (citing cases).

The Show Cause Order notified Registrant of her right to request a hearing on the allegations or to submit a written statement while waiving her right to a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). In addition, the Show Cause Order notified Registrant of her right to submit a corrective action plan under 21 U.S.C. 824(c)(2)(C). *Id.* at 2–3.

On August 1, 2017, a DEA Special Agent assigned to the Charlotte District Office personally served the Show Cause Order on Registrant. GX 3, at 1–2 (Declaration of Special Agent). In a letter dated August 3, 2017, Registrant stated that she was ''aware of the current law regarding [her] DEA Certificate'' and that she did ''not wish to have a hearing on the issue.'' GX 4. Registrant further stated that her ''medical license is suspend[ed] until 12–23–2017'' and that she ''will reapply for [her] DEA certification after [her] suspension is completed.'' *Id.*

On September 8, 2017, the Government submitted a Request for Final Agency Action. Therein, the Government seeks the revocation of Registrant's registration. As support for the proposed action, the Government submitted various exhibits, including a Consent Order entered into by Registrant and the North Carolina Medical Board on May 23, 2017. *See* GX3A, at 8.

Based on Registrant's letter of August 3, 2017, I find that Registrant has waived her right to a hearing on the allegations of the Show Cause Order. 21 CFR 1301.43. I therefore issue this Decision and Order based on relevant evidence submitted by the Government. I make the following findings.

Findings

Registrant is the holder of DEA Certificate of Registration No. BP4154023, pursuant to which she is authorized to dispense controlled substances in schedules II through V, at the registered address of Carolina Heart Care, 651 S. Main St., Dobson, North Carolina. GX 1. Registrant is also the holder of DATA-Waiver Identification No. XP4154023, pursuant to which she is authorized to prescribe schedule III through V ''narcotic drug[s] approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment'' to up to 100 patients. GX 1; *see also* 21 CFR 1306.04(c).

Registrant is also the holder of a license to practice medicine and surgery issued by the North Carolina Medical Board. However, on May 23, 2017, Registrant entered into a Consent Order with the Board. GX 3, Appendix A, at 8. The Board's Order found that in September 2014, Registrant and the Board had entered a previous Consent Order ''based on findings that [she] had failed to conform to the standards of acceptable and prevailing medical practice in her care of five patients that she treated for chronic pain.'' *Id.* at 2. The Board further found that while Registrant ''underwent the required [comprehensive professional] assessment, [she] still has failed to complete any remediation recommended by the assessment center in a timely manner.'' *Id.*

The Board's Order also found that, in April 2016, it had received information regarding Registrant's prescribing of opiates to four patients, including one who died due to ''opioid toxicity.'' *Id.* The Board further found that ''an independent medical expert'' had reviewed the medical records of the four patients and opined that Registrant's ''diagnosis, treatment, and overall care in all four . . . cases failed to conform to the standards of acceptable and prevailing medical practice in North Carolina.'' *Id.*

Finally, the Board found that, ''[o]n December 6, 2016, [Registrant] entered into an Interim Partial Non-Practice Agreement restricting her prescribing of all controlled substances.'' *Id.* at 3. The Board further found that Registrant issued controlled substance prescriptions to patients in violation of the Interim Partial Non-Practice Agreement. *Id.*

With respect to her ''care and treatment of'' the four patients, the Board concluded as a matter of law that Registrant ''fail[ed] to conform to the standards of acceptable and prevailing medical practice.'' *Id.* at 4 (citing N.C. Gen. Stat. SEC. 90–14(a)(6)). The Board also concluded as a matter of law that Registrant's ''issuance of controlled substance prescriptions in violation of a restriction contained in the December 2016 Interim Partial Non-Practice Agreement . . . constitutes unprofessional conduct.'' *Id.* (citing N.C. Gen. Stat. SEC. 90–14(a)(6)).

The Board and Registrant agreed to resolve the matter by suspending her medical license for a period of six months ''from June 23, 2017[] until December 23, 2017.'' *Id.* at 5. While the Board and Registrant agreed that she ''may return to the active practice of medicine on December 24, 2017, subject to the provisions contained in this . . . Order,'' the provisions include that she ''shall not prescribe controlled substances except for a patient who has been admitted to a hospital where [she] has active clinical privileges.'' *Id.* The provisions also include that ''[o]nce the patient has been discharged, [she] shall not prescribe controlled substances for those patients who received such medications pursuant to'' the above provision. *Id.* at 6.

Moreover, Registrant's ability to resume practicing medicine is also subject to the condition that she ''complete a five . . . day board certification review course in Internal Medicine.'' [1] *Id.* Thus, while the suspension may expire in less than six weeks, it is far from certain that she will be able to resume practicing medicine (even subject to the limitations on her authority to prescribe), and absent evidence that she has completed the board certification review course, the restriction on her ability to resume practicing takes on the characteristic of a suspension of indefinite duration. Based on the above, I find that Registrant is currently without authority

[1] According to the online records of the North Carolina Medical Board, of which I take official notice, the suspension of Registrant's medical license remains in effect as of the date of this Decision and Order. *See* 5 U.S.C. 556(e). Registrant may dispute this finding by filing a properly supported motion for reconsideration within 10 business days of the date of this Order with the Office of the Administrator. Registrant may also provide evidence that she has completed the five-day board certification review course. Registrant must serve a copy of any such motion on the Government.

to dispense controlled substances under the laws of the State of North Carolina.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, ''upon a finding that the Registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' Also, DEA has held repeatedly that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton,* 43 FR 27616 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which [s]he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which [s]he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a physician possess state authority in order to be deemed a practitioner under the Act, DEA has held that revocation of a practitioner's registration is the appropriate sanction whenever she is no longer authorized to dispense controlled substances under the laws of the State in which she practices medicine. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *see also Hooper* v. *Holder,* 481 Fed. Appx. at 828.

As a consequence of the Consent Order which Registrant entered into with the Board, she is not currently authorized to dispense controlled substances in North Carolina, the State in which she is registered with the Agency. Because the CSA makes clear that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for both obtaining and maintaining a practitioner's registration, it is of no consequence that the suspension is of a finite duration. *See Hooper* v. *Holder,* 481 F. App'x at 828 (upholding revocation of a physician's registration as based on a reasonable interpretation of the CSA, notwithstanding that the physician's medical license was subject to a suspension of known duration); *see also James L. Hooper,* 76 FR 71371, 71371–72 (2011). Rather, what matters for the purposes of the CSA is that Registrant is not currently authorized to dispense controlled substances in North Carolina. *See Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997) (''the controlling question . . . is whether the Respondent is currently authorized to handle controlled substances in the state'')). Indeed, it is by no means clear that Registrant will even be able to resume the practice of medicine following the ending date of the suspension given the requirement that she complete the required five-day board certification review course.[2] Therefore, she is not entitled to maintain her registration in that State. Accordingly, I will order that her registration and her DATA-Waiver Identification number be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BP4154023, issued to Linda M. Shuck, be, and it hereby is, revoked. I further order that DATA-Waiver Identification No. XP4154023, issued to Linda M. Shuck, be, and it hereby is, revoked. This order is effective immediately.[3]

Dated: November 13, 2017.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2017–25286 Filed 11–21–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration as bulk manufacturers of various classes of schedule I and II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as manufacturers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted for these notices.

Company	FR Docket	Published
Cayman Chemical Company	82 FR 34691	July 26, 2017.
AMRI Rensselaer, Inc	82 FR 34695	July 26, 2017.
Organic Consultants, Inc	82 FR 34696	July 26, 2017.
Isosciences, LLC	82 FR 35546	July 31, 2017.
Cody Laboratories, Inc	82 FR 41054	August 29, 2017.
Noramco, Inc	82 FR 41055	August 29, 2017.
Stepan Company	82 FR 42119	September 6, 2017.

[2] Indeed, as found above, even if she completes the course and returns to practice, under the Consent Order, she is prohibited from prescribing controlled substances outside of a hospital where she ''has active clinical privileges.'' GX 3, Appendix A, at 5. As this revocation does not impose any time bar on Registrant's ability to reapply, she can apply for a new registration upon being allowed to return to practice.

[3] Based on the North Carolina Board's findings that Registrant prescribed controlled substances in violation of the Interim Partial Non-Practice Agreement, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed persons.

Dated: November 16, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–25285 Filed 11–21–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–35]

First Choice Surgery Center of Baton Rouge, L.L.C.; Decision and Order

On May 24, 2017, the Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to First Choice Surgery Center of Baton Rouge, L.L.C (Respondent), of Baton Rouge, Louisiana. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. FF4394209, on the ground that ''the clinic does not have authority to dispense controlled substances in Louisiana, the [S]tate in which the clinic is located.'' Show Cause Order, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)). The Show Cause Order also proposed revocation on the ground that Respondent's owner, ''Dr. Arnold Feldman, M.D., has been found guilty by the Louisiana State Board of Medical Examiners of misconduct related to controlled substances.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(2); 21 CFR 1306.04).

As to the jurisdictional basis for the proceeding, the Show Cause Order alleged that Respondent is ''registered . . . as a hospital/clinic in [s]chedules II–V pursuant to [Registration No.] FF4394209 at 505 East Airport Drive, Baton Rouge, Louisiana.'' *Id.* at 2. The Order alleged that this registration does not expire until ''September 30, 2019.'' *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order alleged that Respondent ''is without authority to dispense controlled substances in Louisiana.'' *Id.* The Show Cause Order alleged that while Respondent ''previously held'' a Louisiana controlled substance license, ''[t]his license expired on September 23, 2016 and has not been renewed.'' *Id.* The Order then asserted that ''based upon [Respondent's] lack of [s]tate authority to dispense controlled substances in . . . Louisiana,'' its registration must be revoked. *Id.*

As to the allegation based on its owner's misconduct, the Show Cause Order alleged that ''[o]n August 15, 2016, the Louisiana State Board of Medical Examiners found [Respondent's owner] guilty of violating [state law] by giving his staff pre-signed controlled substance prescriptions and/or allowing his staff to utilize a 'Ghost writer' to affix his signature to controlled substances prescriptions.'' *Id.* The Order further alleged that its owner's conduct violated 21 U.S.C. 841(a)(1) and 21 CFR 1306.04. *Id.*

The Show Cause Order notified Respondent of its right to request a hearing on the allegations or to submit a written statement while waiving its right to a hearing and the procedure for electing either option. *Id.* (citing 21 CFR 1301.43). In addition, the Order notified Respondent of its right to submit a corrective action plan pursuant to 21 U.S.C. 824(c)(2)(C). *Id.* at 3–4.

On June 15, 2017, Respondent, through its counsel, requested a hearing on the allegations. Letter from Respondent to Hearing Clerk, Office of Administrative Law Judges (June 15, 2017). The matter was assigned to Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ), who, on June 16, 2017, issued an order directing the Government to file evidence supporting the allegations by June 29, 2017 at 2 p.m., as well any motion for summary disposition. Briefing Schedule For Lack Of State Authority Allegations, at 1. The ALJ's order also provided that if the Government moved for summary disposition, Respondent's opposition was due by July 13, 2017 at 2 p.m. *Id.*

On June 20, 2017, the Government filed its Motion for Summary Disposition. In its Motion, the Government argued that Respondent is a ''practitioner'' under the CSA and that because its ''state authority has terminated, [it] no longer meets the statutory definition of a practitioner'' and is not entitled to maintain its registration. Motion, at 3. The Government thus sought a Recommendation that Respondent's registration be revoked. *Id.*

As support for its motion, the Government provided: (1) A copy of Respondent's registration; (2) a letter dated May 22, 2017 from the Assistant Executive Director of the Louisiana Board of Pharmacy to a DEA Diversion Investigator (DI) stating that Respondent's Louisiana Controlled Dangerous Substance (CDS) license expired September 23, 2016; (3) a November 16, 2016 Order of the Louisiana Board of Pharmacy indefinitely suspending the Controlled Dangerous Substance license of Arnold E. Feldman based on the suspension of his Louisiana Medical license; and (4) a declaration of the aforementioned DI that Respondent ''currently has no authority to handle controlled substances in Louisiana.'' Mot. for Summ. Disp., Appendices A, B, and C. The Government did not, however, seek summary disposition based on the allegation that Respondent's owner had been found guilty by the Louisiana Board of misconduct related to controlled substances. *Compare* Mot. for Summ. Disp. *with* Show Cause Order, at 1–2.

Respondent did not file a Reply to the Government's Motion, and on July 25, 2017, the ALJ granted the Government's Motion. Order Granting Summary Disposition (R.D.), at 3, 6. Noting that the Government had ''provided a certified letter from the Louisiana Board of Pharmacy indicating that the Respondent held Louisiana Board of Pharmacy Number CDS.043803–ASC, but that this license expired on September 23, 2016,'' *id.* at 2, the ALJ found it ''undisputed that the Respondent lacks state authorization to dispense controlled substances in Louisiana, where [it] is registered.'' *Id.* at 5. Applying the Agency's longstanding rule ''that a practitioner must be currently authorized to dispense controlled substances by the State in which [it] practices in order to obtain and maintain a registration,'' *id.* at 4 (citation omitted), the ALJ concluded that ''Respondent cannot maintain a DEA registration for any location in'' Louisiana and recommended that I revoke its registration.[1] *Id.* at 5–6.

[1] With respect to the allegation that Respondent's owner had been found guilty of misconduct by the Louisiana Board of Medical Examiners, the ALJ noted that [t]he Government did not provide any argument or evidence in its Motion.'' R.D. 6 n.1. However, as the ALJ observed, ''Respondent's lack of state authority to dispense controlled substances

Having considered the record, I adopt the ALJ's finding of fact that Respondent's Louisiana CDS license has expired and his of conclusion of law that Respondent lacks state authorization to dispense controlled substances in Louisiana. I will therefore adopt the ALJ's recommendation that I revoke Respondent's registration. I make the following findings.

Findings of Fact

Respondent is the holder of DEA Certificate of Registration No. FF4394209, pursuant to which it is authorized to dispense controlled substances in schedules II through V as a Hospital/Clinic, at the registered address of: First Choice Surgery Center of Baton Rouge, L.L.C., 505 East Airport Drive, Baton Rouge, Louisiana. Mot. for Summ. Disp., Appendix A. This registration does not expire until September 30, 2019. *Id.* Respondent is owned by Arnold E. Feldman, M.D. Resp.'s Hrng. Req, at 1.

Respondent also previously held Louisiana Controlled Dangerous Substance License No.043803–ASC. *Id.,* at Appendix B. However, Respondent allowed this license to expire on September 23, 2016. *Id.*

Accordingly, I find that Respondent currently lacks authority to dispense controlled substances under the laws of the State of Louisiana.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), ''upon a finding that the registrant . . . has had [its] State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, which includes a hospital or clinic, *see* 21 U.S.C. 802(21), DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining *and maintaining* a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton,* 43 FR 27616 (1978).

This rule derives from the text of two other provisions of the CSA, section 802(21), which defines the term ''practitioner,'' and section 823(f), which sets forth the registration requirements for practitioners. Notably, in section 802(21), Congress defined ''the term 'practitioner' [to] mean[ ] a . . . physician . . . *hospital,* or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21) (emphasis added). The text of this provision makes clear that a hospital is not a practitioner within the meaning of the CSA if it is not ''licensed, registered or otherwise permitted, by the jurisdiction in which [it] practices . . . to dispense [or] administer . . . a controlled substance in the course of professional practice.'' *Id.*

To the same effect, Congress, in setting the requirements for obtaining a practitioner's registration, directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which [it] practices.'' 21 U.S.C. 823(f). Based on these provisions, the Agency held nearly forty years ago that ''[s]tate authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance *and maintenance* of a Federal controlled substances registration.'' *Blanton,* 43 FR at 27617 (revoking physician's registration based on one-year suspension of his state license) (emphasis added).

Having allowed its Louisiana CDS license to expire, Respondent is no longer authorized to dispense controlled substances in the State.[2] Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, and Respondent is no longer authorized to dispense controlled substances under the laws of Louisiana, the State in which it is registered, I adopt the ALJ's recommended order and will order that its registration be revoked. *See, e.g., Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *Blanton,* 43 FR at 27616.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. FF4394209 issued to First Choice Surgery Center of Baton Rouge, L.L.C., be, and it hereby is, revoked. This *order* is effective immediately.[3]

Dated: November 13, 2017.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2017–25288 Filed 11–21–17; 8:45 am]

BILLING CODE 4410–09–P

is a sufficient independent ground to recommend the revocation of [its] registration.'' *Id.*

[2] Subsequent to the ALJ's issuance of his Recommended Decision, Respondent has not filed a motion supported by any evidence that its CDS license has been reinstated with either the ALJ or my Office.

[3] As found above, Respondent is owned by Dr. Arnold E. Feldman. For the same reasons which led the former Acting Administrator to revoke Dr. Feldman's Louisiana registration with an immediate effective date, *see Arnold E. Feldman,* 82 FR 39614, 39618 & n.8 (2017), I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 17– 087]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Thursday, December 7, 2017, 1:00–5:00 p.m.; and Friday, December 8, 2017, 9:00 a.m.–12:00 noon, Local Time.

ADDRESSES: NASA Headquarters, Program Review Center (PRC), Room 9H40, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1148 or *marla.k.king@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the Toll Number 1–630–395–0139 or Toll Free Number 1–888–603–9606 and then the numeric passcode 8148619, followed by the # sign, on both days. **Note**: If dialing in, please ''mute'' your phone. To join via WebEx, the link is *https://nasa.webex.com/.* The meeting number on December 7 is 996 950 837 and the meeting password is NACDEC717! (case sensitive); the meeting number on December 8 is 997 757 737 and the meeting password is NACDEC817@(case sensitive).

The agenda for the meeting will include reports from the following:

—Aeronautics Committee
—Human Exploration and Operations Committee
—Science Committee
—Technology, Innovation and Engineering Committee
—Ad Hoc Task Force on STEM Education

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to NASA Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees that are U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days in advance. Information should be sent to Ms. Marla King via email at *marla.k.king@nasa.gov.* It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–25201 Filed 11–21–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Overhead Transfer Rate Methodology

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final notice.

SUMMARY: In June 2017, the NCUA Board (Board) published a notice and request for comment on proposed changes to its Overhead Transfer Rate (OTR) methodology and sought industry comments on the proposed changes.[1] This Final Notice discusses the comments received and provides the Board's response to the comments. This Final Notice also sets forth the new OTR methodology the Board has chosen to adopt after consideration of the public comments received.

FOR FURTHER INFORMATION CONTACT: Russell Moore or Julie Decker, Loss/Risk Analysis Officers, Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or telephone: (703) 518–6383 or (703) 518–6384.

SUPPLEMENTARY INFORMATION:

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I. Background and Legal Authority

The NCUA administers the Federal Credit Union Act (the Act), which is comprised of three Titles: Title I—General Provisions, Title II—Share Insurance, and Title III—Central Liquidity Facility. Pursuant to the Act, the NCUA charters, regulates, and insures shares in federal credit unions and insures shares and deposits in federally insured state-chartered credit unions through the National Credit Union Share Insurance Fund (Share Insurance Fund). The NCUA is responsible for ensuring federally insured credit unions operate safely and soundly and comply with all applicable laws and regulations within the NCUA's jurisdiction.[2] In so doing, the agency mitigates risk to the Share Insurance Fund and prevents taxpayer-funded bailouts. The agency's mission is to ''provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit.'' [3] This includes protecting member rights and deposits.

To achieve its statutory mission, the agency incurs various expenses, including those involved in examining and supervising federally insured credit unions. The Board adopts an Operating Budget in the fall of each year to fund the vast majority of the costs of operating the agency.[4] The Act authorizes two primary sources to fund the Operating Budget: (1) Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper''; [5] and (2) ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].'' [6] Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions].'' Taken together, these dual primary funding authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating these expenses.

To allocate agency expenses between these two primary funding sources, the NCUA uses the OTR. The OTR represents the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II. Almost all other operating expenses are collected through annual Operating Fees paid by federal credit unions.[7] Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for the NCUA's Operating Budget and, hence, the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.[8] Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.[9] The NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the OTR.

[1] Request for Comment Regarding Revised Overhead Transfer Rate Methodology, 82 FR 29935 (June 30, 2017).

[2] In coordination with State Supervisory Authorities with respect to federally insured state-chartered credit unions.

[3] *https://www.ncua.gov/About/Pages/Mission-and-Vision.aspx.*

[4] Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.

[5] 12 U.S.C. 1783(a).

[6] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget include interest income, funds from publication sales, parking fee income, and rental income.

[7] Annual Operating Fees must ''be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [FCUs] to pay the fee.'' 1755(b). The Board's methodology for determining the aggregate amount of Operating Fees was discussed in a separate **Federal Register** publication. 81 FR 4674 (Jan. 27, 2016).

[8] 12 U.S.C. 1783(a).

[9] The Act in 12 U.S.C. 1755(a) states, ''[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'' See also 12 U.S.C. 1766(j)(3).

In 1972, the Government Accountability Office recommended the NCUA adopt a method for properly allocating Operating Budget costs—that is, the portion of the NCUA's budget funded by requisitions from the Share Insurance Fund and the portion covered by Operating Fees paid by federal credit unions.[10] The NCUA has since used an allocation methodology, known as the OTR, to determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

The NCUA has employed various allocation methods over the years, with the methodology adopted in 2003. For a chronological history of the OTR, refer to *Overhead Transfer Rate (OTR)—Timeline* at *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/overhead-transfer-rate-chronology.pdf.* For a detailed explanation of the prior methodology, refer to **Federal Register**—*NCUA Request for Comment Regarding Overhead Transfer Rate Methodology* at *https://www.federalregister.gov/documents/2016/01/27/2016-01626/request-for-comment-regarding-overhead-transfer-rate-methodology.*

In January of 2016, the Board voluntarily published its OTR methodology in the **Federal Register** and invited industry comment.[11] In June 2017, the Board proposed changes to the OTR methodology in the **Federal Register** and requested comments on the proposed changes.[12]

Within the 60-day comment period, the NCUA received 26 comment letters on the OTR methodology. The commenters included federal credit unions, federally insured state-chartered credit unions, national credit union trade organizations, state leagues, state supervisory authorities, and a credit union service organization (CUSO).

II. Legal Authority Comments and Responses

In response to its initial OTR notice in January 2016, the NCUA received a variety of comments related to the legal authority to requisition funds from the Share Insurance Fund to cover a portion of the Operating Budget. Several of the 2016 commenters stated the agency does not have authority or discretion to establish and determine the OTR. Some commenters asserted that the NCUA lacks the legal authority to use the Share Insurance Fund to cover costs of operating the agency. Other commenters claimed the NCUA has only very narrow authority to allocate costs, has too broadly interpreted its authority, and may assign to the Share Insurance Fund only those costs directly associated with share insurance payments for failed or troubled credit unions. Some commenters insisted the NCUA is required to fund the vast majority of the cost of operating the agency through Operating Fees charged to federal credit unions, claiming Congress intended that Operating Fees were to subsidize costs in managing risk to the Share Insurance Fund. Finally, some commenters insisted that the Board must use APA notice-and-comment processes to establish the OTR. To the extent commenters explained their positions, they read various limitations into the provisions the NCUA cites in Section I above and the response below and pointed to the Act's legislative history.

In response to the June 2017 Request for Comment the NCUA received a number of comments that reiterated the substance of or referenced points made in the comments received in response to the January 2016 Request for Comment. While helpful, the comments did not advocate materially new legal arguments or substantively expand on ones made in response to the January 2016 Request for Comment. Accordingly, the substance of the Board's responses to comments largely tracks those published in the June 2017 notice, with minor alterations. The Board believes this will be helpful to stakeholders in addressing questions they may have by once again fully explaining the NCUA's legal analysis set forth above.

Various commenters disagreed with the agency's legal analysis and argued that some combination of 12 U.S.C. 1781(b)(1), 1782(a)(5), and 1790 also limit the NCUA's requisition of funds from the Share Insurance Fund for the Operating Budget. Several commenters went further and argued that Title II's legislative history indicates the savings from the NCUA's reliance on Title I and State Supervisory Authority examinations and reports should accrue to the benefit of the Share Insurance Fund. Having considered these comments, the NCUA maintains that a plain reading of the Act, as described in section I above and in both the January 2016 and June 2017 notices, supports the agency's legal authority and broad discretion in allocating operating costs. As the Board previously stated, the Act's plain language does not require an analysis of the legislative history.[13] Even if legislative history was applicable in this case, the plain reading of the Act is consistent with the legislative history and does not support commenters' interpretation that Congress intended costs savings provisions to only accrue to the Share Insurance Fund as discussed below.

a. Allocation of the Cost Savings From the NCUA's Dual Roles

Multiple commenters stated that the plain language of the Act requires the Board to structure examinations and Call Reports originally required under Title I so they may be used for Title II share insurance purposes. These commenters similarly stated that the Act places requirements on the NCUA to use state regulator examinations and reports to the maximum extent feasible.

As the Board has previously explained, Title II of the Act, in 12 U.S.C. 1781(b)(2), authorizes examinations as needed for the protection of the Share Insurance Fund and other credit unions in addition to those permitted under Title I, recognizing that the scope and timing of Title I examinations does not necessarily satisfy share insurance needs under Title II. With respect to use of state regulator exams and reports, the Board is careful to build efficiencies wherever reasonable in light of the NCUA's dual roles as (1) charterer and prudential regulator of federal credit unions and (2) insurer of federal credit unions and federally insured state-chartered credit unions. This ensures the NCUA uses state regulator examinations and reports to the maximum extent feasible for purposes of insurance. Efficiencies gained from the NCUA's dual role provide cost savings and help avoid subjecting credit unions to the burden of redundant examinations.

Further, the Act's provisions on cost savings do not prohibit the NCUA from allocating insurance-related operating expenses to the Share Insurance Fund through the OTR under 12 U.S.C. 1783(a). Specifically, 12 U.S.C. 1781(b)(1) requires the NCUA to adjust the way it conducts examinations of federal credit unions so they may be ''utilized for share insurance purposes.'' This provision does result in cost savings. However, it does not preclude the NCUA from allocating the costs of the ''share insurance purposes'' portion of federal credit union examinations to

[10] *http://www.gao.gov/assets/210/203181.pdf.*

[11] Request for Comment Regarding Overhead Transfer Rate Methodology, 81 FR 4804 (Jan. 27, 2016).

[12] Request for Comment Regarding Revised Overhead Transfer Rate Methodology, 82 FR 29935 (June 30, 2017). The OTR does not require notice-and-comment procedures. The NCUA's legal analysis with respect to the OTR and Administrative Procedure Act processes is available at the following Web page: *https://www.ncua.gov/Legal/Documents/Opinion/OL2015-0818.pdf.*

[13] *See, e.g., Barnhart* v. *Sigmon Coal Co.,* 534 U.S. 438, 450 (2002).

the Share Insurance Fund.[14] The Board thus disagrees with commenters that argued the Act requires the cost-savings of the NCUA's dual roles to accrue specifically to the Share Insurance Fund.

b. 12 U.S.C. 1790—Prohibition of Discrimination Based on Charter Type

With respect to 12 U.S.C. 1790, the Board agrees with commenters stating that this provision should inform the NCUA's interpretation of Title II so that it consciously avoids discrimination against federally insured state-chartered credit unions to the benefit of federal credit unions.[15] However, the Board does not believe that either the prior OTR process or the one adopted in this Final Notice discriminates against federally insured state-chartered credit unions or federal credit unions to the benefit of the other.

As background, all federally insured credit unions are subject to the same requirements for funding the Share Insurance Fund. Specifically, § 1782(c)(1)(A)(i) requires that ''[e]ach insured credit union shall pay to and maintain with the [Share Insurance Fund] a deposit in an amount equaling 1 per centum of the credit union's insured shares.'' Section 1782(c)(2)(A) requires that ''[e]ach insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).'' Thus, in funding the Share Insurance Fund, federal credit unions and federally insured state-chartered credit unions are not treated any differently. Similarly, requisitions from the Share Insurance Fund used to fund the insurance-related expenses of the NCUA's Operating Budget under § 1783(a) do not distinguish between federal credit unions and federally insured state-chartered credit unions.

In response to the June 2017 Request for Comment one commenter stated that the primary goal of the proposed changes was to reduce the complexity of the OTR methodology. The commenter stated that the NCUA's primary goal should be to ensure fair and equitable treatment of federal credit unions and federally insured state-chartered credit unions in the allocation of insurance-related activities. However, the Board has always approached the OTR with the goal that it be fair and equitable to both charter types. The Board believes the new method continues to provide a fair and equitable distribution of Title I and Title II costs while recognizing that somewhat less precision can make the process more cost effective and understandable. In other words, fairness and equity among charter types is more than a goal, they have been and continue to be fundamental to the OTR methodology.

c. Title II Operating Costs

The Act clearly permits expenses related to insurance to be funded by the Share Insurance Fund, regardless of charter. Specifically, 12 U.S.C. 1783(a) allows expenses ''incurred in carrying out the purposes of [Title II]'' to be allocated to the Share Insurance Fund. The costs the NCUA incurs in safeguarding the Share Insurance Fund relate to the risks in federal credit unions and federally insured state-chartered credit unions. The Act provides the Board with specific authorities that relate to costs the NCUA incurs in carrying out its obligations under Title II. For instance, Title II of the Act authorizes the Board ''to appoint examiners who shall have the power, on its behalf, to examine any insured credit union . . . whenever in the judgment of the Board an examination is necessary to determine the condition of any such credit union for insurance purposes.'' [16] Further, Title II authorizes the Board to implement regulations applicable to all insured credit unions to address risk to the Share Insurance Fund. Title II states the Board may ''prescribe such rules and regulations as it may deem necessary and appropriate to carry out the provisions of this subchapter.'' [17] Title II also grants the Board the following authorities relevant to agency operating costs:

- ''appoint such officers and employees as are not otherwise provided for in this chapter;'' [18]
- ''employ experts and consultants or organizations thereof;'' [19]
- ''prescribe the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed;'' [20]
- ''exercise all powers specifically granted by the provisions of this subchapter and such incidental powers as shall be necessary to carry out the power so granted;'' [21] and
- ''make examinations of and require information and reports from insured credit unions, as provided in this subchapter.'' [22]

The Board concludes that these authorities, taken together, provide the NCUA as insurer with broad discretion to impose regulations on and examine all insured credit unions. In addition, the cost of the agency activities associated with exercising these and other accompanying authorities can properly be considered costs of carrying out Title II of the Act.[23]

d. APA Requirements

The legal analysis of the NCUA's Office of General Counsel on the applicability of the notice and comment provisions of the Administrative Procedure Act (APA) to the OTR methodology is summarized in the January 2016 OTR notice [24] and articulated more fully in a legal opinion posted on the NCUA's Web site.[25] In soliciting comment on the OTR through the **Federal Register**, the NCUA has gone, and continues to go, beyond its APA obligations.

In response to the June 2017 notice, one commenter specifically cited the Board's characterization of the OTR

[14] With respect to call reports and other ongoing reports submitted by federally insured credit unions, 12 U.S.C. 1782(a)(5) is also a cost savings provision but does not preclude allocating insurance-related costs of the applicable data collections to the Share Insurance Fund.

[15] 12 U.S.C. 1790 (''It is not the purpose of this subchapter to discriminate in any manner against State-chartered credit unions and in favor of Federal credit unions, but it is the purpose of this subchapter to provide all credit unions with the same opportunity to obtain and enjoy the benefits of this subchapter.'').

[16] 12 U.S.C. 1784(a).

[17] 12 U.S.C. 1789(a)(11).

[18] 12 U.S.C. 1789(a)(4).

[19] 12 U.S.C. 1789(a)(5).

[20] 12 U.S.C. 1789(a)(6).

[21] 12 U.S.C. 1789(a)(7).

[22] 12 U.S.C. 1789(a)(8).

[23] For example, Title II specifically addresses a broad range of standards for all insured credit unions, including standards for insurance against burglary and defalcation, loss reserve requirements, investment limitations, ongoing reporting requirements (such as the Call Report), independent audits, accounting principles, national flood insurance program requirements, liquidity capacity, unsafe and unsound conditions or practices, security standards, recordkeeping, monetary transaction and recordkeeping and reporting, benefits to institution affiliated parties, capital standards, and approval of officials.

[24] 81 FR 4804 (Jan. 27, 2016) (''Since its inception, NCUA has taken the position that the OTR is not a legislative rule under the Administrative Procedure Act (APA) and is, therefore, exempt from notice and comment rulemaking processes. As such, NCUA has never used notice and comment rulemaking to establish either an individual determination of the OTR or the general methodology used to calculate the OTR. However, the OTR has been explained, discussed, and reviewed in various public records, including in annual Board Action Memorandums related to budget matters, independent evaluations, and other documents available in public records and on NCUA's Web site.'' (footnotes omitted).

[25] The NCUA's legal analysis with respect to the OTR and APA process is available at the following Web page: *https://www.ncua.gov/Legal/Documents/Opinion/OL2015-0818.pdf.*

methodology as a rule at the June 2017 Board meeting as support for notice and comment procedures being required. However, as articulated in the Office of General Counsel's analysis [26] cited above, the APA does not require notice-and-comment procedures for all rules. Instead, a broad variety of agency actions fall under the APA's definition of ''rule,'' only some of which require notice and comment. As the Office of General Counsel's analysis states ''The APA's definition of a rule is very broad and applies to 'nearly every statement an agency' may make. However, determining whether the APA notice and comment requirements apply to a particular agency action or rule is a separate inquiry.'' By referring to the OTR as a rule, the Board was not suggesting notice-and-comment procedures are required but was instead calling the OTR what it is under the APA: A rule that does not require notice-and-comment procedures.

III. Proposed OTR Methodology Comments and Responses

a. Allocate Examination and Supervision of Federal Credit Unions as 50 Percent Insurance Related

Approximately half of the comments received addressed the first principle that examination and supervision of federal credit unions should be treated as 50 percent insurance-related. Those that did address it were split. Commenters supporting the proposed principle argued that it appeared to be a rough approximation of the time the NCUA should spend between its prudential and insurance-related responsibilities with respect to federal credit unions. One commenter specifically opined that the NCUA's analysis appeared reasonable and that the principle would be simple to apply. Another commenter supported the proposed principle, but suggested that it may be ''too modest'' of an assessment of the time the NCUA devotes to prudential supervision of federal credit unions.

Commenters that opposed the proposed principle argued that the Board's policy rationale is not clearly set out in the notice and, therefore, the change in policy appears to be without ''a reasoned basis.'' Some of these commenters also argued that the proposed principle is arbitrary, capricious, and not supported by substantial evidence. One commenter stated that it was not based on observable and measurable data inputs. The same commenter argued that the principle reflects the NCUA's position of ''how things should be'' but not how things are in reality. Another commenter argued that the principle ignores the Federal Deposit Insurance Corporation's (FDIC) actual practices, citing the following: (1) Pronouncements from the FDIC asserting its primary focus and intention is to protect the insurance fund by ensuring the safety and soundness of its member institutions; (2) conducting annual joint examinations with state regulators in many cases rather than alternating examinations, suggesting the FDIC considers protection of the insurance fund through its own examinations as a critical responsibility; and (3) the FDIC conducts a substantial and increasing amount of offsite monitoring, examination and supervision on all its institutions for safety and soundness purposes on an ongoing basis. Several other commenters recommended that the Board take additional time to study this assumption to develop a more empirically supportable principle and that the Board continue to refine this principle in the future to be more accurate.

The Board believes the rationale for the first principle is supportable and easy to understand. It attributes equal weight to each of NCUA's dual roles as regulator and insurer of federal credit unions. It creates a cost sharing similar to what would result if NCUA conducted alternating examinations of federal credit unions, acting as the regulator during one exam cycle and the insurer the next. Additionally, joint examinations between the regulator and insurer are generally staffed equally, resulting in a 50–50 time split. Whether alternating examinations or participating in joint examinations, the examination and supervision time of the insurer still ends up approximately 50 percent. As noted in the request for comment, it is consistent with the alternating examinations the FDIC and state regulators conduct for insured state-chartered banks, as mandated by Congress.

As one commenter noted, the FDIC prominently asserts its primary focus is to protect its insurance fund by ensuring the safety and soundness of its member institutions, in many cases through annual joint examinations. Like the FDIC, the NCUA's primary focus in its role as insurer is to protect the Share Insurance Fund. However, unlike the FDIC, the NCUA also has chartering authority. Since the NCUA examination staff perform all examinations of federal credit unions,[27] the NCUA as insurer can fully rely on all federal credit union examination reports for insurance purposes where the FDIC deals with many different state regulators. The FDIC conducts annual/joint examinations where it perceives elevated risks. The NCUA also increases examination activity where it perceives elevated risk and may choose to increase supervision for federal credit unions or conduct joint examinations for federally insured state-chartered credit unions. Further, the NCUA conducts a substantial amount of offsite monitoring and supervision of both federal credit unions and federally insured state-chartered credit unions, increasing this oversight when risk warrants. All examination and supervision time, both onsite and offsite, for all credit unions, whether they are healthy or troubled, is covered by the methodology in the workload hours portion of the calculation. This is consistent with Principle 1 and the FDIC model.

Using a principle-based approach simplifies the OTR calculation and reduces the resources needed to administer it. Further, it reflects that the NCUA as insurer is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator.

Importantly, the simplified assumption of equal sharing reflects the offsetting benefits for each role under a framework emulating an alternating examination program like the one used by FDIC. In other words, the insurer may evaluate compliance matters as part of a reciprocal arrangement with the prudential regulator in evaluating matters specific to insurance as part of the overall shared supervision of a credit union. It reflects an equal sharing of supervisory responsibilities between the NCUA's dual roles as charterer/prudential regulator and insurer given both roles have a vested interest in the safety and soundness of federal credit unions.

b. Allocate Examination and Supervision of All Others as 100 Percent Insurance Related

Few commenters addressed the second principle that all time and costs the NCUA spends supervising or evaluating the risks posed by federally insured state-chartered credit unions or other entities the NCUA does not charter or regulate (for example, third-

[26] *Id.*

[27] The Consumer Financial Protection Bureau also performs compliance examinations on credit unions with assets greater the $10 billion.

party vendors and CUSOs) should be treated as 100 percent insurance related. The majority of responsive comments supported the proposed principle. One commenter recommended that the Board allocate the supervision of CUSOs as 50 percent prudential regulatory and 50 percent insurance related. Another commenter recommended that the Board allocate CUSOs and third-party supervision as 25 percent prudential regulatory and 75 percent as insured-related. The commenter reasoned that, since the safety and soundness of federal credit unions is partially allocated to Title I, it would follow that some hours for CUSOs and third-party reviews should reflect the NCUA's safety and soundness responsibility as charterer and prudential regulator. Additionally, at least one commenter opposed the proposed second principle, arguing the Board has not explained its policy rationale clearly in the notice and, therefore, the change in policy is without a ''reasoned basis.''

The Board disagrees that it has not explained its policy rationale. The NCUA has specifically defined its role with federally insured state-chartered credit unions and other entities the NCUA does not charter or regulate, including CUSOs. The NCUA does not charter, nor is it the prudential regulator of, federally insured state-chartered credit unions; therefore, the NCUA's role is solely as the insurer. Further, the Board does not believe singling out CUSO activities is necessary or appropriate under the first or second proposed principle. Doing so would revert back to the prior approach of more particular designation of examination activities as insurance or regulatory based, which the proposed principles are designed to lessen for the reasons discussed above.

A CUSO itself is at times subject to a limited review during the examination of a federally insured credit union. This review generally covers the documentation required by NCUA or state regulation that credit unions must execute prior to investing in or lending to a CUSO. Examiners may also assess the risk a CUSO's activities pose to the credit union as part of the credit union examination. The CUSO related time within the scope of the examination and supervision of federally insured credit unions is captured under Principle 1 for federal credit unions and Principle 2 for federally insured state-chartered credit unions. The time designated for separate, stand-alone reviews of CUSOs and third-party vendors is accounted for separately in the NCUA's workload budget and is covered by Principle 2 only. The Board has no direct regulatory authority with respect to CUSOs and there is no support to allocate time specifically designated for CUSO and third-party vender reviews as anything other than the NCUA's role as insurer.

c. Allocate Time and Costs Related to the NCUA's Role as Charterer and Enforcer of Consumer Protection and Other Non-Insurance Based Laws Governing the Operations of Credit Unions as Zero Percent Insurance Related

Only a few commenters addressed the third proposed principle that all time and costs related to the NCUA's role as charterer and enforcer of consumer protection and other non-insurance based laws governing the operations of credit unions should be treated as not insurance related. Each commenter to address the proposed principle favored the Board's approach but did not offer substantive commentary.

d. Allocate Administration of the Share Insurance Fund as 100 Percent Insurance Related

Only a few commenters addressed the fourth principle that time and costs related to the NCUA's role in administering federal share insurance and the Share Insurance Fund should be treated as 100 percent insurance related. Each commenter to address the proposed principle favored the Board's approach but did not offer substantive commentary.

e. Soliciting Public Comment on the OTR Methodology

Less than half of the commenters addressed whether the Board should solicit public comment on the OTR methodology every three years and whenever the Board seeks to change the OTR methodology. All of those commenting favored soliciting public comment. One commenter recommended that the Board adopt a standardized five-year review period for the calculation. Another commenter recommended that the Board also solicit public comment on the OTR methodology for any year the OTR changes more than two percent. A third commenter recommended that the Board codify the OTR methodology as part of the NCUA's regulations, believing this would subject the OTR methodology to the notice-and-comment requirements of the APA. A fourth commenter recommended that the Board include the OTR methodology in the NCUA's rolling regulatory review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Finally, another commenter argued that the Board should subject the OTR methodology to periodic verification from an independent third party.

The Board is committed to seeking public comment on the OTR methodology every three years or when there are changes to the methodology. The Board reiterates that changes to the methodology means changes to the four principles or abandonment of the principles in favor of another methodology, not changes to the NCUA's organizational structure. The results of the calculation are not static and will change from year to year based on the contemporaneous information from the workload and financial budgets. The results are updated and reviewed annually and are applied to actual expenses. The Board does not agree that the OTR application should be submitted for public comment, regardless of whether it results in a material year-over-year change to the rate. Changes to the OTR output would be a result of the methodology's application to organizational changes or internal resource allocations, not a result of changes to the methodology. Even if the Board wanted to subject output changes to notice-and-comment, the time required for such processes would almost certainly impede the Board's budget processes.

The Board acknowledges that application of the current methodology has resulted in material changes in the OTR from year to year. This was a factor the Board considered in simplifying the calculations and the Board expects that the proposed methodology should result in less volatility in OTR outputs going forward. As noted in the legal analysis contained in the Request for Comment, the NCUA's position remains that the OTR methodology is not subject to the APA's notice-and-comment requirements. The Board maintains that the same is true with respect to its application. Further, this conclusion does not depend on whether the OTR methodology is included in the NCUA regulations. Whether a Board action is codified does not determine whether it is subject to notice-and-comment processes.[28]

Regarding subjecting the proposed methodology to periodic verification from an independent third-party, the Board will consider the cost versus the benefits of such a review. Given the greatly simplified methodology, such reviews may provide limited benefits.

[28] Interested parties can review the NCUA's position on this in the opinion found on the NCUA's Web site at the following address: *https://www.ncua.gov/Legal/Documents/Opinion/OL2015-0818.pdf.*

f. Maintaining Current Staff Delegations

Only a few commenters addressed whether the Board should maintain the current staff delegation to administer the OTR methodology but require public board briefings every year. Each commenter to address the proposal to maintain current staff delegations favored the Board's approach but did not offer substantive commentary.

g. Additional Comments

50/50 Split Between OTR and Operating Fees

One commenter opposed the OTR methodology and recommended the NCUA's operating budget be funded 50 percent by requisition from the Share Insurance Fund via the OTR and 50 percent from federal credit union operating fees. This commenter suggested that this was the Board's long-standing approach to funding the NCUA's operating budget prior to the current OTR methodology. Another commenter, however, indicated that a majority of its member credit unions would not favor such an approach.

As stated in the Request for Comment, the Board does not believe it is transparent or appropriate to set the OTR at any level, such as 50 percent, without a reasoned basis to demonstrate that level of agency operating costs are properly allocated to Title II activities. Even if it was, the Board thinks such a rough justice approach is unnecessarily simple while providing negligible, if any, additional administrative ease. The Board believes the principles-based methodology adopted in this Final Notice provides a reasoned basis for the OTR and is fair and equitable. The proposed new OTR methodology also provides a good balance between understandability, ease of administration, and precision.

Revise or Replace

At least one commenter strongly opposed the proposed OTR methodology in its entirety, arguing that the Board should revise and refine, not replace, the current methodology. Some refinements this commenter suggested included a clearer distinction between insurance and safety and soundness activities.

The Board does not agree that further distinction between insurance and safety and soundness is warranted. The proposed new OTR methodology revises the former OTR methodology and addresses concerns raised in the first request for comment as well as this one related to the distinction between insurance related and safety and soundness. The NCUA recognizes that safety and soundness is not the sole domain of the insurer. Rather, both the prudential regulator and insurer have responsibilities for safety and soundness. In the June 2017 Request for Comment, the NCUA acknowledged that safety and soundness is not the sole domain of the insurer; prudential regulators have various responsibilities with respect to the safety and soundness of institutions they oversee. To better reflect that the prudential regulator and insurer both have responsibilities for safety and soundness, the Board is adjusting the OTR methodology accordingly. This is reflected in the first principle of the proposed new methodology. Further, the old methodology also recognized this to some extent through the Imputed SSA Value component.

Another commenter also recommended retaining the old methodology, stating it is an objective, formula-based model that uses measurable data inputs, which prioritizes fairness, accuracy, and equity. Instead of replacing the old methodology, the commenter suggested the Board refine the examiner time survey and reevaluate the Imputed SSA Value. The Board disagrees with this recommendation and favors the proposed new methodology.

The proposed new methodology, though simpler, is still objective and formula driven. The examiner time study and the assignment of time as insurance, insurance regulatory, and consumer regulatory has been an area of great debate and the Board does not believe any amount of refining of these categories will alleviate the criticism and confusion around the process. The same criticism and confusion pertains to the ''Imputed SSA Value.'' Without 100 percent cooperation from the state supervisory authorities in providing detailed time studies and budget information, the NCUA cannot calculate a more accurate estimate. There is also stakeholder confusion regarding the hypothetical ''as if'' scenario that assumes the NCUA would have to do all the examination and supervision work. The proposed new methodology eliminates the examiner time study and the ''Imputed SSA Value'' to eliminate the confusion caused by each. Therefore, further refinements or changes to either are unnecessary at this time.

One commenter recommended establishing a Credit Union Advisory Council that would discuss, among other topics, the OTR. This request goes beyond the scope of the Request for Comment on the OTR.

Consistency With OCC, Segregating Functions

At least one commenter recommended that the Board adopt a methodology that more closely resembles the national banking model. The commenter suggested that the budget of the Office of the Comptroller of the Currency (OCC) for supervising national banks is entirely separate from the FDIC's budget for insuring bank deposits and recommended that the Board adopt a similar approach for the supervision of federal credit unions. Similarly, another commenter indicated that a majority of its member credit unions favor the Board separating the NCUA's charting and supervision of federal credit unions from its insurance-related supervisory functions.

The Board thinks using this approach would undermine the efficiencies Congress intended to create. The NCUA is both a regulator and insurer under the organization of a single federal agency with one budget. As noted in the January 2016 Request for Comment, in Title II of the Act, Congress established the Share Insurance Fund and housed it within the NCUA for administration by the Board. Congress envisioned efficiencies from this arrangement, as well as the NCUA's partnership with state regulators. While the NCUA does not have two distinctly separate budgets, it strives to allocate the appropriate amount to each activity through the OTR. In contrast, the OCC has no authority regarding the Deposit Insurance Fund, which is managed by the FDIC. The FDIC manages the Deposit Insurance Fund and has no primary regulatory responsibility for federally chartered banks. They have completely separate budgets because they are distinct federal agencies.

The NCUA also notes that the funding of the banking regulatory system has also been the subject of criticism. For example, in its July 2001 Report, *Reforming the Funding of Bank Supervision,* the Comptroller of the Currency concluded the funding system was not fair. The report states:

> Under the present system, national banks pay the full costs of their supervision, through assessments levied on them by the Office of the Comptroller of the Currency (OCC), the federal agency that charters and supervises national banks. State-chartered banks, by contrast, pay only for that small fraction of their supervision that is provided by state supervisory agencies. The predominant part of state bank supervision actually comes from two federal agencies, the Federal Reserve System (FRS) and the Federal Deposit Insurance Corporation (FDIC). These federal agencies perform exactly the same supervisory functions for

state banks as the OCC performs for national banks. The main difference is that the FRS and the FDIC do not assess state banks for the costs of their supervisory services.[29]

The NCUA Board seeks to be as fair as possible in the funding of its Operating Budget and does not believe the banking industry model is appropriate for credit unions.

Cost Savings Measures

One commenter recommended that the Board adopt cost saving measures to further reduce the OTR. Those measures included accepting the results of validated Asset Liability Management models of credit unions subject to supervision by the Office of National Examinations and Supervision (ONES) for supervisory stress testing purposes.

Suggestions regarding cost saving measures are aimed at the NCUA's overall budget, not at the OTR methodology. The budgeted amount is beyond the scope of the Request for Comment. While a lower budget may reduce the amount charged to the Share Insurance Fund through the OTR, this effect would not be a function of changes to the OTR methodology, which was the focus of the request for comment.

This commenter also recommended that the Board investigate options to improve the financial performance of the Share Insurance Fund in order to use investment gains to generate additional earnings. This comment also goes beyond the scope of the OTR methodology. Further, Title II of the Act explicitly limits the permissible investment vehicles for the Share Insurance Fund.[30] Consistent with its role as a steward of public insurance funds, the NCUA adheres to the strict investment objectives of ''safety, liquidity, and yield (*i.e.,* income)'' and in that order of priority. Only *after* ensuring safety of principal and establishing that maturities coincide with the timing of planned and contingent funding needs are the income objectives of the portfolio considered. In accordance with the U.S. Treasury's policy for *Government Investment Accounts,* the schedule of portfolio maturities coincides with the Agency's anticipated disbursement estimates (that is, our projected funding needs) and all purchases are intended to be held to maturity. The NCUA is bound by U.S. Treasury Operating Circular requirements, which states in section 4060:

> A Program Agency for a Government Investment Account shall not engage in investment practices that result in windfall gains and losses, including but not limited to security day-trading and large restructuring of investment portfolios to take advantage of short-term Interest Rate fluctuations.

One commenter recommended that the Board explore ways to work more closely with state supervisory authorities to increase efficiencies and reduce costs. The Board agrees that working with state supervisory authorities reduces costs and increases efficiencies for both the NCUA and state supervisory authorities. Therefore, as stated in the Request for Comment, the Board is careful to build efficiencies related to the NCUA's dual role as charterer and prudential regulator of federal credit unions and insurer of federal credit unions and federally insured state-chartered credit unions wherever possible. As part of the Examination Flexibility Initiative, the Board established a joint NCUA-State Regulator working group that has been active in 2017 in exploring ways to further improve coordination and cooperation.

Budget Allocations

Two commenters requested clarification on how the NCUA's proposed reorganization will impact budget allocations. One commenter specifically noted that 13 percent of the Office of Consumer Financial Protection and Access' budget is allocated from the Share Insurance Fund and that the proposed reorganization could have a substantial impact on that assumption.

The NCUA's reorganization affects the OTR's application, not the OTR methodology. The Board is approving the allocation principles for the OTR methodology. These principles are then dynamically applied to the activities and related costs of the agency—they are not necessarily specific to individual offices or the agency's organization. For example, costs associated with federal credit union examinations and supervision are aggregated. Therefore, a reduction from five regions to three regions will not affect the budget allocation.

Similarly, the Office of Small Credit Union Initiatives' transition to the new Office of Credit Union Resources and Expansion and the assumption of the NCUA's chartering function, formerly in the Office of Consumer Financial Protection and Access, does not materially impact budget allocation. The majority of the Economic Development Specialists from the old Office of Small Credit Union Initiatives are being converted to Consumer Access Analysts in the new Office of Credit Union Resources and Expansion. The Consumer Access Analysts from the Office of Consumer Financial Protection and Access will also be transferred to the new Office of Credit Union Resources and Expansion. The change in the composition of the work of the reorganized offices will affect their allocation calculation but not how the underlying costs are allocated based on the Board approved principles. The net result is a reallocation of the agency resources from the Office of Consumer Financial Protection and Financial Access to the new Office of Credit Union Resources and Expansion. The same principles will apply to the resources transferring to the new office based on their roles.

One commenter also recommended a number of changes to the Board's proposed budget allocations. The commenter recommended that the Board use a 50 percent allocation from the Share Insurance Fund for human resources and Board functions. For all other program offices, the commenter suggested using the 60 percent allocation from the Share Insurance Fund generated by the hypothetical application of the proposed OTR methodology in the June 2017 notice.

The Board does not agree that a 50 percent allocation should be applied to its budget and the human resources budget. As noted in the Request for Comment, the NCUA's remaining offices do not have a specific allocation calculation because they design and oversee the agency's mission and its related offices or provide necessary support to mission offices or the entire agency. As such, the proportion of insurance-related activities for these offices corresponds to that of the mission offices. Further, it would be administratively burdensome to attempt to account for any variation in activity levels from the mission functions and would not result in a material difference in outcomes. Therefore, these offices' costs are allocated based on the weighted average of insurance-related activities calculated in the subtotal of agency costs for the offices above that have a distinct allocation calculation. The Board also notes the 60 percent allocation, referred to by the commenter, was illustrative based on 2017 budget information and is therefore a methodology output, not a principle in itself. It is not a fixed allocation and will change from year to year based on contemporary data and the applicable calculation in the proposed new OTR methodology.

[29] Comptroller of the Currency, Reforming the Funding of Bank Supervision (2001), available at *ttps://www.occ.gov/static/news-issuances/news-releases/2001/nr-occ-2001-67-paper.pdf.*

[30] 12 U.S.C. 1783(c).

Another commenter recommended that the Board explore how other insurance industries allocate expenses and adopt a 5-year rolling average of actual costs when assessing future fees. However, share/deposit insurance is unique from other insurance industries as it only insures member/customer deposits in financial institutions. In the United States, there are three deposit insurers, the NCUA, the FDIC, and American Share Insurance. Both the NCUA and FDIC are backed by the full faith and credit of the United States while American Share Insurance is a private insurer. Additionally, neither the FDIC nor American Share Insurance have NCUA's chartering authority.

The NCUA is responsible for both regulating and insuring credit unions and has different accounting/cost allocation needs. NCUA share insurance is not risk-based. There are numerous other risk-based types of insurance companies operating in the United States, covering such things as real estate, automobiles, and health care. Some insurance companies offer some or all these business lines. Costs are generally allocated by business line or operating company. The NCUA's cost allocation approach incorporates sound cost accounting principles and commercial practices. However, additional analysis of insurance companies will not provide meaningful information given the unique role of the NCUA as regulator and insurer and other differences between private sector insurance models and the NCUA as a government agency.

Further, using a 5-year rolling average of actual costs to set expenses would add a layer of complexity to the OTR calculation. Adding complexity is not consistent with the Board's goal of simplifying the calculation to improve transparency. Additionally, a 5-year rolling average would not support contemporary needs based on contemporary data because it would be affected by past events, either increasing or decreasing costs, over a period of five years. The Board believes using the proposed new methodology is more fair and stable.

Negative Impact on Federal Credit Unions

Several commenter's stated the proposed new methodology would have a negative impact on federal credit unions. One commenter was particularly concerned with the impact on small federal credit unions. While another commenter suggested a three-year phase-in period if adopted to mitigate the impact this change will have on federal credit unions.

The NCUA staff analyzed the impact the change in methodology would have on federal credit union Operating Fees using data from the 2017 budget as discussed in the 2017 Request for Comment. The results of the analysis indicate the Operating Fee for federal credit unions with asset size $1 million and above, the increase would be less than one basis point of average assets. Additionally, credit unions under $1 million in assets do not pay an Operating Fee. While the Operating Fee will increase when the OTR decreases, this has been true during the OTR's entire existence.

Simplicity Over Accuracy and Equity

Several commenters stated the proposed new methodology favors simplicity over accuracy and equity. However, the Board believes the proposed method strikes the correct balance. The results of the proposed new methodology, using 2017 budget data, fall well within the historical range of the OTR under the old method. The average OTR since the Board adopted the old methodology is 60.7 percent, very similar to the results of the proposed new methodology applied to 2017 budget numbers. Table 1 illustrates the historical OTR trend.

TABLE 1

OTR year	OTR (%)
2004	59.8
2005	57.0
2006	57.0
2007	53.3
2008	52.0
2009	53.8
2010	57.2
2011	58.9
2012	59.3
2013	59.1
2014	69.2
2015	71.8
2016	73.1
2017	67.7

One of the main criticisms of the old OTR methodology is that it is not transparent. This stems from the complexity of the calculation and was discussed in the Request for Comment. Although all information related to the old OTR calculation is publicly available, the Board acknowledged that an obstacle to transparency was the complexity of the methodology. In an effort to address the transparency concern, the Board is adopting the simplified OTR methodology. While still formula driven, the proposed new methodology provides for a simpler approach that remains comprehensive, fair, and equitable. The Board believes the proposed new methodology, though simplified, continues to provide an accurate allocation of agency costs.

IV. Final Action

Based on the comments and the NCUA's internal assessment, the Board is adopting the new OTR methodology as proposed in the June 2017 notice. These changes will reduce both the complexity of the OTR methodology and the resources needed to administer it, while remaining fair and equitable to both federal credit unions and federally insured state-chartered credit unions. The final OTR methodology is fully described below.

V. Details of the OTR Methodology

a. Methodology

The OTR methodology incorporates the following underlying principles for allocating agency operating costs:

1. Time spent examining and supervising federal credit unions is allocated as 50 percent insurance related.[31]

2. All time and costs the NCUA spends supervising or evaluating the risks posed by federally insured state-chartered credit unions or other entities the NCUA does not charter or regulate (for example, third-party vendors and CUSOs) is allocated as 100 percent insurance related.[32]

3. Time and costs related to the NCUA's role as charterer and enforcer of consumer protection and other non-insurance based laws governing the operation of credit unions (like field of membership requirements) are allocated as zero percent insurance related.[33]

[31] The 50 percent allocation mathematically emulates an examination and supervision program design where the NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate units within the NCUA. It reflects an equal sharing of supervisory responsibilities between the NCUA's dual roles as charterer/prudential regulator and insurer, given both roles have a vested interest in the safety and soundness of federal credit unions. It is consistent with the alternating examinations the FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress. Further, it reflects that the NCUA is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator.

[32] The NCUA does not charter state-chartered credit unions nor serve as their prudential regulator. The NCUA's role with respect to federally insured state-chartered credit unions is as insurer. Therefore, all examination and supervision work and other agency costs attributable to insured state-chartered credit unions are allocated as 100 percent insurance related.

[33] As the federal agency with the responsibility to charter federal credit unions and enforce non-insurance related laws governing how credit unions

Continued

4. Time and costs related to the NCUA's role in administering federal share insurance and the Share Insurance Fund are allocated as 100 percent insurance related.[34]

These four principles represent the principles the Board has committed to subject to public comment every three years and in the event it proposes a change to one or more of the principles. The principles are applied to the activities and costs of the agency to arrive at the portion of the agency's Operating Budget to be charged to the Share Insurance Fund as detailed below. The NCUA will not submit the methodology's applications or outputs for public comment.

b. Application

The Steps below describe how the four principles above are applied. Unlike the principles themselves, the Board will not subject the application of the principles or the OTR outputs to notice-and-comment processes.

Step 1—Workload Program

Annually, the NCUA develops a workload budget based on the NCUA's examination and supervision program to carry out the agency's core mission. The workload budget reflects the time necessary to examine and supervise federally insured credit unions, along with other related activities, and therefore the level of field staff needed to implement the exam program. Applying principles 1, 2, and 3 (those relevant to the workload budget) to the applicable elements of the workload budget results in a composite rate that reflects the portion of the agency's overall insurance related mission program activities.

Step 2—Operating Budget

The Operating Budget represents the costs of the activities associated with achieving the strategic goals and objectives set forth in the NCUA's Strategic Plan. The Operating Budget is based on agency priorities and initiatives that drive resulting resource needs and allocations. Information related to the NCUA's budget process, including details on the Board-approved Operating Budgets, is available on the agency's Web site.[35]

The agency achieves its primary mission through the examination and supervision program. The percentage of insurance-related workload hours derived from Step 1 represents the main allocation factor used in Step 2 and is applied to the total operating budget for the examination and supervision programs to calculate the insurance-related costs of the offices conducting field work (currently the Regions and ONES). A few agency offices have roles distinct enough to warrant their own allocation factors, which are developed by applying the four factors described above to their respective activities. Each of these offices tracks their activities annually to determine their factors. These factors are then applied to the respective offices' operating budgets to determine their insurance-related costs.

A weighted average allocation factor, calculated by dividing the aggregate insurance-related costs for the field offices conducting the examination and supervision program and the agency offices with their own unique allocation factors by their aggregate total operating budgets, is applied to the central offices that design or oversee the examination and supervision program or support the agency's overall operations. This factor is then applied to the aggregate operating budgets for the remaining offices. As such, the proportion of insurance-related activities for these offices corresponds to that of the mission offices. The NCUA's total insurance related costs are calculated by summing the insurance cost calculated for the field offices, the offices with unique allocations factors, and the insurance cost for all other remaining NCUA offices.

Step 3—Calculate the OTR

The OTR represents the percentage of the NCUA Operating Budget funded by a transfer from the Share Insurance Fund.[36] The OTR is calculated by dividing the total insurance-related costs determined in Step 2 by the NCUA's total operating budget.

By the National Credit Union Administration Board on November 16, 2017.

Gerard Poliquin,

Secretary of the Board.

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BILLING CODE 7535–01–P

operate in the marketplace, the NCUA resources allocated to these functions are properly assigned to its role as charterer and prudential regulator. This includes any reviews of credit unions focused solely on compliance, such as a fair lending exam. It does not include the more broadly based examinations and supervision contacts of federal credit unions covered by principle 1. It also does not include enforcing laws, like Prompt Corrective Action, that are part of share insurance under Title II as covered by principle 4.

[34] The NCUA conducts liquidations of credit unions, insured share payouts, and other resolution activities in its role as insurer. Also, activities related to share insurance, such as answering consumer inquiries about insurance coverage, are a function of the NCUA's role as insurer.

[35] *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.*

[36] The percentage of actual expenses funded by the Share Insurance Fund as they are incurred each month.

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, December 12, 2017.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

57238 Marine Accident Report—Sinking of US Cargo Vessel SS *El Faro,* Atlantic Ocean, Northeast of Acklins and Crooked Island, Bahamas, October 1, 2015.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, December 6, 2017.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Peter Knudson at (202) 314–6100 or by email at *peter.knudson@ntsb.gov.*

Dated: November 20, 2017.

LaSean R. McCray,

Alternate Federal Register Liaison Officer.

[FR Doc. 2017–25417 Filed 11–20–17; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; ADS and IRWST Injection Block

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 91 and 90 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on October 19, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated October 14, 2016 (ADAMS Accession No. ML16288A810), as supplemented by letters dated February 23, 2017 (ADAMS Accession No. ML17054D204), and May 9, 2017 (ADAMS Accession No. ML17129A589), respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 91 and 90 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific DCD Tier 2 information and involves changes to COL Appendix C and COL Appendix A, Technical Specifications. The proposed changes revise the licensing basis documents to add additional design details to the automatic depressurization system (ADS) injection blocking devices and to add new blocking devices to the design of the in-containment refueling water storage tank (IRWST) injection squib valves actuation logic in the safety-related protection and safety monitoring system.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17268A084.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17268A081 and ML17268A080, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17268A079 and ML17268A078, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated October 14, 2016, as supplemented by letters dated February 23, 2017, and May 9, 2017, the Southern Nuclear Operating Company requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 16–018, ''ADS and IRWST Injection Block.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17268A084, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this

circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License as described in the request dated October 14, 2016, as supplemented by letters dated February 23, 2017, and May 9, 2017. This exemption is related to, and necessary for the granting of License Amendment No. 91 (Unit 3) and 90 (Unit 4), which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17268A084), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated October 14, 2016 (ADAMS Accession No. ML16288A810), as supplemented by letters dated February 23, 2017 (ADAMS Accession No. ML17054D204), and May 9, 2017 (ADAMS Accession No. ML17129A589), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 20, 2016 (81 FR 92873). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on October 14, 2016, as supplemented by letters dated February 23, 2017, and May 9, 2017.

The exemption and amendment were issued on October 19, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17268A075).

Dated at Rockville, Maryland, this 17th day of November, 2017.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–25297 Filed 11–21–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4, Changes to Containment Cooling and Spent Fuel Pool Makeup Strategies

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (together ''the licensees''), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

DATES: Comments must be filed by December 22, 2017.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: OWFN–2–A13, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter C. Hearn, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1189; email: *Peter.Hearn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):*You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated July 14, 2017, is available in ADAMS under Accession No. ML17198A596.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–91 and NPF–92, issued to the licensees for operation of the VEGP Units 3 and 4 located in Burke County, Georgia.

The proposed amendment would change the plant-specific Tier 1 (and COL Appendix C) to revise the inspected volume for the spent fuel pool and cask loading pit, and make corresponding changes to the minimum volumes. A new Tier 1 inspection is also added for the cask washdown pit with appropriate acceptance criteria for its volume. The requested amendment also proposes changes to the Technical Specification reactor decay heat limits and spent fuel pool decay heat limits which reflect when various safety-relate makeup path are required to be available for containment cooling or spent fuel pool makeup.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request Involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by section 50.91(a) of title 10 of the *Code of Federal Regulations* (10 CFR), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes ensure that sufficient spent fuel cooling is provided based on the revised analyses that properly account for thermal expansion and voiding in the Spent Fuel Pool (SFP). The containment and spent fuel cooling capabilities remain adequate to meet the design bases following a seismic event and station blackout. The proposed changes do not alter an accident initiating component, nor do the proposed changes create any new accident precursors, and thus, the probabilities of the accidents previously evaluated are not affected. The plant response to previously evaluated accidents or external events is not adversely affected. Thus, the proposed changes would not affect any safety-related accident mitigating function. The radioactive material source terms and release paths used in the safety analyses are unchanged, thus the radiological releases in the UFSAR accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are supported by the revised analyses that demonstrate the ability of the affected systems to perform their design function, and additionally, do not introduce a new failure mechanism into the design. The proposed changes do not involve a new failure mechanism or malfunction, which affects a system, structure, or component (SSC) accident initiator, or interface with any SSC accident initiator or initiating sequence of events considered in the design and licensing bases. There is no adverse effect on radioisotope barriers or the release of radioactive materials. The proposed amendment does not adversely affect any accident, including the possibility of creating a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes ensure that sufficient spent fuel cooling is provided based on the revised analyses that properly account for thermal expansion and voiding in the SFP. The containment and spent fuel cooling capabilities remain adequate to meet the design bases following a seismic event and station blackout. The containment and SFP cooling capabilities continue to comply with the existing UFSAR regulatory requirements and industry standards. The proposed changes would not affect any safety-related design code, function, design analysis, safety analysis input or result, or existing design/safety margin. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the requested changes.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 60 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 60-day comment period should circumstances change during the 60-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's

''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 22, 2018. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its

counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated July 14, 2017.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Dated at Rockville, Maryland, this 17th day of November 2017.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–25296 Filed 11–21–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0052]

Enforcement Discretion for Tornado-Generated Missile Protection Noncompliance, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG), ''Clarification of Licensee Actions in Receipt of Enforcement Discretion per Enforcement Guidance Memorandum (EGM) 15–002, 'Enforcement Discretion for Tornado-Generated Missile Protection Noncompliance,' Revision 1.'' The revisions provide clarifying guidance to facilitate the NRC staff's consistent oversight associated with implementing enforcement discretion for tornado missile protection noncompliance(s) per EGM 15–002.

DATES: The applicable date of the ISG is November 22, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0052 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0052. Address questions about NRC dockets to Carol Gallagher, telephone: 301–415–3463; email: *Carol.Gallagher@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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at

1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ISG, ''Clarification of Licensee Actions in Receipt of Enforcement Discretion Memorandum 15–002, ''Enforcement Discretion for Tornado-Generated Missile Protection Noncompliance,'' Revision 1, is available in ADAMS under Accession No. ML17128A344. Enforcement Guidance Memorandum, EGM 15–002, ''Enforcement Discretion for Tornado-Generated Missile Protection Noncompliance,'' Revision 1 is available in ADAMS under Accession No. ML16355A286.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Hickey, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2180, email: *James.Hickey@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published a **Federal Register** notice requesting public comment on this interim staff guidance (ISG) on February 23, 2017 (82 FR 11483). The agency received five total comments. The NRC considered the comments, which resulted in no changes to the ISG. The evaluation of these comments is discussed in the last appendix of the ISG.

I. Background

The Office of Nuclear Reactor Regulation (NRR), Division of Risk Analysis (DRA) completed a generic bounding risk analysis (ADAMS Accession No. ML14114A556) that concluded that the issues associated with the inoperability of a Structure, System, or Component due to a tornado-generated missile are likely to be of low risk significance, and do not require immediate plant shutdown. Based on the conclusions of the NRR/DRA analysis, the staff issued EGM 15–002, dated June 10, 2015. In its implementation of EGM 15–002, the NRC staff found that additional refinements are needed to address reportability, enforcement of long standing design issues, and the duration of the enforcement discretion resulting from all the non-conforming conditions being assessed together. As a result, the staff issued EGM 15–002, Revision 1, dated February 7, 2017.

This revised ISG adds additional information for inspection and review staff to support implementation of the changes made in EGM 15–002, Revision 1. This revised ISG provides an approach to extending the discretion. The revisions to this ISG also revise provisions concerning reportability requirements under § 50.72 of title 10 of the *Code of Federal Regulations* (10 CFR), discusses enforcement discretion for long-term design non conformances, and reinforces the need for licensees to follow the corrective action program when dispositioning the impact of identified tornado missile non-conformances on operability. This revised ISG will expire with the expiration of EGM 15–002, Revision 1.

II. Backfit Discussion

Issuance of this ISG in final form does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule). As discussed in the ''Backfitting'' section of DSS–ISG- 2016–001, Revision 1, this ISG contains guidance for the NRC staff for implementing EGM–15–002. This ISG does not constitute backfitting as defined in the Backfit Rule and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, and the NRC staff did not prepare a backfit analysis. This because this ISG requires no response by licensees, and concerns only NRC staff implementation of enforcement discretion pursuant to EGM–15–002.

III. Congressional Review Act

This ISG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 16th day of November, 2017.

For the Nuclear Regulatory Commission.

Alexander H. Schwab,

Project Manager, ROP Support and Generic Communications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–25271 Filed 11–21–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4, Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of the successful completion of inspections, tests, and analyses.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for the Vogtle Electric Generating Plant (VEGP), Units 3 and 4.

DATES: The applicable date for determining successful completion of inspections, tests, and analyses for VEGP Units 3 and 4 is November 22, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Licensee Notification of Completion of ITAAC

Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG Power SPVP, LLC., and the City of Dalton,

Georgia, (hereafter called the licensee) has submitted inspections, tests, analyses, and acceptance criteria (ITAAC) closure notifications (ICNs) under § 52.99(c)(1) of title 10 of the *Code of Federal Regulations* (10 CFR), informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses, and that the acceptance criteria are met for:

VEGP Unit 3 ITAAC

2.1.02.08a.i (28), 2.1.02.08d.iii (34), 2.2.04.08a.i (235), 2.2.04.08a.ii (236), 2.5.01.03d (514), 2.5.02.07a (534), 2.5.02.07d (537), 2.5.02.07e (538), 2.5.02.14 (553), C.2.6.12.06 (676), 3.2.00.01a (739), and 3.2.00.01b (740)

VEGP Unit 4 ITAAC

2.1.02.08a.i (28), 2.1.02.08d.iii (34), 2.5.01.03d (514), 2.5.02.07a (534), 2.5.02.07d (537), 2.5.02.07e (538), 2.5.02.14 (553), 3.2.00.01a (739), and 3.2.00.01b (740)

The ITAAC for VEGP Unit 3 are in Appendix C of the VEGP Unit 3 combined license (ADAMS Accession No. ML14100A106). The ITAAC for VEGP Unit 4 are in Appendix C of VEGP Unit 4 combined license (ADAMS Accession No. ML14100A135).

II. NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the specified inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met. The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF) for each ITAAC. The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. Each ICN presents a narrative description of how the ITAAC was completed. The NRC's ICN review process involves a determination on whether, among other things: (1) Each ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) each ICN provides sufficient information to demonstrate that the acceptance criteria of the ITAAC are met; and (3) any NRC inspections for the ITAAC have been completed and any ITAAC findings associated with that ITAAC have been closed.

The NRC staff's determination of the successful completion of these ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If the staff receives new information that suggests the staff's determination on any of these ITAAC is incorrect, then the staff will determine whether to reopen that ITAAC (including withdrawing the staff's determination on that ITAAC). The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for these ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of these ITAAC will be reflected on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html.*

This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

Vogtle Electric Generating Plant Unit 3, Docket No. 5200025

A complete list of the review status for VEGP Unit 3 ITAAC, including the submission date and ADAMS Accession Number for each ICN received, the ADAMS Accession Number for each VEF, and the ADAMS Accession Numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog3-icnsr.pdf.*

Vogtle Electric Generating Plant Unit 4, Docket No. 5200026

A complete list of the review status for VEGP Unit 4 ITAAC, including the submission date and ADAMS Accession Number for each ICN received, the ADAMS Accession No. for each VEF, and the ADAMS Accession Numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog4-icnsr.pdf.*

Dated at Rockville, Maryland, this 17th day of November, 2017.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–25298 Filed 11–21–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–55]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 28, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–55; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* November 16, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 28, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–25246 Filed 11–21–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meeting

TIME AND DATE: December 7, 2017, at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: The Postal Regulatory Commission will hold a public meeting to discuss the agenda items outlined below. Part of the meeting will be open to the public as well as audiocast, and the audiocast may be accessed via the Commission's Web site at *http://www.prc.gov.* Part of the meeting will be closed.

MATTERS TO BE CONSIDERED: The agenda for the Commission's December 7, 2017 meeting includes the items identified below.

Portions Open to the Public

1. Report from the Office of Public Affairs and Government Relations.

2. Report from the Office of General Counsel.

3. Report from the Office of Accountability and Compliance.

4. Report from the Office of the Secretary and Administration.

5. Commissioners Vote to designate the Vice-Chairman of the Commission for calendar year 2018 pursuant to 39 U.S.C. 502(e).

Portions Closed to the Public

6. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: David A. Trissell, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Stacy L. Ruble, Secretary of the Commission, at 202–789–6800 or *stacy.ruble@prc.gov* (for inquiries related to meeting location, changes in date or time of the meeting, access for handicapped or disabled persons, the live-webcast, or similar matters). The Commission's Web site may also provide information on changes in the date or time of the meeting.

By direction of the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–25461 Filed 11–20–17; 4:15 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82100; File No. SR–NYSEARCA–2017–130]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes to the NYSE Arca Equities Proprietary Market Data Fees

November 16, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 3, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to the NYSE Arca Equities Proprietary Market Data Fees (''Fee Schedule'') to: (1) Modify the Redistribution Fee for NYSE ArcaBook and NYSE Arca Integrated Feed; (2) modify the Non-Display Fee for NYSE ArcaBook and NYSE Arca Integrated Feed; and (3) modify Professional User Fees for NYSE ArcaBook and NYSE Arca Integrated Feeds and establish tiered Professional User Fees and a Professional User Fee Cap for Broker-Dealers subscribers of NYSE ArcaBook. The proposed rule change is available on the Exchange's Web site 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 changes to the Fee Schedule to: (1) Modify the Redistribution Fee for NYSE ArcaBook [4] and NYSE Arca Integrated Feed; [5] (2)

[4] *See* Securities Exchange Act Release Nos. 53592 (June 7, 2006), 71 FR 33496 (June 9, 2006) (SR–NYSEArca–2006–21) (''2006 ArcaBook Notice''); 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) (''2013 Non-Display Filing''); 72560 (July 8, 2014), 79 FR 40801 (July 14, 2014) (SR–NYSEArca–2014–72)(''2014 ArcaBook Filing''); 73011 (September 5, 2014), 79 FR 54315 (September 11, 2014) (SR–NYSEARCA–2014–93) (''2014 Non-Display Filing''); 74011 (January 7, 2015), 80 FR 1681 (January 13, 2015) (SR–NYSEArca–2014–149) (''2015 ArcaBook Filing''); and 76903 (January 14, 2016), 81 FR 3547 (January 21, 2016) (SR–NYSEArca–2016–01).

[5] *See* Securities Exchange Act Release Nos. 66128 (Jan. 10, 2012), 77 FR 2331 (Jan. 17, 2012) (SR–NYSEArca–2011–96); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) (''2013 Non-Display Filing''); 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEArca–2014–

modify the Non-Display Fee for NYSE ArcaBook and NYSE Arca Integrated Feed; and (3) modify Professional User Fees for NYSE ArcaBook and NYSE Arca Integrated Feeds and establish tiered Professional User Fees and a Professional User Fee Cap for Broker-Dealer subscribers of NYSE ArcaBook. The Exchange proposes to make these fee changes operative on January 1, 2018.

Redistribution Fee

A Redistributor is any person approved by the Exchange that provides an NYSE Arca data product to an external data recipient or to any external system that a data recipient uses, irrespective of the means of transmission or access. The Exchange currently charges a redistribution fee of $1,500 per month for NYSE ArcaBook and $3,000 per month for NYSE Arca Integrated Feed. The Exchange proposes to increase the redistribution fee to $2,000 per month for NYSE ArcaBook and to $3,750 per month for NYSE Arca Integrated Feed.

Non-Display Fee

Non-Display Use of NYSE Arca market data means accessing, processing, or consuming NYSE Arca market data delivered via direct and/or Redistributor data distribution for a purpose other than in support of a data recipient's display usage or further internal or external redistribution.[6]

There are currently three categories of, and fees applicable to, data recipients for non-display use that are listed on the Fee Schedule:

- Category 1 Fees apply when a data recipient's non-display use of real-time market data is on its own behalf as opposed to use on behalf of its clients;
- Category 2 Fees apply when a data recipient's non-display use of real-time market data is on behalf of its clients as opposed to use on its own behalf; and
- Category 3 Fees apply when a data recipient's non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients.

The Exchange proposes to amend non-display use fees for NYSE ArcaBook and NYSE Arca Integrated Feed.

The current non-display fee for NYSE ArcaBook is $5,000 per month for each of Category 1, Category 2 and Category 3. Category 3 fees are currently capped at $15,000 per month. The Exchange proposes to increase the non-display fee for NYSE ArcaBook to $6,000 per month for each of Category 1, Category 2 and Category 3. The Exchange proposes a corresponding increase in the cap for Category 3 fees for NYSE ArcaBook to $18,000 per month.

The current non-display fee for NYSE Arca Integrated Feed is $7,000 per month for each of Category 1, Category 2 and Category 3. Category 3 fees are currently capped at $21,000. The Exchange proposes to increase the non-display fee for NYSE Arca Integrated Feed to $10,500 per month for each of Category 1, Category 2 and Category 3. The Exchange proposes a corresponding increase in the cap for Category 3 fees for NYSE Arca Integrated Feed to $31,500 per month.

Professional User Fee

The Exchange currently charges a flat monthly Professional User Fee of $40 per user for NYSE ArcaBook. The Exchange proposes to increase Professional User Fees for NYSE ArcaBook to $60 per month. The Exchange also proposes to establish tiered Professional User Fees for broker-dealers that are subscribers of NYSE ArcaBook, as follows:

- $60 per month for each of 500 or fewer professional users reported for a broker-dealer subscriber, and
- The current rate of $40 per month for each professional user over 500 reported for a broker-dealer subscriber.

The Exchange notes that it has not increased NYSE ArcaBook subscriber fees for display use since 2014.[7] With this proposed change, all subscribers would pay more for some of their professional users than they do today. However, some subscribers that qualify for the proposed tiered rate, *i.e.,* subscribers with more than 500 professional users, would pay less under the proposed fee change than they would absent the proposed tiered fees.

In addition, the Exchange proposes to cap the Professional User Fee for broker-dealers that are subscribers of NYSE ArcaBook at $75,000 per month.

To illustrate the application of the proposed Professional User Fee increase and the Professional Use Fee cap, a broker-dealer with 2,500 professional users who receive NYSE ArcaBook would currently pay $100,000 per month in Professional User Fees (2,500 users at $40 per month). If all 2,500 users are internal users, under the proposed fee change, this broker-dealer's Professional User Fees would increase to $110,000 per month (500 users at $60 per month plus 2,000 users at $40 per month). However, the operation of the proposed cap would cause this broker-dealer's fees to drop to $75,000 per month. Thus, for this broker-dealer the effect of the proposed changes would be a *decrease* of $25,000 per month in Professional User Fees.

Further, the Exchange currently charges a flat monthly Professional User Fee of $40 per month per user for NYSE Arca Integrated Feed. The Exchange proposes to increase the monthly Professional User Fees for NYSE Arca Integrated Feed to $60 per month per user. The proposed fee change would apply to all professional users of NYSE Arca Integrated Feed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that the proposed fee changes are fair and reasonable in light of market and technology developments. The Exchange further believes that the proposed fee changes are also equitable and not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to NYSE ArcaBook and NYSE Arca Integrated Feed.

Redistribution Fee

The Exchange believes the proposed changes to the redistribution fee for NYSE ArcaBook and NYSE Arca Integrated Feed are equitable and reasonable because they compare favorably to redistribution fees that are currently charged by other exchanges.[10] The Exchange believes that it is reasonable to charge redistribution fees

93) (''2014 Non-Display Filing''); 73993 (Jan. 6, 2015), 80 FR 1527 (Jan. 12, 2015) (SR–NYSEArca–2014–147); and 76914 (January 14, 2016), 81 FR 3484 (January 21, 2016) (SR–NYSEArca–2016–03).

[6] *See e.g.* 2015 ArcaBook Filing, *supra* note 4.

[7] *See* Securities Exchange Act Release No. 71483 (February 5, 2014), 79 FR 8217 (February 11, 2014) (SR–NYSEArca–2014–12)

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] Cboe BZX U.S. Equities Exchange (''BZX Equities'') charges $5,000 per month for external distribution of the BZX Depth market data product. *See https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.* In addition, the Nasdaq Stock Market (''Nasdaq'') charges $3,750 per month for external distribution of the NASDAQ TotalView market data product. *See https://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#tv.*

because vendors receive value from redistributing the data in their business products for their customers. The Exchange believes the proposed change to the redistribution fees also are not unfairly discriminatory because they would continue to be charged on an equal basis to any vendor that chooses to redistribute the data.

Non-Display Fee

The Exchange believes that the proposed fee increases for each of Categories 1, 2, and 3 for NYSE ArcaBook and NYSE Arca Integrated Feed are equitable and reasonable. In establishing the non-display fees in April 2013, the Exchange set its fees at levels that were below or comparable to similar fees charged by certain of its competitors.[11] The Exchange then modestly increased such fees in 2014 after gaining further experience with its non-display fee structure. The Exchange believes the proposed fees better reflect the significant value of the non-display data to data recipients, which purchase data on an entirely voluntary basis. Non-display data continues to be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. Non-display data also continues to be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate profits, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefitting end users. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[12]

The Exchange believes the proposed fee increases are also reasonable in that they support the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves. For example, the Exchange's extensive improvements to its trading platform and feed technology has significantly lowered the latency of its proprietary data products available over the XDP protocol, which transmits data faster and more efficiently than the Exchange's previous data distribution channel. For example, the average latency of NYSE ArcaBook and NYSE Arca Integrated Feed is approximately one-third of what it was in 2014.

The Exchange believes the proposed fees are competitive with offerings by other exchanges, which structure and set their fees comparably. For example, Nasdaq charges professional subscribers monthly fees for non-display usage based upon direct access to NASDAQ level 2, NASDAQ TotalView, or NASDAQ OpenView, which range from $375 per month for customers with one to 39 subscribers to $75,000 per month for customers with 250 or more subscribers.[13] In addition, Nasdaq PHLX (''PHLX'') offers an alternative $10,000 per month ''Non-Display Enterprise License'' fee that permits distribution to an unlimited number of internal non-display subscribers without incurring additional fees for each internal subscriber.[14] The Non-Display Enterprise License covers non-display subscriber fees for all PHLX proprietary direct data feed products and is in addition to any other associated distributor fees for PHLX proprietary direct data fee products.

Professional User Fee

The Exchange believes that the proposed subscriber fees are reasonable, equitable and not unfairly discriminatory because the fee structure of differentiated professional and non-professional fees has long been used by the Exchange for other products, by other exchanges for their products, and by the CTA and CQ Plans in order to make data more broadly available.

The Exchange believes that the tiered structure with decreasing fees as the number of professional subscribers increase is equitable and not unfairly discriminatory because it is similar to the tiered structure used for professional subscribers by the CTA and CQ for Network A data[15] Broker-dealers that purchase NYSE ArcaBook typically have more than 500 professional users and would therefore be impacted by the change in fees for up to the first 500 such users. The fees for such broker-dealers for users above that level will remain at the current level. Additionally, as proposed, professional user fees will be based on a tiered fee structure that depends on the number of users, with a reduced per user rate for those professional users that exceed 500. Subscribers would pay $60 per user per month for 500 and fewer users, and would pay the current rate of $40 per user per month for those users that exceed 500. This tiered structure is an equitable allocation of reasonable dues, fees and other charges because the proposed fees are commensurate with the value of the data feed.

The Exchange further believes the proposed monthly Professional User Fee of $60 for NYSE ArcaBook and NYSE Arca Integrated Feed is reasonable because the proposed fee is comparable to the $60 per month fee currently charged by the New York Stock Exchange LLC (''NYSE'') to professional users of the NYSE OpenBook market data product,[16] and is lower than the $76 per month fee currently charged by Nasdaq to professional users of the Nasdaq TotalView market data product.[17] And as noted above, the Exchange has not raised the subscriber fees for display use of NYSE ArcaBook since 2014 and for NYSE Arca Integrated Feed since 2013 when fees for NYSE Arca Integrated Feed were first adopted. Since then, the Exchange has continually enhanced its market data products through technology upgrades to meet industry and customer demands. The Exchange believes that the proposed fees are fair and reasonable in light of the Exchange's ongoing effort to improve the delivery technology for market data.

The Exchange believes that it is reasonable to establish the Professional Fee Cap. The purpose of the Professional User Fee is to charge for each use of NYSE ArcaBook data feed. The Exchange believes it is appropriate to charge user fees for employees that work on different trading desks or who

[11] *See* Securities Exchange Act Release No. 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37).

[12] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

[13] *See* Nasdaq Rule 7023(b)(4).

[14] *See* Section IX of the PHLX Pricing Schedule.

[15] Those monthly fees are $50 for 1–2 devices, $30 for 3–999 devices, $25 for 1,000–9,999 devices, and $20 for 10,000 or more devices. *See* CTA Network A Rate Schedule, available at *http://www.nyxdata.com/nysedata/default.aspx?tabid=518.*

[16] *See* NYSE Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.*

[17] *See* Nasdaq Price List—U.S. Equities at *https://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#tv.*

provide advisory services. These internal uses are intended to provide value to customers of the broker-dealer, whether in the execution of trades, or with designing an investment portfolio, and are therefore an integral part of a broker-dealer's business model. While the Exchange anticipates that only the largest broker-dealers would avail themselves to the proposed fee cap, in the Exchange's view, limiting the fee exposure of a subset of its customers, *i.e.,* large broker-dealers, does not unreasonably discriminate against other customers under Section 603(a)(2) of Regulation NMS. Additionally, the Exchange notes that fee caps have long been accepted as an economically efficient form of volume discount for the heaviest users of market data and would allow for a broad dissemination of the Exchange's market data product.[18] The concept of adopting a fee cap applicable to broker-dealer subscribers is not novel. The Exchange currently has a Non-Professional Fee Cap applicable to Broker-Dealers only that subscribe to NYSE ArcaBook.[19]

The Exchange proposes these higher fees in light of the fact that since 2014, the value of NYSE ArcaBook and NYSE Arca Integrated Feed data feeds has increased significantly while fees for these products have not increased. The Exchange notes that in that time, the Exchange has continually upgraded its technology to keep pace with changes in the industry and evolving customer needs. Further, the standardization of the market data specifications recently implemented by the Exchange may provide value to subscribers that utilize data feeds from more than one NYSE market. This standardization enables greatly increased efficiency for firms by allowing them to leverage their development work on one market across multiple markets and reduces the overall impact of the price increases.

The Exchange notes that NYSE ArcaBook and NYSE Arca Integrated Feed are entirely optional. Firms are not required to purchase NYSE ArcaBook and NYSE Arca Integrated Feed. Firms that do purchase NYSE ArcaBook and NYSE Arca Integrated Feed do so for the primary goals of using the data feeds to increase profits, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE ArcaBook and NYSE Arca Integrated Feed or any other similar products are attractively priced or not.

Firms that do not wish to purchase NYSE ArcaBook and NYSE Arca Integrated Feed at the new prices have a variety of alternative market data products from which to choose,[20] or if NYSE ArcaBook and NYSE Arca Integrated Feed does not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE ArcaBook and NYSE Arca Integrated Feed or use them at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[21]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [22]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[23]

For the reasons stated above, the Exchange believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. As described above, the proposed fees are based on pricing conventions and distinctions that exist in the Exchange's current fee schedule, and the fee schedules of other exchanges. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal. Thus, although the proposal results in a fee increase, these increases are based on careful analysis of empirical data and the application of

[18] *See e.g.,* Nasdaq Rule 7023(c), Enterprise License Fees at *http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_4_6&manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F.*

[19] *See* NYSE Arca Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Fee_Schedule.pdf. See also* Securities Exchange Act Release Nos. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21); 72560 (July 8, 2014), 79 FR 40801 (July 14, 2014) (SR–NYSEArca–2014–72); and 76903 (January 14, 2016), 81 FR 3547 (January 21, 2016) (SR–NYSEArca–2016–01).

[20] *See* Nasdaq Rule 7023 (Nasdaq TotalView) and BZX Equities Rule 11.22(a) and (c) (TCP Depth and Multicast Depth).

[21] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

[22] *NetCoalition,* 615 F.3d at 535.

[23] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

time-tested pricing principles accepted and applied by the Commission for many years.

As described in greater detail below, if the market deems the NYSE ArcaBook and NYSE Integrated Feeds not to provide fair value at the prices to be charged, firms can discontinue or change the ways they use these products because the products are optional to all parties. The Exchange continually reviews pricing policies aimed at increasing fairness and equitable allocation of fees among subscribers. NYSE Arca believes that periodically it must adjust the subscriber fees to reflect market forces and the Exchange believes it is an appropriate time to adjust the fees that are the subject of this proposed rule change to more accurately reflect the investments made to enhance these products through technology upgrades.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

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. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [24]

Moreover, competitive markets for listings, order flow, executions, and transaction reports impose pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [25] More recently, former SEC Chair Mary Jo White reported that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[26] And as the Commission's own Chief Administrative Law Judge found after considering extensive fact and expert testimony and documentary evidence on the subject, ''there is fierce competition for trading services (or 'order flow')'' among exchanges, and ''the record evidence shows that competition plays a significant role in restraining exchange pricing of depth-of-book products.'' *In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken By Self-Regulatory Organizations,* Initial Decision Release No. 1015, Administrative Proceeding File No. 3–15350 (June 1, 2016), at pp. 8 and 33.

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make NYSE ArcaBook and NYSE Arca Integrated Feed available unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE ArcaBook and NYSE Arca Integrated Feed can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example

[24] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available* at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11-cv-2280 (DC Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[25] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[26] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

of joint products with joint costs.[27] The decision of whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of the Exchange and the Exchange's affiliates, NYSE and NYSE American LLC (''NYSE American''), was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[28] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[29]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, Cboe Global Markets f/k/a Bats Global Markets (''Bats'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[30] More recently, Investors Exchange (''IEX''), which began to operate as an ATS in 2013 and later obtained exchange status in 2016, currently provides market data at no charge in order to attract order flow and build market share. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

[27] *See generally Pricing of Market Data Services, An Economic Analysis* at vi (''Given the general structure of electronic order books and electronic order matching, it is not possible to provide transaction services without generating market data, and it is not possible to generate trade transaction—or market depth—data without also supplying a trade execution service. In economic terms, trade execution and market data are joint products.'') (Oxera 2014).

[28] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[29] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[30] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE American, Nasdaq, and Bats.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, Bats and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE ArcaBook and NYSE Arca Integrated Feed, competitors offer close substitute products.[31] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, Bats and Direct Edge. As noted above, Bats launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010. And more recently, IEX, which started operating as an ATS in 2013 has accumulated more than 2% market share since it obtained exchange status in 2016.

In determining the proposed changes to the fees for NYSE ArcaBook and NYSE Arca Integrated Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[32] of the Act and subparagraph (f)(2) of Rule 19b–4[33] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[34] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2017–130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2017–130. 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 Web site (*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 Web site 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–2017–130 and should be submitted on or before December 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

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[31] *See supra* note 20.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

[34] 15 U.S.C. 78s(b)(2)(B).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82102; File No. SR–CBOE–2017–070]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Rule 6.56

November 16, 2017.

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 November 3, 2017, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe'') 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

The Exchange seeks to amend Rule 6.56. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.56 (Compression Forums) to: (1) Modify the compression-list positions file to include positions with multiple legs; (2) provide for the creation of a new multi-leg-position file; and (3) modify the time by which TPHs must provide compression-list positions. This proposal is intended to make it easier for TPHs to efficiently close positions in series of SPX options at the end of each calendar month in order to mitigate the effects of capital constraints on market participants and help ensure continued depth of liquidity in the SPX options market.

Modifications to the Compression-List Position File

Under current Rule 6.56, on the final three business days of each calendar month, the Exchange holds compression forums in the SPX trading crowd. Beforehand, in order to facilitate TPHs finding counterparty offsets against which they can trade closing positions, TPHs may submit lists of existing SPX positions to the Exchange that they wish to close during a compression forum (''compression-list positions''). Prior to the open of trading on the third-to-last business day of each calendar month (*i.e.* the first day of the month on which a compression forum is held), the Exchange makes available to all TPHs on its Web site a list including each series for which both long and short compression-list positions have been submitted to the Exchange (''compression-list positions file''). In addition, TPHs that submit compression-list positions to the Exchange receive a compression-list positions file containing the names of the TPHs that contributed to the file (and did not opt out of being identified as contributors), including contact information for each TPH's designated point of contact. The Exchange then holds open outcry ''compression forums'' in which all TPHs may participate, whether or not they submitted positions for inclusion in the compression-list position file.

The Exchange proposes to amend Rule 6.56 to enhance the effectiveness and utility of its compression forums process for market participants. Specifically, the Exchange seeks to modify the compression-list positions file to include positions with multiple legs. For example, the Exchange proposes to group compression-list positions into common multi-leg options strategies and include the multi-leg positions in the compression-list position file. Specifically, the Exchange proposes to use the list of individual series to create a list of all possible vertical call spreads,[3] vertical put spreads,[4] and box spreads [5] (common multi-leg options strategies). The box spreads will be derived from the aforementioned call and put spreads where there is both a long and short position (*i.e.,* offsetting interest). The Exchange emphasizes the fact that the Exchange is proposing to compile a list of all possible vertical call spreads, vertical put spreads, and box spreads. The Exchange is proposing to specify in proposed Interpretation and Policy .01 to Rule 6.56 that for purposes of Rule 6.56 multi-leg positions will include vertical call spreads, vertical put spreads, and box spreads. Files generated by the Exchange pursuant to Rule 6.56 are provided to TPHs for informational purposes only. Individual TPHs determine whether to submit compression-list positions; whether to participate in the compression forum process; and whether to represent orders on the trading floor. The Exchange's provision of the list does not constitute advice, guidance, a commitment to trade, an execution, or a recommendation to trade.

Example #1

- TPH A submits the following positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Long.
12/21/2017	C	2700	50	Short.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A vertical call spread involves the purchasing and selling of an equal number of call options with the same expiration date but different strike prices. For example, buying 100 DEC 2040 calls and selling 100 DEC 2070 calls.

[4] A vertical put spread involves the purchasing and selling of an equal number of put options with the same expiration date but different strike prices. For example, buying 100 DEC 2040 puts and selling 100 DEC 2070 puts.

[5] A box spread involves purchasing (selling) a bull call spread and purchasing (selling) a bear put spread. In other words, a box spread is composed of a long (short) call and short (long) put position at one strike price and a short (long) call and long (short) put position at another strike price. For example, a box spread would be entered by purchasing 100 DEC 2040 calls and selling 100 DEC 2070 calls (*i.e.,* bull call spread) and selling 100 DEC 2040 puts and purchasing 100 DEC 2070 puts (*i.e.,* bear put spread).

• TPH B submits the following positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/15/2017	C	2400	50	Short.
12/15/2017	C	2700	50	Long.

• The Exchange will not identify any multi-leg positions with offsetting interest because the expiration dates of TPH A's positions do not match the expiration dates of TPH B's positions.

Example #2

• TPH A submits the following positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Long.
12/21/2017	C	2700	100	Short.

• TPH B submits the following positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Short.
12/21/2017	C	2700	100	Long.

• The Exchange will identify a vertical call spread because the expiration dates of TPH A's positions and TPH B's position match to create a vertical call spread with two parties (TPH A and B) that have opposite positions (*i.e.,* the parties have offsetting interest). However, a vertical call spread requires the purchase and sale of the same number of options contracts; thus, even though there are 100 of the 2700 calls in Example #2 the Exchange will identify a vertical call spread with total possible offsetting interest of 50 contracts.

• In this example, the compression-list position file distributed to all TPHs would include the following information (not necessarily representative of the exact format) for both single series positions (*i.e.,* information currently provided in the compression-list position file) and the multi-leg positions:

• Single series positions with the size of possible offsetting interest:

Expiration	Call/put	Strike	Possible
12/21/2017	C	2400	50
12/21/2017	C	2700	100

• Call spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Possible
12/21/2017	2400	2700	50

Example #3

• If in Example #2 the positions were puts instead of calls, the compression-list position file distributed to all TPHs would include the following information (not necessarily representative of the exact format) for both single series positions (*i.e.,* information currently provided in the compression-list position file) and the multi-leg positions:

• Single series positions with size of possible offsetting interest:

Expiration	Call/put	Strike	Possible
12/21/2017	P	2400	50
12/21/2017	P	2700	100

• Put spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Possible
12/21/2017	2400	2700	50

Example #4

• TPH A submits the following positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Long.
12/21/2017	C	2700	100	Short.
12/21/2017	P	2400	50	Short.
12/21/2017	P	2700	100	Long.

• TPH B submits the following positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Short.
12/21/2017	C	2700	100	Long.
12/21/2017	P	2400	50	Long.
12/21/2017	P	2700	100	Short.

• The Exchange will identify a vertical call spread (2400 calls and 2700 calls) and a vertical put spread (2400 puts and 2700 puts). Again, each vertical call spread and each vertical put spread requires the purchase and sale of the same number of options contracts; thus, even though the 2700 calls and puts have 100 contracts, the Exchange will identify a vertical call spread with total possible offsetting interest of 50 contracts and a vertical put spread with total possible offsetting interest of 50 contracts.

• In addition to the vertical call spreads and vertical put spreads, the Exchange will also identify a box spread. TPH A's position is a box spread (long 2400 calls, short 2400 puts, short 2700 calls, and long 2700 puts) that is potentially offset by TPH B's position (short 2400 calls, long 2400 puts, long 2700 calls, and short 2700 puts), which represents an opposite interest box spread. Again, as with vertical call spreads and vertical put spreads, the total possible offsetting interest is limited to 50 contracts.

• In this example, the compression-list position file distributed to all TPHs would include the following information (not necessarily representative of the exact format) for both single series positions (*i.e.,* information currently provided in the compression-list position file) and the multi-leg positions:

• Single series positions with the size of possible offsetting interest:

Expiration	Call/put	Strike	Possible
12/21/2017	C	2400	50
12/21/2017	C	2700	100
12/21/2017	P	2400	50
12/21/2017	P	2700	100

• Call spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

• Put spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

• Box spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

As previously noted a box spread is composed of a long (short) call and short (long) put position at one strike price and a short (long) call and long (short) put position at another strike price. In Example #4 above, identifying the two strike prices of a box spread necessarily means that there is a TPH that is long the 2400 call, short the 2400 put, short the 2700 call, and long the 2700 put and at least one other TPH has the opposite position (*i.e.,* short the 2400 call, long the 2400 put, long the 2700 call, and short the 2700 put).

As demonstrated above, in addition to providing the offsetting interest for each individual series the Exchange is proposing to add additional information to the compression-list positions file related to multi-leg positions (*i.e.,* the aforementioned vertical call spreads, vertical put spreads, and box spreads). Currently, only a fraction of the two-sided interest available to be offset is actually being offset. This is due, in part, to the compression-list position file containing only the offsetting interest for each individual series. TPHs currently seeking to close such single series positions must then execute each series individually or attempt to identify multi-leg positions comprised of individual series. Closing positions on an individual series basis is less advantageous because closing a single series may change a TPHs risk profile. Closing multi-leg positions is advantageous because such positions can be risk neutral, which means the closing of the entire multi-leg position has little or no impact on a TPHs risk profile. However, in the current compression forum framework TPHs seeking to close multi-leg positions must undertake a burdensome process of divulging their individual positions in an attempt to identify multi-leg positions that have offsetting interest. The process is time-consuming, inefficient, and devoid of the anonymity TPHs desire, making the use of multi-leg orders to close positions difficult and ineffective. The Exchange believes that providing TPHs with a way to identify multi-leg positions with offsetting interest will enable efficient closing of such positions.

Example #5

- In addition to the positions submitted by TPH A in Example #4 TPH A also submits the below position:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2800	0	Short.

- In addition to the positions submitted by TPH B in Example #4 TPH B also submits the below position:

Expiration	Call/put	Strike 2	Size	Long/short
12/21/2017	C	2800	50	Long.

- The Exchange will use the 2400 calls multiple times to identify all possible combinations of vertical call spreads, vertical put spreads, and boxes. In this example, the 2400 calls can be used multiple times to create multiple possible vertical call spreads, thus, the following information (not necessarily representative of the exact format) for both single series positions (*i.e.,* information currently provided in the compression-list position file) and the multi-leg positions:
- Call spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50
12/21/2017	2400	2800	*50

*Additional position identified due to the 2800 calls.

- Put spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

- Box spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

New Individualized Multi-Leg Position File

In order to further encourage TPHs to submit compression-list positions to the Exchange and to allow the Exchange to provide information that will enable TPHs to represent multi-leg positions in compression forums that have offsetting interest and thus more efficiently and effectively close positions via compression forums, the Exchange also seeks to create an additional position file containing individualized multi-leg positions (''multi-leg position file''). Specifically, the Exchange seeks to amend paragraph (a)(4) to Rule 6.56 to provide that in addition to making available to all Trading Permit Holders a compression-list positions file composed of individual series with offsetting interest and multi-leg positions with offsetting interest (as proposed and described above), the Exchange will electronically send an individualized multi-leg positions file to each Trading Permit Holder that submitted compression-list positions to the Exchange pursuant to paragraph (a)(1). Paragraph (a)(4) will also provide that the individualized multi-leg position file will include: A complete list of all possible combinations of offsetting multi-leg positions that are composed of series the individual Trading Permit Holder submitted as part of a compression-list position; a unique identification number for each multi-leg position (''PID'') that will enable the TPH to identify particular multi-leg positions for purposes of proposed paragraph (a)(5), which is discussed below in relation to disclosing the identities of TPHs; the series that make up the multi-leg position; and the offsetting size of the multi-leg position against other Trading Permit Holders on an individualized and anonymous basis.

Example #6

• TPH A submits the below positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Long.
12/21/2017	C	2700	100	Short.
12/21/2017	P	2400	50	Short.
12/21/2017	P	2700	100	Long.

• TPH B submits the below positions to the Exchange:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Short.
12/21/2017	C	2700	100	Long.
12/21/2017	P	2400	50	Long.
12/21/2017	P	2700	100	Short.

• The compression-list position file distributed to all TPHs would include the following information (not necessarily representative of the exact format) for both single series positions (*i.e.,* information currently provided in the compression-list position file) and the multi-leg positions:

• Single series positions with the size of possible offsetting interest:

Expiration	Call/put	Strike	Possible
12/21/2017	C	2400	50
12/21/2017	C	2700	100
12/21/2017	P	2400	50
12/21/2017	P	2700	100

• Call spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

• Put spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

• Box spread positions with the size of possible offsetting interest:

Expiration	Strike 1	Strike 2	Size
12/21/2017	2400	2700	50

• TPH A's individualized position file would include the following multi-leg position information (not necessarily representative of the exact format):

• Call spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
1	12/21/2017	2400	2700	50

• Put spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
2	12/21/2017	2400	2700	50

• Box spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
3	12/21/2017	2400	2700	50

• TPH B's individualized position file would include the following multi-leg position information (not necessarily representative of the exact format):

• Call spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
1	12/21/2017	2400	2700	50

• Put spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
2	12/21/2017	2400	2700	50

• Box spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
3	12/21/2017	2400	2700	50

Example #7

• In addition to TPH A and TPH B's positions in Example #6, TPH C submits the below position:

Expiration	Call/put	Strike	Size	Long/short
12/21/2017	C	2400	50	Short.
12/21/2017	C	2700	100	Long.

• TPH B's individualized position file noted in Example #6 would remain the same because TPH A still remains the only contra-party with offsetting interest.

• The Exchange will use TPH A's positions multiple times to identify all possible contra-parties with offsetting interest. In this example, TPH A's 2400/2700 vertical call spread has multiple possible contra-parties. Thus, TPH A's

individualized position file would include the following multi-leg position information (not necessarily representative of the exact format):

• Call spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
1	12/21/2017	2400	2700	50
4	12/21/2017	2400	2700	*50

*Additional position identified due to the additional contra-party.

• Put spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
2	12/21/2017	2400	2700	50

• Box spread positions with the size of possible offsetting interest:

PID	Expiration	Strike 1	Strike 2	Size
3	12/21/2017	2400	2700	50

The purpose of grouping individual series into multi-leg positions is to allow TPHs to efficiently and effectively identify multi-leg positions with offsetting interest in order for TPHs to represent multi-leg orders in compression forums. If a TPH does not receive an individualized multi-leg position file from the Exchange the TPH will be less able to efficiently and effectively identify which of their individual series positions can and should be grouped together to be represented in the compression forum. Even a compression-list position file that contains multi-leg positions is not effective without an individualized list because it is an individualized list that will allow a TPH to easily identify their particular multi-leg positions that can be represented in a compression forum in an efficient and effective manner.

The Exchange proposes to condition receipt of individualized multi-leg position files on a TPH's submission of compression-list positions. The Exchange believes the condition will encourage TPHs to submit compression-list positions, which helps to encourage TPHs to close positions via the compression forum.

TPH Identity Disclosures

The Exchange also seeks to add paragraph (a)(5) to give TPHs the opportunity to identify themselves as having a particular multi-leg position. Pursuant to proposed paragraph (a)(5), TPHs will have the opportunity to give the Exchange permission (on a multi-leg position by multi-leg position basis—enabled by the PID unique to each identified multi-leg position) to share the TPH's identity with the contra-party for each multi-leg position and vice versa.

To illustrate, in Example #5 above TPH A has three multi-leg positions that have a potential contra-party with offsetting interest (in this example TPH B). TPH A has the option—for PID #1, PID #2, and/or PID #3—to direct the Exchange to disclose TPH A's identity to the potential contra-party for each particular multi-leg position. If, for example, TPH A instructed the Exchange to disclose their identity to the potential contra-party for PID #3, but not PID #1 or #2, the Exchange would notify TPH B that the potential contra-party for TPH B's PID #3 is willing to disclose their identity to TPH B if TPH B agrees to disclose their identity to the contra-party to PID #3. In short, if TPH A and B mutually agree to disclose their identities to the other party for purposes of PID #3, the Exchange will disclose the information. In the event that TPH B does not want their identity disclosed, the Exchange will not disclose any identifying information to either party.

As noted above, each TPH and contra-party each have to agree to reveal their identity before the Exchange can provide the information to the TPH and contra-party. The Exchange believes providing a process by which individual TPHs with offsetting multi-leg positions may identify each other will enable TPHs utilizing that process to more easily identify potential counterparties during the compression forums, which encourages a more efficient and effective compression forum process. The Exchange notes that TPHs currently have the ability to identify themselves for purposes of the compression-list positions file.[6] Although Rule 6.56(a)(3) does not currently allow the Exchange to disclose a TPH's identity in relation to a specific position listed on the compression-list position file, the restriction was solely designed to alleviate concerns from TPHs that the Exchange's publication of the compression-list position file would publically disclose the individual positions of every TPH submitting compression-list positions. The Exchange is not proposing to modify the restriction in Rule 6.56(a)(3); thus, the compression-list position file that is publically disclosed will not identify any TPH as having a specific position. Rather, the Exchange is proposing to allow TPHs to opt-in to a process that will disclose their identity to the contra-party for a specific multi-leg position, but only if the parties mutually agree to do so for the specific multi-leg position. TPHs can make the commercial decision not to opt-in to the process. The Exchange notes that providing the ability for TPHs to opt-in to the proposed process is similar to the manner in which TPHs have the ability to opt-out of identifying themselves on the compression-list positions file.[7]

[6] *See* Rule 6.56(a)(3).

[7] *See* Rule 6.56(a)(3), which provides, in part, that ''the Exchange will electronically send the compression-list positions file to the Trading Permit Holders that submitted compression-list positions to the Exchange pursuant to paragraph (a)(1), including a list of those Trading Permit Holders that contributed to the compression-list positions file. The list will not include the name of any Trading Permit Holder that requests its name be excluded from this list.''

The Exchange also proposes to determine the deadlines by which TPHs must grant the Exchange permission to disclose their identities with regards to specific multi-leg positions. The deadlines are necessary to allow the Exchange to begin and complete the notification process.

Importantly, the Exchange is unaware of any regulatory restriction that would prevent TPHs from publically disclosing their entire position book in an effort to find potential counterparties with offsetting interest. In fact, TPHs can and do share position level information today. It is standard practice for TPHs to request quotes, seek indications of interest, and solicit parties to trade (via the trading crowd, electronic messaging systems, telephone, etc.) when seeking liquidity for a particular position. The Exchange's role and the design of Rule 6.56 (*e.g.,* providing TPHs the option to opt-in to the information sharing process or even submit compression-list positions to the Exchange in the first instance) helps to alleviate the commercial concerns of TPHs, which helps to encourage TPH participation in compression forums and ultimately the closing of open positions. Furthermore, the proposal has no effect on the manner in which TPHs will represent orders on the trading floor. The position level information will simply allow TPHs to more effectively and efficiently identify other TPHs on the trading floor that have a particular offsetting position. TPHs must represent orders on the trading floor, and TPHs that do not submit compression-list positions have the opportunity to respond to the orders represented on the trading floor, including orders represented in compression forums.

The Exchange notes that all transactions must be effected in accordance with applicable trading rules, must be subject to risk of the market, and must be reported for dissemination. In addition, TPHs are reminded that Section 9(a)(1) of the Act provides in relevant part that it shall be unlawful for any member of a national securities exchange, for the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties. Furthermore, under the Exchange's policy concerning prearranged trading, TPHs are cautioned that any purchase or sale, transaction or series of transactions, coupled with an agreement, arrangement or understanding, directly or indirectly to reverse such transaction which is not done for a legitimate economic purpose or without subjecting the transactions to market risk, violates Exchange Rules and may be inconsistent with various provisions of the Act and rules thereunder.[8]

TPHs receiving individualized multi-leg position lists will still be required to represent orders on the trading floor in accordance with existing trading rules and thereby expose orders to the risk of the market. The Exchange notes that the provision in Rule 6.56(c) is not intended as an absolute safe harbor from prearranged trading prohibitions, but is instead intended to provide that transacting through a compression forum (consistent with open outcry transactions generally) will not be deemed to be prearranged trading provided that the transaction is otherwise executed in accordance with Exchange Rules, including the policy concerning prearranged trading.

Deadline To Submit Compression-List Positions

Paragraph (a)(1) of Rule 6.56 currently provides that prior to the close of Regular Trading Hours (*i.e.,* 3:15 p.m. Chicago time) on the fourth to last business day of each calendar month, a Trading Permit Holder may provide the Exchange with a list of open SPX options positions that it would like to close through the compression forum for that calendar month (''compression-list positions''). The Exchange is proposing to extend the deadline to 4:30 p.m. Chicago time. TPHs have missed the 3:15 p.m. cutoff in the past, and the Exchange believes expanding the deadline to 4:30 p.m. Chicago time will give TPHs the time necessary after the end of the trading day to submit compression-list positions to the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settlpreing [sic], 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)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposal is consistent with the Act in that it seeks to foster liquidity in the SPX options market in light of the bank regulatory capital requirements. The Exchange believes bank regulatory capital requirements could potentially limit the amount of capital clearing TPHs can allocate to their clients' transactions, which in turn, may impact liquidity, particularly in the SPX market. The Exchange believes the proposal encourages TPHs to close positions via the compression process by providing information regarding multi-leg positions that will enable TPHs to more efficiently and effectively close positions via the compression forums, which, in general, helps to protect investors and the public interest because closing positions via the compression process serves to alleviate the adverse impact of bank capital requirements.

In addition, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the compression forum process is open to all TPHs and completely voluntary. Individual TPHs determine whether to submit compression-list positions; whether to participate in the compression forum process; and whether to represent orders on the trading floor. The Exchange's provision of the list does not constitute advice, guidance, a commitment to trade, an execution, or a recommendation to trade. Rather, files generated by the Exchange pursuant to Rule 6.56 are provided to TPHs for informational purposes only. Aiding TPHs efforts to identify offsetting multi-leg positions helps TPHs close positions and thereby

[8] *See* Cboe Regulatory Circular RG17–085.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

helps mitigate the effects of bank capital requirements. Mitigating the effects of bank capital requirements helps to promote continued liquidity provision by the market-making community, which serves to protect investors and the public interest by helping to ensure liquidity continues to be available to investors. Each individualized multi-leg position file will be customized only in that each individualized list will be unique to the positions submitted by the individual TPH. In short, each individual multi-leg position list may contain different information because each individual TPH's positions are different. The individual multi-leg position lists will not be different based on any of the Exchange's processes. The Exchange is not raking positions but is instead compiling lists of all possible combinations of multi-leg positions (defined as vertical call spread, vertical put spreads, and boxes), and as previously noted, the Exchange's provision of the list does not constitute advice, guidance, a commitment to trade, an execution, or a recommendation to trade. Again, the multi-leg position files are provided to TPHs for informational purposes only. Finally, TPHs are not required to participate in the compression forum process. To the extent TPHs participate, compression forums are conducted in a non-discriminatory manner, which is also consistent with the Act. Furthermore, this proposed rule change does not amend rules related to open outcry trading, prearranged trading, solicitation orders, etc. The manner in which orders must be represented on the trading floor is unaffected by this proposed rule change.

Importantly, the Exchange is unaware of any regulatory restriction that would prevent TPHs from publically disclosing their entire position book in an effort to find potential counterparties with offsetting interest. In fact, TPHs can and do share position level information today. It is standard practice for TPHs to request quotes, seek indications of interest, and solicit parties to trade (via the trading crowd, electronic messaging systems, telephone, etc.) when seeking liquidity for a particular position. The Exchange's role and the design of Rule 6.56 (*e.g.,* providing TPHs the option to opt-in to the information sharing process or even submit compression-list positions to the Exchange in the first instance) helps to alleviate the commercial concerns of TPHs, which helps to encourage TPH participation in compression forums and ultimately the closing of open positions. Furthermore, the proposal has no effect on the manner in which TPHs will represent orders on the trading floor. The position level information will simply allow TPHs to more effectively and efficiently identify other TPHs on the trading floor that have a particular offsetting position. TPHs must represent orders on the trading floor, and TPHs that do not submit compression-list positions have the opportunity to respond to the orders represented on the trading floor, including orders represented in compression forums.

The Exchange notes that all transactions must be effected in accordance with applicable trading rules, must be subject to risk of the market, and must be reported for dissemination. In addition, TPHs are reminded that Section 9(a)(1) of the Act provides in relevant part that it shall be unlawful for any member of a national securities exchange, for the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties. Furthermore, under the Exchange's policy concerning prearranged trading, TPHs are cautioned that any purchase or sale, transaction or series of transactions, coupled with an agreement, arrangement or understanding, directly or indirectly to reverse such transaction which is not done for a legitimate economic purpose or without subjecting the transactions to market risk, violates Exchange Rules and may be inconsistent with various provisions of the Act and rules thereunder.[12]

TPHs receiving individualized multi-leg position lists will still be required to represent orders on the trading floor in accordance with existing trading rules and thereby expose orders to the risk of the market. The Exchange notes that the provision in Rule 6.56(c) is not intended as an absolute safe harbor from prearranged trading prohibitions, but is instead intended to provide that transacting through a compression forum (consistent with open outcry transactions generally) will not be deemed to be prearranged trading provided that the transaction is otherwise executed in accordance with Exchange Rules, including the policy concerning prearranged trading.

[12] *See* Cboe Regulatory Circular RG17–085.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would encourage the closing of positions, which, once closed, may serve to alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain SPX positions. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to the trading of SPX options, which are exclusively-listed on Cboe. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are eligible to participant through Cboe TPHs. Furthermore, participation in compression forums is completely voluntary and open to all TPHs. Lastly, sharing of position level information is also completely voluntary.

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:

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–2017–070 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–2017–070. 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 Web site (*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 Web site 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–2017–070 and should be submitted on or before December 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25233 Filed 11–21–17; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82095; File No. SR–NYSEAMER–2017–31]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 903 (Series of Options Open for Trading)

November 16, 2017.

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 November 2, 2017, NYSE American LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 903 (Series of Options Open for Trading). The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to amend Commentary .05 to Rule 903 to modify the strike price intervals for certain Exchange Traded Funds (each an ''ETF''). Specifically, the Exchange proposes to modify the interval setting regime for options on SPDR® S&P 500® ETF (''SPY''), iShares Core S&P 500 ETF (''IVV''), and the SPDR® Dow Jones® Industrial Average ETF (''DIA'') to allow the Exchange to initiate $1 or greater strike price intervals above $200. Through this filing, the Exchange intends to make SPY, IVV, and DIA options more tailored and easier for investors and traders to use, which is consistent with the rules of other options exchanges.[4]

Currently, the S&P 500 Index is above 2000.[5] The S&P 500 Index is widely regarded as the best single gauge of large cap U.S. equities and is widely quoted as an indicator of stock prices and investor confidence in the securities market. As a result, individual investors often use S&P 500 Index-related products to diversify their portfolios and benefit from market trends. Accordingly, the Exchange believes that offering a wide range of S&P 500 Index-based options affords traders and investors important hedging and trading opportunities. SPY and IVV are identical in all material respects and are designed to track the performance of the S&P 500 Index. Shares of SPY and IVV are currently priced around 1/10th the value of S&P 500 Index. The Dow Jones Industrial Average (''DJIA'') is currently above 20,000 and is one of the most widely followed market indices.[6] Shares of DIA are currently priced around 1/100th of the DJIA. Accordingly, SPY and IVV strike prices—having a multiplier of $100—reflect a value

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See, e.g.,* Chicago Board of Options Exchange (''CBOE'') Rule 5.5, Interpretation and Policy .08; NASDAQ PHLX LLC (''PHLX'') Rule 1012, Commentary .05. CBOE and PHLX both amended their rules regarding strike setting regimes for SPY and DIA in 2014. *See* Securities Exchange Act Release Nos. 72949 (August 29, 2014) 79 FR 53089 (September 5, 2014) (SR–Phlx–2014–46) and 72990 (September 4, 2014) 79 FR 53799 (September 10, 2014) (SR–CBOE–2014–068). Earlier this year, CBOE and PHLX further modified their rules to include IVV in the same strike setting regime as SPY. *See* Securities Exchange Act Release Nos. 80913 (June 13, 2017), 82 FR 27907 (June 19, 2017) (SR–CBOE–2017–048) and 81246 (July 28, 2017) 82 FR 36020 (August 2, 2017) (SR–Phlx–2017–57). The Exchange is authorized to match (and has matched) strikes in DIA, SPY, and IVV that are listed on other exchanges such as CBOE and PHLX. *See* Rule 903A(b)(vi) (providing that the Exchange ''may list an options series that is listed by another options exchange, provided that at the time such series was listed it was not prohibited under the provisions of the [Options Listing Procedure Plan or OLPP] or the rules of the exchange that initially listed the series''). The proposed rule change would allow the Exchange to initially list strike price intervals of $1 or greater in options on DIA, SPY, or IVV when the strike price is above $200 (regardless of whether other exchanges similarly list such strikes).

[5] On October 30, 2017, the S&P 500 Index closed at 2,572.83.

[6] On October 30, 2017, the DJIA closed at 23,348.74.

roughly equal to 1/10th of the value of the S&P 500 Index. For example, if the S&P 500 Index is at 1972.56, shares of SPY and IVV might have a value of approximately 197.26 per share. Consequently, an at-the-money option on SPY or IVV, with a strike price of $197.00 will have a notional value of $19,700. In general, SPY and IVV (and, to a lesser extent, DIA) options provide retail investors and traders with the benefit of trading the broad market in a manageably sized contract.

The Exchange notes that the popularity of options on DIA and SPY (and, to a lesser extent, IVV) is evidenced by the existence of monthly, quarterly, and weekly expiration cycles in these ETFs.[7] Currently, Commentary .05(a) to Rule 903 provides that the ''interval of strike prices of series of options on Exchange-Traded Fund Shares will be $1 or greater where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.'' [8] Thus, unless the Exchange is able to match strikes listed on other exchanges (see supra note 4), the current rule limits the trading and hedging possibilities for investors on the Exchange—particularly those investors that would like to execute strategies that are effective in $1 intervals. The Exchange therefore proposes to amend Commentary .05 to Rule 903 to allow the Exchange to initiate $1 strike price intervals in options on SPY, IVV, and DIA. As proposed, the modified rule would provide that ''[n]otwithstanding any other provision of this rule regarding the interval of strike prices of series of options on Exchange-Traded Fund Shares, the interval of strike prices on options on [SPY, IVV, and DIA] will be $1 or greater.'' [9]

The Exchange believes that modifying the Rule to allow the Exchange to initiate finer—*i.e.,* one dollar—strike intervals in SPY, IVV, and DIA, would provide investors more efficient hedging and trading opportunities. In particular, the proposed ability to initiate $1 intervals, particularly above a $200 strike price, will result in having at-the-money series based upon the underlying SPY, IVV, or DIA moving less than 1%. The Exchange believes this strike setting regime is consistent with slower price movements of broad-based indices. Furthermore, the proposed ability to initiate $1 intervals would allow investors to continue to employ certain option trading strategies (*e.g.,* risk reduction/hedging strategies using SPY weekly options) without the Exchange having to wait for another exchange to list such strikes. Considering that $1 intervals already exist below the $200 price point, and that SPY, IVV, and DIA are above the $200 level, the Exchange believes it would be appropriate to modify the existing $200 level (above which intervals increase 500% to $5) for options on these ETFs. The Exchange believes that eliminating the existing $200 level would allow investors to continue investing, trading and utilizing hedging strategies on these highly-liquid options.

Under the current rule, the Exchange is limited in its ability to initiate strikes in options on IVV, DIA, and SPY over $200. Assuming no other exchange lists the desired strike, investors and traders on the Exchange are unable to roll open positions from a lower strike to a higher strike in conjunction with the price movement of the underlying index because the next (higher) available series would be $5 away above a $200 strike price.[10] Thus, to initiate a position from $200 strike to a $205 strike under the current rule, an investor would need for the underlying product to move 2.5% and would not be able to execute a roll up until such a large movement occurred. With the proposed rule change to allow the Exchange to initiate finer strikes in options on IVV, DIA, and SPY over the $200 level, however, the investor would be in a significantly safer position of being able to roll his open options position from a $200 to a $201 strike price, which is only a 0.5% move for the underlying.[11]

The proposed rule change would allow the Exchange to better respond to customer demand for SPY, IVV, and DIA strike prices more precisely aligned with current S&P 500 Index and DJIA values.[12] The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, would benefit investors by continuing to provide investors the flexibility to more closely tailor their investment and hedging decisions using options on SPY, IVV, and DIA. By allowing the Exchange to initiate the listing of series of options on SPY, IVV, and DIA in $1 intervals between strike prices over $200, the proposal would moderately augment the potential total number of options series available on the Exchange.[13] However, the Exchange believes it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange also believes that members will not have a capacity issue due to the proposed rule change. Finally, the Exchange represents that it does not believe that this expansion will cause fragmentation of liquidity.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [14] of the Act, in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would promote just and equitable principles of trade by allowing the Exchange to initiate strikes in options on IVV, DIA, and SPY over $200, which would result in continued trading and hedging opportunities in options on these ETFs. The proposed change would likewise ensure that such options investors are not at a disadvantage simply because of the strike price.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The rule change proposal allows the Exchange to respond to customer demand to allow options on SPY, IVV, and DIA to trade

[7] For rules regarding quarterly or weekly options (also known as Short Term Options or STOS), *see* Commentaries .09 and .10, respectively, to Rule 903.

[8] *See* Rule 903, Commentary .05(a). *See also* Rule 903, Commentary .10 (d) (providing, in relevant part, that [i]f the class does not trade in $1 strike price intervals, the strike price interval for Short Term Option Series may be (i) $0.50 or greater where the strike price is less than $100; (ii) $1.00 or greater where the strike price is between $100 and $150; or (iii) $2.50 or greater for strike prices greater than $150. A non-Short Term Option that is on a class that has been selected to participate in the Short Term Option Series Program is referred to as a ''Related non-Short Term Option'').

[9] *See* proposed Rule 903, Commentary .05(d).

[10] *See* Rule 903, Commentary .05(a).

[11] *See* proposed Rule 903, Commentary .05(d).

[12] *See supra* notes 5, 6.

[13] As noted herein (*see supra* note 4), the Exchange has matched strikes listed by other exchanges in options on IVV, DIA and SPY.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

in $1 intervals above a $200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality.

As noted above, under the current rule (absent another exchange listing strikes that the Exchange could match),[16] ETF options trade in wider $5 intervals above a $200 strike price, whereas options at or below a $200 strike price trade in $1 intervals. This creates a situation where contracts on the same option class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the arbitrary $200 strike price above which options intervals increase by $5. This proposal establishes a clear exception to the current ETF interval regime for options on SPY, IVV, and DIA to allow the Exchange to initiate the listing of such options to trade in $1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change, like other strike price programs currently offered by the Exchange, would remove impediments to and perfect the mechanisms of a free and open market and a national market system to the benefit of investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. Finally, the proposal would foster cooperation and coordination with persons engaged in facilitating transactions in securities as this proposal would align Exchange rules with those of other exchanges—including CBOE and PHLX—to permit finer strikes in IVV, DIA, and SPY.[17]

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

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. Rather, the proposed rule change would enable the Exchange to better compete with other options exchanges that have already adopted the proposed strike setting regime.[13] Although the Exchange is able to match strikes listed by other exchanges, this proposal would allow the [sic] initiate strikes in IVV, DIA, and SPY regardless of strikes listed on other exchanges, which should help level the playing field for investors investing in, trading and utilizing hedging strategies on these options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] 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[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, the proposal would allow the Exchange to initiate $1 or greater strike price intervals above $200 for options on SPY, DIA, and IVV. Substantially similar rules are already in place at CBOE and PHLX, and the Exchange currently has the ability to list, and does list, these strike price intervals pursuant to its matching authority in Rule 903A(b)(vi). The Commission therefore believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2017–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2017–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*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 Web site 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

[16] *See supra* note 4.

[17] *See supra* note 4.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2017–31 and should be submitted on or before December 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25230 Filed 11–21–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82101; File No. SR–MRX–2017–18]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Order Granting Approval of a Proposed Rule Change To Adopt New Corporate Governance and Related Processes Similar to Those of the Nasdaq Exchanges

November 16, 2017.

I. Introduction

On September 19, 2017, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to its corporate governance documents and trading rules to align its corporate governance framework to the structure of other exchanges owned by its ultimate parent company, Nasdaq, Inc. The proposed rule change was published for comment in the **Federal Register** on October 6, 2017.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Background

On June 21, 2016, the Commission approved a proposed rule change relating to a corporate transaction in which Nasdaq, Inc. would become the ultimate parent of MRX (the ''Nasdaq Acquisition''), Nasdaq ISE, LLC (''ISE''), and Nasdaq GEMX, LLC (''GEMX,'' and together with MRX and ISE, the ''ISE Exchanges'').[4] On June 30, 2016, pursuant to this transaction, Nasdaq, Inc. acquired all of the capital stock of U.S. Exchange Holdings, Inc. (''Exchange Holdings''), and thereby became the indirect, ultimate parent of the ISE Exchanges.[5] Nasdaq, Inc. is also the ultimate parent of Nasdaq BX, Inc. (''BX''), The Nasdaq Stock Market LLC (''Nasdaq''), and Nasdaq PHLX LLC (''Phlx'' and, together with Nasdaq and BX, the ''Nasdaq Exchanges'').[6] The Commission notes that the corporate governance documents of MRX, specifically its Limited Liability Company Agreement (''Current LLC Agreement'') and its Constitution (''Current Constitution'' and, together with the Current LLC Agreement, the ''Current Governing Documents'') are rules of the Exchange, as are the governing documents of MRX's Upstream Owners,[7] which include certain provisions that are designed to maintain the independence of MRX's self-regulatory functions (as well as the self-regulatory functions of the Upstream Owners' other self-regulatory subsidiaries, *i.e.,* the Nasdaq Exchanges).[8]

The Exchange intends to effect a merger with a newly-formed Delaware limited liability company (''Merger'') under Nasdaq, Inc. that would result in MRX as the surviving entity with new corporate governance documents. In connection with that Merger, the Exchange proposes various changes to its corporate governance documents and rules (''Rules'').[9] Specifically, the Exchange proposes to: (1) Delete the Exchange's Current LLC Agreement in its entirety and replace it with the New LLC Agreement, which is based on the limited liability company agreement of Nasdaq; [10] (2) delete the Exchange's Current Constitution in its entirety and replace it with the New By-Laws, which are based on the by-laws of Nasdaq; [11] and (3) amend certain of its Rules to reflect the replacement of the Current Governing Documents with the New Governing Documents.[12]

The Exchange represents that the proposed changes are designed to align the Exchange's corporate governance framework with the existing structure of the Nasdaq Exchanges, particularly as it relates to the board and committee structure, nomination and election processes, and related governance practices.[13] The Exchange also represents that it is not proposing any amendments to its ownership structure. The Exchange does not propose any amendments to the governing documents of its Upstream Owners.[14] Thus, the provisions in the governing documents of these entities, which were designed to maintain the independence of MRX's self-regulatory functions, would remain unchanged. The Exchange also represents that it is not proposing any amendments to its Rules at this time, other than minor clarifying changes and technical amendments to reflect the changes to its governing documents as described in more detail below.[15] The Exchange states that it intends to implement its proposed rule change no later than by the end of the fourth quarter of 2017.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] Specifically, as

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81795 (October 2, 2017), 82 FR 46848 (''Notice'').

[4] *See* Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISE–2016–11; SR–ISEGemini–2016–05; SR–ISEMercury–2016–10) (''Nasdaq Acquisition Order'') (order approving Nasdaq, Inc.'s acquisition of ISE (f/k/a International Securities Exchange, LLC), GEMX (f/k/a ISE Gemini, LLC), and MRX (f/k/a ISE Mercury, LLC)).

[5] *See* Notice, *supra* note 3, at 46848 n.3. Exchange Holdings is the sole owner of ISE Holdings, Inc. (''ISE Holdings,'' and together with Exchange Holdings and Nasdaq, Inc., the ''Upstream Owners''), which is the sole owner of 100% of the Exchange's limited liability company interests. *See id.* at 46849; *see also* Nasdaq Acquisition Order, *supra* note 4, at 41611. ISE Holdings is also the sole direct owner of ISE and GEMX. *See* Nasdaq Acquisition Order, *supra* note 4, at 41611.

[6] *See* Notice, *supra* note 3, at 46848. *See also* Nasdaq Acquisition Order, *supra* note 4, at 41611. As a result of this transaction, the ISE Exchanges and the Nasdaq Exchanges became affiliates. *See* Nasdaq Acquisition Order, *supra* note 4, at 41611 n.8.

[7] *See* Nasdaq Acquisition Order, *supra* note 4, at 41612.

[8] *See, e.g.,* Nasdaq Acquisition Order, *supra* note 4, at 41612–13.

[9] The Rules as proposed to be amended pursuant to the proposed rule change are referred to herein as the ''New Rules.''

[10] *See* Notice, *supra* note 3, at 46849 n.5.

[11] *Id.*

[12] The Commission has approved nearly identical proposed rule changes submitted by the Exchange's affiliates, ISE and GEMX. *See* Securities Exchange Act Release Nos. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR–ISE–2017–32) (''ISE Governance Order'') and 81802 (October 3, 2017), 82 FR 47055 (October 10, 2017) (SR–GEMX–2017–37) (''GEMX Governance Order'').

[13] *See* Notice, *supra* note 3, at 46848–49.

[14] *See generally id.*

[15] *See id.* at 46849 and 46862–63.

[16] *See id.* at 46848. The Exchange also states that it will alert its members in the form of a regulatory alert to provide notification of the implementation date. *Id.*

[17] In approving these proposed rule changes, the Commission has considered the proposed rules'

Continued

discussed in more detail below, the Commission finds that the proposed rule change is consistent with Sections 6(b)(1) and 6(b)(3) of the Act,[18] which require, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange, and assure the fair representation of its members and persons associated with its members in the selection of its directors and administration of its affairs, and provide that one of more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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.

A. Ownership of the Exchange

MRX is currently structured as a Delaware limited liability company (''Delaware LLC'') [20] and, as discussed above, is a wholly-owned subsidiary of ISE Holdings. ISE Holdings, in turn is a wholly-owned subsidiary of Exchange Holdings, which is wholly-owned by Nasdaq, Inc. Pursuant to the Current LLC Agreement, ISE Holdings is defined as the Sole LLC Member.[21] As the Sole LLC Member, ISE Holdings may assign all (but not less than all) of its interest in the Exchange, subject to prior approval by the Commission pursuant to the rule filing procedures under Section 19 of the Act.[22]

Pursuant to the proposed rule change, MRX will be merged with a newly formed Delaware LLC, whereby MRX will be the surviving entity, governed by the New Governing Documents. ISE Holdings will continue to be the direct owner of MRX and will be defined as the ''Company Member'' or ''Sole LLC Member'' in the New LLC Agreement and New By-Laws.[23] Additionally, pursuant to the New LLC Agreement, ISE Holdings will not be permitted to assign, in whole or in part, its limited liability company interest in the Exchange, unless such transfer or assignment is filed with and approved by the Commission pursuant to the rule filing procedures under Section 19 of the Act.[24]

The Commission believes that the proposed restrictions on ISE Holdings' assignment of its ownership interest in MRX, taken together with restrictions on voting and ownership limitations in the governing documents of MRX's Upstream Owners that were previously approved by the Commission,[25] are designed to minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or MRX to effectively carry out its regulatory oversight responsibilities under the Act. The Commission also notes that the restrictions on transfer of ownership interest in the Exchange will be similar to those currently in place. In this regard, the Commission believes the proposed rule change is consistent with Section 6(b)(1) of the Act [26] in particular, which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

B. Governance of the Exchange

The Exchange proposes to replace certain provisions pertaining to governance of the Exchange with related provisions that are based on provisions currently in the Nasdaq LLC Agreement and Nasdaq By-Laws.[27] These changes include, among others, provisions governing: The composition of the Exchange's board of directors (''Board'' or ''Board of Directors,'' and each member of the Board of Directors a ''Director''); the process for nominating, electing, and removing Directors; the filling of vacancies on the Exchange's Board; the Exchange's board committee structure; and regulatory independence of the Exchange.[28]

1. Board of Directors: Powers and Composition

Under the New Governing Documents, and consistent with the Current LLC Agreement,[29] the business and affairs of the Exchange will be managed under the discretion of its Board, which will be vested with the power to do any and all acts necessary or for the furtherance of the purposes described in the New LLC Agreement, including fulfilling the Exchange's self-regulatory responsibilities as set forth in the Act.[30] The new Board will also have the power to bind the Exchange and delegate powers,[31] as it does today.[32]

ISE Holdings, as the Sole LLC Member, may determine at any time, in its sole and absolute discretion, the number of Directors to constitute the Board of Directors.[33] However, at least 20% of the Directors must be ''Member

impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(1) and (b)(3).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Current LLC Agreement.

[21] *See id.* The Current Constitution also defines ISE Holdings as the Sole LLC Member of the Exchange and permits assignment of its LLC interest as provided in the Current LLC Agreement. *See* Current Constitution, Article I, Section 1.1.

[22] *See* Current LLC Agreement, Article VII, Section 7.1.

[23] *See* New LLC Agreement, Schedule A; and New By-Laws, Article I(f).

[24] *See* New LLC Agreement, Section 20. Pursuant to Section 7.1 of the Current LLC Agreement, ISE Holdings may only assign all (but not less than all) of its ownership interest, and any assignment of ISE Holdings' interest in MRX would similarly be subject to approval by the Commission pursuant to the rule filing procedures under Section 19 of the Act.

[25] *See* Nasdaq Acquisition Order, *supra* note 4, at 41612–17 (discussing provisions, including voting and ownership limitations, in the governing documents of Nasdaq, Inc. and other Upstream Owners that are designed to maintain the independence of their self-regulatory subsidiaries); Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260, 25262–63 (April 28, 2006) (''ISE HoldCo Order'') (order approving SR–ISE–2006–04) (discussing voting and ownership limitations in the governing documents of ISE Holdings); Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622, 46622–23, 46625, 46627–29 (August 1, 2013) (''GEMX Exchange Approval'') (granting GEMX's application for registration as a national securities exchange and discussing the provisions in the governing documents of ISE Holdings and other Upstream Owners that are designed to preserve the self-regulatory function of the national securities exchanges they control, which includes MRX); and Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066, 6067, 6069, 6071–73 (February 4, 2016) (''MRX Exchange Approval'') (approving the registration of MRX as a national securities exchange and discussing the provisions in the governing documents of ISE Holdings and other Upstream Owners that are designed to preserve the self-regulatory function of MRX).

[26] 15 U.S.C. 78(b)(1).

[27] *See* Notice, *supra* note 3, at 46854–57.

[28] *See id.*

[29] *See* Current LLC Agreement, Article II, Section 2.2 and Article V, Sections 5.1 and 5.7; and Current Constitution, Article III, Section 3.1.

[30] *See* New LLC Agreement, Sections 7, 8, and 9(a).

[31] *See* New LLC Agreement, Section 9(b).

[32] *See* Current LLC Agreement, Article II, Section 2.2; and Current Constitution, Article V, Section 5.1.

[33] *See* New LLC Agreement, Section 9(a).

Representative Directors'' [34] and the number of ''Non-Industry Directors,'' including at least one ''Public Director'' and at least one ''issuer representative'' (or if the Board consists of ten or more Directors, at least two issuer representatives), must equal or exceed the sum of the number of Industry Directors and Member Representative Directors.[35] Additionally, up to two Staff Directors may be elected to the Board.[36] A Director may not be subject to a statutory disqualification.[37] A Director will be removed upon a determination by the Board, by a majority vote of the remaining Directors, that the Director no longer satisfies the classification for which the Director was elected and that the Director's continued service on the Board would violate the board composition requirements.[38]

As discussed in more detail below,[39] the current Board was elected at the Exchange's 2017 annual election of its Board (the ''2017 Annual Election,'' and such Board the ''2017 Board''), which was held on June 19, 2017, pursuant to the Current Governing Documents. When the New Governing Documents become operative, the 2017 Board will appoint a Nominating Committee and a Member Nominating Committee.[40] The Member Nominating Committee will nominate candidates for each Member Representative Director position on the Board,[41] as well as nominate candidates for appointment by the Board for each vacant or new position on a committee that is to be filled with a ''Member Representative member'' [42] under the New By-Laws.[43] If an Exchange Member [44] submits a timely and duly executed written nomination to the Secretary of the Exchange, additional candidates may be added to the List of Candidates [45] for the Member Representative Director positions.[46] These candidates, together with candidates nominated by the Member Nominating Committee, will then be presented to Exchange Members for election.[47] The Nominating Committee

[34] *See id.* A ''Member Representative Director'' will be defined as a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the New By-Laws and may be, but is not required to be, an officer, director, employee, or agent of an Exchange Member. *See* New By-Laws, Article I(r).

[35] *See* New By-Laws, Article III, Section 2(a). A ''Non-Industry Director'' will be defined as a Director (excluding an officer of the Exchange serving as a Director (''Staff Director'')) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director. *See* New By-Laws, Article I(w). A ''Public Director'' will be defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. *See* New By-Laws, Article I(z). An ''Industry Director'' will be defined as a Director with direct ties to the securities industry as a result of connections to a broker-dealer, the Exchange or its affiliates, FINRA, or certain service providers to such entities. *See* Notice, *supra* note 3, at 46857 n.78. *See also* New By-Laws, Article I(m).

[36] *See* New By-Laws, Article I(m); *see also* Notice, *supra* note 3, at 46857 n.81 and accompanying text.

[37] *See* New By-Laws, Article III, Section 2(a). Similar to Article III, Section 2(a), of the New By-Laws, Current Constitution Article III, Section 3.2(a), provides that a director may not be subject to a statutory disqualification (as defined in Section 3(a)(39) of the Act).

[38] *See* New By-Laws, Article III, Section 2(b). If the remaining term of office of a removed Director is not more than six months, the Board will not be deemed to be in violation of the Article III, Section 2(a) composition requirements during the vacancy by virtue of such vacancy. *See id.*

[39] *See infra* notes 60–63, 65–66, and accompanying text.

[40] *See* Notice, *supra* note 3, at 46858. The Nominating Committee will consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members, and if the Nominating Committee consists of seven or more members, at least three shall be Public members. The Member Nominating Committee shall consist of no fewer than three and no more than six members. All members of the Member Nominating Committee shall be a current associated person of a current Exchange Member, and the Board will appoint such individuals after appropriate consultation with representatives of Exchange Members. *See* New By-Laws, Article III, Sections 6(b)(i) and (iii). *See also* Notice, *supra* note 3, at 46861 (discussing the compositional requirements for, and responsibilities of, the Nominating Committee and Member Nominating Committee).

An ''Industry member'' will be a member of any committee appointed by the Board that is associated with a broker-dealer as defined in the New By-Laws, Article I(n). A ''Non-Industry member'' will be defined as a member of any committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry member. *See* New By-Laws, Article I(x). A ''Public member'' will be defined as a member of any committee appointed by the Board who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. *See* New By-Laws, Article I(aa).

[41] Pursuant to the New By-Laws, Member Representative Directors shall be elected to the Board on an annual basis. *See* New By-Laws, Article II, Section 1(a).

[42] Pursuant to the New By-Laws, a ''Member Representative member'' will be defined as a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the By-Laws. *See* New By-Laws, Article I(s). As discussed further below, the required inclusion of such representatives on certain committees, and the process by which they are to be selected, is designed to comply with the fair representation requirements of Section 6(b)(3) of the Act. *See infra* note 97 and accompanying text. *See also* Notice, *supra* note 3, at 46856, 46863.

The Exchange states that the new Member Nominating Committee is responsible for: (i) The nomination for election of Member Representative Directors to the Board and (ii) the nomination for appointment of Member Representative members to the committees requiring such members. *See* Notice, *supra* note 3, at 46861.

[43] *See* New By-Laws, Article III, Section 6(b).

[44] ''Exchange Member'' will be defined as any registered broker or dealer that has been admitted to membership in the national securities exchange operated by MRX. *See* New By-Laws, Article 1(u).

[45] ''List of Candidates'' will be defined as the list of candidates for Member Representative Director positions to be elected on an Election Date. *See* New By-Laws, Article 1(p).

''Election Date'' will be defined as a date selected by the Board on an annual basis, on which Exchange Members may vote with respect to Member Representative Directors in the event of a Contested Election. *See* New By-Laws, Article 1(k). *See also infra* note 47 for the definition of ''Contested Election.''

[46] *See* New By-Laws, Article II, Section 1(b). *See also* Notice, *supra* note 3, at 46854.

[47] If there is only one candidate for each Member Representative Director position to be elected on the annual election date, the Member Representative Directors shall be elected by ISE Holdings as the Sole LLC Member. If, as a result of the nomination and petition process, there are more Member Representative Directors candidates than the number of positions to be elected, each Exchange Member shall have the right to cast one vote for each Member Representative Director, and the candidates who receive the most votes shall be elected to the Member Representative Director positions. An Exchange Member, however, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate. *See* New By-Laws, Article II, Section 1(c) and Section 2. *See also* New By-Laws, Article 1(g) (defining ''Contested Election'' as an election for one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected).

Under the Exchange's Current Governing Documents, at least 30% of the directors on the Board are officers, directors, or partners of Exchange members (currently, six directors), and are elected by a plurality of the holders of Exchange Rights (the ''Industry Directors,'' or, as referred to herein, ''Exchange Directors''), of which at least one must be elected by holders of PMM Rights, one must be elected by holders of CMM Rights, and one must be elected by holders of EAM Rights; provided, however, that the number of each type of Exchange Director will always be equal to one another. *See* Notice, *supra* note 3, at 46850. *See also* Current Constitution, Article III, Section 3.2. The Exchange states that this current structure was adopted to comply with the fair representation requirements of Section 6(b) of the Act. *See* Notice, *supra* note 3, at 46850. Because they give members a voice in the Exchange's use of its self-regulatory authority, the Exchange believes that Exchange Directors serve the same function as Member Representative Directors on the boards of the Nasdaq Exchanges. *See id.*

The Exchange notes that the Commission has previously found the Nasdaq LLC Agreement's (1) 20% Member Representative Director requirement, and (2) election process, provide fair representation of Nasdaq members, consistent with the requirements of Section 6(b) of the Act. *See* Notice, *supra* note 3, at 46850 n.18 (citing Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (''Nasdaq Exchange Order'') (granting the exchange registration of Nasdaq Stock Market, Inc.). The Commission notes that the Board compositional requirements and the process for electing Member Representative Directors in the New Governing Documents are based on the parallel requirements

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will nominate candidates for all other vacant or new Director positions on the Board.[48]

The Commission believes that the proposed composition of the Exchange's Board satisfies the requirements in Section 6(b)(3) of the Act,[49] which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.[50] The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest,[51] and that they can help to ensure that no single group of market participants has the ability to systematically disadvantage others through the exchange governance process.[52] As it has previously stated, the Commission believes that public directors can provide unbiased perspectives, which may enhance the ability of the Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.[53]

Section 6(b)(3) of the Act requires that ''the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.'' [54] The Commission also believes that the proposed requirement that at least 20% of the Directors be Member Representative Directors, and the means by which they will be chosen by Exchange Members, is consistent with Section 6(b)(3) of the Act.[55] As the Commission previously has noted, this statutory requirement helps to ensure that members have a voice in the Exchange's use of its self-regulatory authority, and that the Exchange is administered in a way that is equitable to all those persons who trade on its markets or through its facilities.[56] In addition, the Commission believes that the requirement that at least one director be a Public Director and one an issuer representative satisfies the requirements of Section 6(b)(3) of the Act.[57]

2. Transition From Current Board Election Process to the New Election Process

In its filing, the Exchange states that, when it was acquired by Nasdaq, Inc., there were a number of harmonizing changes to its Board that resulted in a complete overlap of directors on the Boards of MRX and the Nasdaq Exchanges (the ''Post-Acquisition Board'').[58] MRX also states its belief that the Post-Acquisition Board satisfied the composition requirements contained in both the Current Constitution and the New By-Laws.[59] The Exchange states that the terms of the Directors on the Post-Acquisition Board ended at the 2017 Annual Election,[60] and that all of the Directors on the 2017 Board are Directors that served on the Post-Acquisition Board. The Exchange believes that the 2017 Board satisfies both the board composition requirements in the Current Governing Documents, as well as in the New Governing Documents,[61] and that once the New Governing Documents become operative, no additional actions with respect to the 2017 Board will be required under the Delaware Limited Liability Company Act.[62] Pursuant to the proposal, the 2017 Board will serve until the Exchange's first annual election of Directors in 2018 (''2018 Board'') in accordance with the processes under the New Governing Documents.[63]

The Commission believes the Exchange's proposal to allow the 2017 Board to continue serving until the 2018 Board would be elected pursuant to the process in the New Governing Documents is consistent with the Act, and in particular Section 6(b)(3) of the Act.[64] The Exchange states that, although the 2017 Board was not nominated or voted upon in accordance with the New Governing Documents, it believes that the composition of the 2017 Board is consistent with the Act, as it still provides for the fair representation of members and has one or more directors that are representative of issuers and investors and not associated with a member of the exchange, broker, or dealer. Specifically, the Exchange states that six Directors are officers, directors, or partners of Exchange members, and were elected by a plurality of the holders of ''Exchange Rights,'' as required by Section 3.2(b) of the Current Constitution.[65] These Exchange Directors were subject to the

in the Nasdaq LLC Agreement and are identical to those recently approved by the Commission for ISE and GEMX. *See* ISE Governance Order, *supra* note 12, at 36499–501; GEMX Governance Order, *supra* note 12, at 47056–58.

[48] *See* New By-Laws, Article III, Section 6(b).

[49] 15 U.S.C. 78f(b)(3).

[50] The Commission also notes that it previously found the compositional requirements for the board of directors of Nasdaq, upon which MRX's proposed requirements are based, to be consistent with Act. *See* Nasdaq Exchange Order, *supra* note 47, at 3553. *See also* ISE Governance Order, *supra* note 12, at 36500–01 (approving identical requirements for ISE); GEMX Governance Order, *supra* note 12, at 47057–58 (approving identical requirements for GEMX).

[51] *See, e.g.,* Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[52] *See, e.g.,* Securities Exchange Act Release No 68341 (December 3, 2012), 77 FR 73065, 73067 (December 7, 2012) (''MIAX Exchange Order'') (granting the exchange registration of the Miami International Securities Exchange LLC).

[53] *See, e.g.,* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11261 (March 6, 2006) (order approving the New York Stock Exchange, Inc.'s business combination with Archipelago Holdings, Inc.); Nasdaq Exchange Order, *supra* note 47, at 3553; and Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295, 51298 (August 19, 2010) (approving the application of BATS Y-Exchange, Inc. for registration as a national securities exchange); ISE Governance Order, *supra* note 12, at 36501; and GEMX Governance Order, *supra* note 12, at 47058.

[54] 15 U.S.C. 78f(b)(3).

[55] *Id.*

[56] *See, e.g.,* Nasdaq Exchange Order, *supra* note 47; Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (order granting the exchange registration of BATS Exchange, Inc.); ISE Governance Order, *supra* note 12, at 36501; and GEMX Governance Order, *supra* note 12, at 47058.

[57] 15 U.S.C. 78f(b)(3).

[58] *See* Notice, *supra* note 3, at 46857.

[59] *See id.*

[60] The Exchange states that it held its 2017 Annual Election on June 19, 2017, in accordance with the nomination, petition, and voting processes set forth in the Current Governing Documents. *See id.*

[61] The Commission notes that if the Board of Directors in place at the time the New Governing Documents become effective does not satisfy the requirements in the New Governing Documents, the Exchange would need to comply with the procedures for removing Directors and filling vacancies pursuant to the New Governing Documents. *See, e.g., supra* notes 38, 41, and 46–48 and accompanying text.

[62] *See* Notice, *supra* note 3, at 46857. As discussed above, the Exchange proposes that, if approved, the New Governing Documents would be made effective no later than by the end of the fourth quarter of 2017. *See id.* at 46848; *see also supra* note 15 and accompanying text.

[63] *See* Notice, *supra* note 3, at 46858.

[64] *See supra* notes 49–57 and accompanying text (discussing the requirements of Section 6(b)(3) and the Commission's belief that the compositional requirements for the Board of Directors, and the process for electing such Directors under the New Governing Documents, are consistent with those requirements).

[65] *See* Notice, *supra* note 3, at 46850 and 46854 (discussing the Exchange's current process for the nomination and election of Directors, including the Exchange Directors). *See also supra* note 47.

''Exchange Rights'' currently means, collectively, PMM Rights, CMM Rights, and EAM Rights, which are the trading and other rights associated with the Exchange's three classes of membership. *See* Rule 100(a)(17); Current LLC Agreement, Article VI; and Current Constitution, Article XIII, Section 13.1(o). *See also* Rules 100(a)(12), 100(a)(15), and 100(a)(36); and Current Constitution, Article XIII, Sections 13.1(f), 13.1(j), and 13.1(z). Under the New Rules, ''Exchange Rights'' will be defined in New Rule 100(a)(20) as the PMM Rights, CMM Rights, and EAM Rights, which will be defined in New Rules 100(a)(41), 100(a)(12), and 100(a)(16), respectively, and as discussed further below. *See infra* Section III.C. (discussing amendments to the Exchange's Rules).

full petition and voting process by membership in accordance with Articles II and III of the Current Constitution, which process the Commission previously found to satisfy the requirements of the Act.[66] The Exchange believes that the Exchange Directors serve the same function as the Member Representative Directors under the proposed board structure, as both directorships give Exchange members a voice in the Exchange's use of its self-regulatory authority.[67] The Exchange also notes that only its corporate governance structure would change under the proposed rule change, and that its membership has remained substantially the same both before and after the 2017 Annual Election.[68] Additionally, the Commission notes that, under the Current Governing Documents, the 2017 Board is required to include one Director that is a ''Public Director.'' [69]

3. Committees of the Board

Pursuant to the New By-Laws, the Exchange may establish committees composed solely of Directors. Specifically, the Exchange may establish an Executive Committee and a Finance Committee, and shall establish a Regulatory Oversight Committee (''ROC'').[70] The Exchange shall also establish certain committees not composed solely of Directors. Specifically, the Exchange shall establish a Nominating Committee and a Member Nominating Committee, which would be elected on an annual basis by ISE Holdings, as the Sole LLC Member,[71] and a Quality of Markets Committee (''QMC'').[72] The New LLC Agreement will provide that, to the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and the authority of the Board in the management of the business and affairs of the Exchange.[73] The powers of any such committee would, however, be limited with respect to approving any matters pertaining to the self-regulatory function of the Exchange or relating to the structure of the market the Exchange regulates.[74]

The Exchange proposes that the Executive Committee be an optional committee, to be appointed only if deemed necessary by the Board.[75] Because the Executive Committee will have the powers and authority of the Board in the management of the business and affairs of the Exchange between meetings of the Board, its composition must reflect that of the Board. Accordingly, if established, the number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors and the percentages of Public Directors and Member Representative Directors must be at least as great as the corresponding percentages on the Board as a whole.[76]

The Board would retain oversight of the financial operations of the Exchange instead of delegating these functions to a standing committee, but would have the option to appoint a Finance Committee at the Board's discretion.[77] The Finance Committee would advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets and proposed changes to the rates and fees charged by the Exchange.

The Exchange proposes to eliminate its current Finance and Audit Committee and to have the committee's functions performed by Nasdaq, Inc.'s Audit Committee (''Nasdaq Audit Committee''), which is composed of at least three directors of Nasdaq, Inc., all of whom must satisfy the standards for independence set forth in Section 10A(m) of the Act [78] and Nasdaq's rules.[79] The Exchange notes that the Nasdaq Audit Committee has broad authority to review the financial information that will be provided to shareholders of Nasdaq, Inc. and others; systems of internal controls; and audit, financial reporting, and legal and compliance processes.[80] The Exchange states that, to the extent the current Finance and Audit Committee oversees the Exchange's financial reporting process, its activities are duplicative of the activities of the Nasdaq Audit Committee, which is also charged with providing oversight over financial reporting and independent auditor selection for Nasdaq, Inc. and all of its subsidiaries.[81] The Exchange also notes that the unconsolidated financial statements of the Exchange will still be prepared for each fiscal year.[82]

The Exchange will also have a Regulatory Oversight Committee (''ROC'') under the New Governing Documents, which will have broad authority to oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory responsibilities.[83] The ROC will consist

[66] *See* Notice, *supra* note 3, at 46858; MRX Exchange Approval, *supra* note 25.

[67] *See* Notice, *supra* note 3, at 46858.

[68] *See id.*

[69] *See* Current Constitution, Article III, Section 3.2(b).

Pursuant to the Exchange's Current Constitution, a ''Public Director'' means a non-industry representative who has no material relationship with a broker or dealer or any affiliate of a broker or dealer or the Exchange or any affiliate of the Exchange. *See* Current Constitution, Article III, Section 3.2(b) and Article XIII, Section 13.1(aa).

The term ''non-industry representative'' means any person who would not be considered an ''industry representative,'' as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, or (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity. *See* Current Constitution, Article XIII, Section 13.1(v).

The term ''industry representative'' means a person who is an officer, director, or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three (3) years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three (3) years. *See* Current Constitution, Article XIII, Section 13.1(s).

[70] *See* New By-Laws, Article III, Section 5.

The Exchange states that the proposed provisions relating to the standing committees are substantially similar to the provisions in Section 9(g) of the Nasdaq LLC Agreement with respect to standing committees. *See* Notice, *supra* note 3, at 46852.

[71] *See* New By-Laws, Article III, Section 6(b). *See also supra* note 40 (describing the compositional requirements of these committees).

The Board may also designate additional committees consisting of one or more Directors or other persons. *See* New LLC Agreement, Section 9(g).

[72] *See* New By-Laws, Article III, Section 6(c). *See also infra* note 97 and accompanying text (describing the compositional requirements of the QMC).

[73] *See* New LLC Agreement, Section 9(g)(v).

[74] *See id. See also* Notice, *supra* note 3, at 46852. The Exchange notes that the proposed limitation is based on substantially similar language in Article V, Section 5.2(ii), of the Current Constitution and is intended to assure the fair administration and governance of the Exchange. *See* Notice, *supra* note 3, at 46852 n.35.

[75] *See* New By-Laws, Article III, Section 5(a).

[76] *See id.*

[77] *See* New By-Laws, Article III, Section 5(b).

[78] *See* U.S.C. 78j–1(m).

[79] *See* Nasdaq, Inc. By-Laws, Section 4.13(g).

The current Finance and Audit Committee must be composed of at least three (3) and not more than five (5) directors, all of whom must be non-industry representatives and must be ''financially literate'' as determined by the Board. *See* Current Constitution, Article V, Section 5.5.

[80] *See* Notice, *supra* note 3, at 46859.

[81] *See id.*

[82] *See id.* The Commission notes that registered national securities exchanges have an ongoing requirement to comply with the requirements of Form 1, which include filing audited financial statements with the Commission on an annual basis. *See* Form 1, General Instructions A.2 and Exhibit I, 17 CFR 249.1; and 17 CFR 240.6a–2(b)(1) (requiring a national securities exchange to file each year, as an amendment to its Form 1, Exhibit I (which requires a Form 1 applicant to file audited financial statements), as of the latest fiscal year of the exchange).

[83] *See* New By-Laws, Article III, Section 5(c). Currently, the Exchange's regulatory oversight activities are performed by the Exchange's

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of three members, each of whom must be a Public Director and an ''independent director,'' as defined in Nasdaq Rule 5605.[84]

Pursuant to the New By-Laws, the Exchange will also have a Chief Regulatory Officer (''CRO''), as it does currently.[85] The new CRO will have general responsibility for the supervision of the regulatory operations of the Exchange and will meet with the ROC in executive session at regularly scheduled meetings of the ROC, and at any time upon request of the CRO or any member of the ROC.[86]

The ROC will assess the Exchange's regulatory performance, assist the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions, review the Exchange's regulatory budget and inquire into the adequacy of resources available in the budget for regulatory activities, and be informed about the compensation and promotion or termination of the CRO.[87]

The Exchange also proposes that the Internal Audit Department of Nasdaq, Inc. (''Nasdaq Internal Audit Department'') would report to the Board on all Exchange-related internal audit matters and direct such reports to the new ROC.[88] In addition, to ensure that the Board retains authority to direct the Nasdaq Internal Audit Department's activities with respect to the Exchange, the Nasdaq Internal Audit Department's written procedures will stipulate that the ROC may, at any time, direct the Nasdaq Internal Audit Department to conduct an audit of a matter of concern and report the results of the audit both to the ROC and the Nasdaq Audit Committee.[89]

The Exchange also proposes to eliminate its current Compensation Committee and its Corporate Governance Committee.[90] The Compensation Committee is primarily charged with reviewing and approving compensation policies and plans for the Chief Executive Officer and other senior executive officers of the Exchange.[91] Under the new governance structure, the functions of the Compensation Committee will be performed by Nasdaq, Inc.'s management compensation committee or, to the extent that policies, programs, and practices must be established for any Exchange officers or employees who are not also officers or employees of Nasdaq, Inc., the full Board.[92] The Corporate Governance Committee is primarily charged with: (i) Nominating candidates for all vacant or new non-industry representative positions on the Board, (ii) overseeing the Exchange's regulatory activities and program, and (iii) overseeing and evaluating the governance of the Exchange.[93] Under the new governance structure, the functions of the Corporate Governance Committee will be performed by the new Nominating Committee, the new ROC, or, if required, the full Board.[94]

As discussed above, the Nominating Committee and Member Nominating Committee will have responsibility for, among other things, nominating candidates for election to the Board. On an annual basis, the members of these committees will nominate candidates for the succeeding year's respective committees to be elected by ISE Holdings.[95]

Finally, the Quality of Markets Committee (''QMC'') will have the following functions: (i) To provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, and other market participants; and (ii) to advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets.[96] At least 20% of the QMC must be composed of Member Representative members, and the Non-Industry members on the QMC must equal or exceed the sum of Industry members and Member Representative members.[97]

The Commission believes that the Exchange's proposed committees, which are similar to the committees maintained by other exchanges,[98] are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[99] The Commission further believes that the Exchange's proposed committees, including their composition and the means by which committee members will be chosen, are consistent with Section 6(b)(3) of the Act because relevant committees provide for the fair representation of members in the administration of the Exchange's affairs.[100]

4. Regulatory Independence

Certain provisions in MRX's Current Governing Documents, and those of its Upstream Owners, are designed to help maintain the independence of the regulatory functions of the Exchange.[101]

Corporate Governance Committee, which will not exist under the new governance structure. *See* Notice, *supra* note 3, at 46861.

The Exchange also states that regulatory oversight functions formerly performed by the Finance and Audit Committee may be assumed by the ROC, and that like the ROCs of the Nasdaq Exchanges, the MRX ROC, because of its broad authority to oversee the adequacy and effectiveness of the Exchange's self-regulatory responsibilities, will be able to maintain oversight over controls in tandem with the Nasdaq Audit Committee's overall oversight responsibilities. *See id.* at 46860.

[84] *See* New By-Laws, Article III, Section 5(c).

[85] *See* New By-Laws, Article IV, Section 7. *See also* Current Constitution, Article IV, Sections 4.1 and 4.7.

In addition to the CRO, pursuant to the New LLC Agreement, the Exchange's officers will include: A Chief Executive Officer, a President, Vice Presidents, a Chief Regulatory Officer, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer. *See* New By-Laws, Article IV, Sections 4–11.

[86] *See* New By-Laws, Article IV, Section 7. The CRO may also serve as the General Counsel of the Exchange. *Id.*

[87] *See* New By-Laws, Article III, Section 5(c).

[88] *See* Notice, *supra* note 3, at 46860 & n.104 (citing the Regulatory Oversight Committee Charter of Nasdaq, Phlx, and BX, *available at http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=1097*).

[89] *See id.* at 46860.

[90] *See id.* at 46860–61.

[91] *See id.* at 46860. *See also* Current Constitution, Article V, Section 5.6.

[92] *See* Notice, *supra* note 3, at 46860.

[93] *See id.* at 46861. *See also* Current Constitution, Article V, Section 5.4.

[94] *See* Notice, *supra* note 3, at 46861.

[95] *See* New By-Laws, Article III, Section 6(b). *See also supra* notes 41–48 and accompanying text. Additional candidates for the Member Nominating Committee may be nominated and elected by Exchange Members pursuant to a petition process. *See supra* notes 44–47 and accompanying text.

The Commission notes that under the New By-Laws, the Member Nominating Committee shall nominate candidates for each Member Representative Director position to be elected by Exchange Members or the Sole LLC Member, and for appointment by the Board for each vacant or new position on any committee that is to be filled with a Member Representative member. *See* New By-Laws, Article III, Section 6.

[96] *See* New By-Laws, Article III, Section 6(c)(i).

[97] *See* New By-Laws, Article III, Section 6(c)(ii). *See also* Notice, *supra* note 3, at 46862.

The Exchange also states that the function of Member Representative members on committees is to provide members a voice in the administration of the Exchange's affairs on certain committees that are responsible for providing advice on any matters pertaining to the Exchange's self-regulatory function or relating to its market structure. *See* Notice, *supra* note 3, at 46855. In order to ensure that its members have the opportunity to formally provide input on matters that are important to them, the Exchange states that at least 20% of the persons serving on any such committees will be individuals who will have been appointed by the Member Nominating Committee and will be representative of the Exchange's membership. *See id.* at 46855–56.

[98] *See, e.g.,* Nasdaq By-Laws Article III, Sections 5–6; BX By-Laws, Article IV, Sections 4.13–14; Phlx By-Laws, Article V, Sections 5–2 to –3; ISE By-Laws Article III, Sections 5–6; GEMX By-Laws Article III, Sections 5–6.

[99] 15 U.S.C. 78f(b)(1).

[100] *See* 15 U.S.C. 78f(b)(3).

[101] *See, e.g.,* MRX Exchange Approval, *supra* note 25, at 6071–73, Nasdaq Acquisition Order, *supra* note 4, at 41613–16; Securities Exchange Act

The New Governing Documents similarly include provisions designed to help maintain the independence of the regulatory functions of MRX,[102] which provisions are substantially similar to those included in the governing documents of other exchanges.[103] Specifically:

• The Exchange Board will be required, when evaluating any proposal, to take into account all factors that the Board deems relevant, including, without limitation, (1) the potential impact on: The integrity, continuity, and stability of the national securities exchange operated by the Exchange and the other operations of the Exchange; the ability to prevent fraudulent and manipulative acts and practices; and investors and the public, and (2) whether such proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, or assist in the removal of impediments to or the perfection of the mechanisms for a free and open market and a national market system.[104]

• All books and records of MRX reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by MRX and its officers, directors, employees and agents; shall not be made available to persons other than to those officers, directors, employees, and agents of MRX that have a reasonable need to know; and will not be used for any non-regulatory purpose.[105]

• The Exchange proposes that, as is currently the case, the books and records of MRX must be maintained in the United States [106] and are subject at all times to examination by the Commission pursuant to the federal securities laws and the rules and regulations thereunder.[107]

• Under the New LLC Agreement and New By-Laws, any amendments to those documents will not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Act and the rules promulgated thereunder.[108]

• Additionally, as is currently the case pursuant to the Current LLC Agreement,[109] Section 15 of the New LLC Agreement would prohibit the Exchange from using Regulatory Funds to pay dividends.[110]

The Commission believes that the provisions discussed in this section, which are designed to help ensure the independence of the Exchange's regulatory function and facilitate the ability of the Exchange to carry out its responsibility and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[111]

The Commission finds that proposed process regarding amendments to the New Governing Documents is consistent with Section 6(b)(1) of the Act, because it reflects the obligation of the Board to ensure compliance with the rule filing requirements under the Act. Additionally, the Commission finds these changes to be consistent with Section 19(b)(1) of the Act and Rule 19b–4 thereunder,[112] which require that a self-regulatory organization file with the Commission all proposed rules, as well as all proposed changes in, additions to, and deletions of its

Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101) (order approving acquisition of ISE Holdings by Eurex Frankfurt); and ISE HoldCo Order, *supra* note 25, at 25263–64.

[102] *See* Notice, *supra* note 3, at 46864. The Commission notes that the Exchange did not propose any amendments to the governing documents of its Upstream Owners.

[103] *See, e.g.,* Nasdaq Exchange Order, *supra* note 47; MIAX Exchange Order, *supra* note 52; MRX Exchange Approval, *supra* note 25; ISE Governance Order, *supra* note 12; GEMX Governance Order, *supra* note 12.

[104] *See* New By-Laws, Article III, Section 3. *See also* Notice, *supra* note 3, at 46858. Article III, Section 3 of the New By-Laws sets forth the factors to be considered by the Board when evaluating any proposal. *See* New By-Laws, Article III, Section 3. Further, the Exchange states that Article III, Section 3 of the New By-Laws recognizes the Exchange's status as a self-regulatory organization, and the provisions of Section 3, taken together, are designed to reinforce the notion that the Exchange is not solely a commercial enterprise, but rather a self-regulatory organization registered pursuant to, and subject to the obligations imposed by, the Act. *See* Notice, *supra* note 3, at 46858.

[105] The Commission believes that the proposed provisions relating to the books and records of the Exchange are designed to maintain the independence of MRX's self-regulatory function, and are consistent with the Act. The Commission notes that these provisions are substantially similar to those the Commission has previously found to be consistent with the Act in the context of the corporate governance structures of other exchanges. *See, e.g.,* MIAX Exchange Order, *supra* note 52; MRX Exchange Approval, *supra* note 25; ISE Governance Order, *supra* note 12; GEMX Governance Order, *supra* note 12.

The Commission also notes that the governing documents of MRX's Upstream Owners provide that all books and records of MRX reflecting confidential information pertaining to the self-regulatory function of the Exchange will be subject to confidentiality restrictions. *See* Certificate of Incorporation of ISE Holdings, Article Eleventh; Certificate of Incorporation of U.S. Exchange Holdings, Article Fourteenth; By-Laws of Nasdaq, Inc., Article XII, Section 12.1(b).

[106] *See* New LLC Agreement, Section 16; *see also* Current LLC Agreement, Article IV, Section 4.1.

[107] *See* New LLC Agreement, Section 16. The Commission notes that, as is currently the case, the requirement to keep such information confidential shall not limit the Commission's ability to access and examine such information or limit the ability of officers, directors, employees, or agents of MRX to disclose such information to the Commission. *See id. See also* Current LLC Agreement, Article IV, Section 4.1(b).

The Exchange states that certain provisions in Section 16 of the New LLC Agreement are substantially similar to provisions in Section 16 of the Nasdaq LLC Agreement. *See* Notice, *supra* note 3, at 46853 n.41. The Exchange also states that it is retaining in the New LLC Agreement certain provisions from its Current LLC Agreement that are not in the governing documents of the Nasdaq Exchanges, such as those relating to where the Exchange's books and records must be maintained and who may access the books and records, in particular those books and records that contain confidential information pertaining to the self-regulatory function of the Exchange. *See id.* at 46853 & n.42.

MRX also states that the Nasdaq Exchanges will separately file proposed rule changes to harmonize the books and records provisions in their respective governing documents with the language in Section 16 of the New LLC Agreement. *See id.* at 46853 n.42.

[108] *See* New LLC Agreement, Section 27; New By-Laws, Article VIII, Section 1.

The Commission notes that, although the Current Constitution and Current LLC Agreement do not include a similar, explicit requirement regarding the filing of amendments pursuant to Section 19 of the Act, the Current Constitution and Current LLC Agreement, as rules of the Exchange, are nonetheless subject to the requirements of Section 19 of the Act and the rules and regulations thereunder.

Additionally, pursuant to the New By-Laws, either the Sole LLC Member or the vote of a majority of the whole Board may enact amendments to the By-Laws, and the Board may adopt emergency by-laws.

[109] *See* Current LLC Agreement, Article III, Section 3.3.

[110] Specifically, pursuant to Section 15 of the New LLC Agreement, Regulatory Funds shall not be used non-regulatory purposes, but rather shall be used to fund the legal, regulatory, and surveillance operations of the Exchange, and the Exchange shall not make a distribution to the Sole LLC Member using Regulatory Funds. *See* New LLC Agreement, Section 15.

Consistent with Section 3.3 of the Current LLC Agreement, Schedule A of the New LLC Agreement defines ''Regulatory Funds'' as fees, fines, or penalties derived from the regulatory operations of the Exchange. However, Regulatory Funds do not include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. *See* New LLC Agreement, Schedule A.

MRX states that the Nasdaq Exchanges will separately file proposed rule changes to harmonize the distribution provisions in their respective governing documents with the language in Section 15 of the New LLC Agreement. *See* Notice, *supra* note 3, at 46852 n.39.

[111] 15 U.S.C. 78f(b)(1).

[112] *Id.;* 17 CFR 240.19b–4.

existing rules. These provisions clarify that amendments to the New Governing Documents constitute proposed rule changes within the meaning of Section 19(b)(2) of the Act and Rule 19b–4 thereunder, and are subject to the filing requirements of Section 19 of the Act and the rules and regulations thereunder.

The Commission also finds that the prohibition on the use of regulatory fines, fees, or penalties to fund dividends is consistent with Section 6(b)(1) of the Act, because it will further the Exchange's ability to effectively comply with its statutory obligations and is designed to ensure that the regulatory authority of the Exchange is not improperly used.[113] This restriction on the use of regulatory funds is intended to preclude the Exchange from using its authority to raise Regulatory Funds for the purpose of benefiting its shareholders.[114]

C. Related Rule Amendments

The Exchange proposes to amend its Rules to reflect the changes to its constituent documents through the adoption of the New Governing Documents to replace the Current Governing Documents. The Exchange states that it is amending its Rules to: (i) Clarify any Rules that cross-reference the Current Governing Documents in the rule text, since those documents are being replaced by the New Governing Documents; [115] or (ii) relocate in the Rules the definitions for a number of defined terms used in the Rules that currently refer back to the Current LLC Agreement or the Current Constitution for their meanings.[116]

Specifically, the Exchange proposed changes to its Rules to, among other things:

- Relocate the concept of CMM Rights from the Current LLC Agreement [117] to New Rule 100(a)(12), which will state that the term ''CMM Rights'' means the non-transferable rights held by a Competitive Market Maker.[118]
- Relocate to New Rule 100(a)(13) the definition of ''Competitive Market Maker,'' [119] which is currently only defined in Section 13.1(f) of the Current Constitution.
- Relocate the concept of EAM Rights to New Rule 100(a)(16), which will state that the term ''EAM Rights'' means the non-transferable rights held by an Electronic Access Member.[120]
- Relocate to New Rule 100(a)(17) the definition of ''Electronic Access Member,'' [121] which is currently only defined in Article XIII, Section 13.1(j), of the Current Constitution.
- Relocate the definitions for ''Exchange Transaction,'' ''good standing,'' and ''System'' from the Current Constitution to the Rules,[122] and delete Rule 100(a)(22A), defining ''LLC Agreement,'' as that term would no longer be used in the Rules, as amended by the proposed rule change.
- Relocate the concept of PMM Rights from Article VI of the Current LLC Agreement to New Rule 100(a)(41), which will state that the term ''PMM Rights'' means the non-transferable rights held by a Primary Market Maker.
- Relocate to New Rule 100(a)(42) the definition for ''Primary Market Maker'' [123] from Section 13.1(z) of the Current Constitution.

The Commission believes that the proposed changes to MRX's Rules are consistent with the Act and, in particular Section 6(b)(1) of the Act,[124] which requires among other things that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act. The Commission notes that many of the proposed changes to MRX's Rules are technical in nature, such as renumbering of Rules or conforming terminology to reflect the replacement of the Current Governing Documents with the New Governing Documents. The Commission also notes that, as described above, the Exchange proposes to relocate definitions for a number of defined terms used in the Rules from the Current Governing Documents into the Rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[125] that the proposed rule change (SR–MRX–2017–18) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[126]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25232 Filed 11–21–17; 8:45 am]

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[113] *See, e.g.,* Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233, 3241 (January 21, 2005) (SR–ISE–2004–29) (approving an ISE rule interpretation that requires that revenues received from regulatory fees or regulatory penalties be segregated and applied to fund the legal, regulatory, and surveillance operations of the Exchange and not used to pay dividends to the holders of Class A Common Stock).

[114] *See* Notice, *supra* note 3, at 46853.

[115] The Exchange states that all such changes are non-substantive, primarily changing terminology, such as changing the term ''Constitution'' to ''By-Laws'' and removing references to the ''Current LLC Agreement.'' *See id.* at 46862.

[116] *See id.* at 46851. The Exchange provides that all the provisions governing the trading privileges associated with the Exchange Rights in the Current Governing Documents are substantially set forth in the Rules. *See id.* The Commission notes that, currently on MRX, the Exchange Rights do not convey any ownership rights and only provide for voting rights for representation, through Exchange Directors, on the Board and the ability to transact on the Exchange. The Exchange represents that, under its Rules, the holders of Exchange Rights will continue to have the same trading privileges they currently hold as PMMs, CMMs, and EAMs, and the new Board structure of the Exchange will not change any trading privileges. Further, under the New Governing Documents, the holders of Exchange Rights will continue to have voting rights for representation on the Board through the election of Member Representative Directors. *See id.* at 46850–51.

[117] *See* Current LLC Agreement, Article VI, Section 6.2(b).

[118] CMM Rights are non-transferable rights. The holders of CMM Rights may not lease or sell these rights. As discussed above, all Exchange Rights (*i.e.,* PMM, CMM, and EAM Rights) convey only voting rights and trading privileges on the Exchange. *See* Notice, *supra* note 3, at 46863 n.121.

[119] The term ''Competitive Market Maker'' (referred to herein as ''CMM'') will be defined to mean a Member that is approved to exercise trading privileges associated with CMM Rights. *See* New Rule 100(a)(13).

The term ''Member'' means an organization that has been approved to exercise trading rights associated with Exchange Rights. *See* current Rule 100(a)(23); New Rule 100(a)(28).

[120] *See supra* note 118.

[121] The term ''Electronic Access Member'' (referred to herein as ''EAM'') will be defined to mean a Member that is approved to exercise trading privileges associated with EAM Rights. *See* New Rule 100(a)(17).

[122] ''Exchange Transaction'' would be relocated from Article XIII, Section 13.1(p), of the Current Constitution to New Rule 100(a)(21), ''good standing'' from Article XIII, Section 13.1(q), of the Current Constitution to New Rule 100(a)(24), and ''System'' from Article XIII, Section 13.1(ee), of the Current Constitution to New Rule 100(a)(55).

[123] The term ''Primary Market Maker'' (referred to herein as ''PMM'') will be defined to mean a Member that is approved to exercise trading privileges associated with PMM Rights. *See* New Rule 100(a)(42).

[124] 15 U.S.C. 78f(b)(1).

[125] 15 U.S.C. 78s(b)(2).

[126] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82094; File No. SR–NYSEArca–2017–128]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.4–O (Series of Options Open for Trading)

November 16, 2017.

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 November 2, 2017, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.4–O (Series of Options Open for Trading). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to amend Commentary .05 to Rule 6.4–O to modify the strike price intervals for certain Exchange Traded Funds (each an ''ETF''). Specifically, the Exchange proposes to modify the interval setting regime for options on SPDR® S&P 500® ETF (''SPY''), iShares Core S&P 500 ETF (''IVV''), and the SPDR® Dow Jones® Industrial Average ETF (''DIA'') to allow the Exchange to initiate $1 or greater strike price intervals above $200. Through this filing, the Exchange intends to make SPY, IVV, and DIA options more tailored and easier for investors and traders to use, which is consistent with the rules of other options exchanges.[4]

Currently, the S&P 500 Index is above 2000.[5] The S&P 500 Index is widely regarded as the best single gauge of large cap U.S. equities and is widely quoted as an indicator of stock prices and investor confidence in the securities market. As a result, individual investors often use S&P 500 Index-related products to diversify their portfolios and benefit from market trends. Accordingly, the Exchange believes that offering a wide range of S&P 500 Index-based options affords traders and investors important hedging and trading opportunities. SPY and IVV are identical in all material respects and are designed to track the performance of the S&P 500 Index. Shares of SPY and IVV are currently priced around 1/10th the value of S&P 500 Index. The Dow Jones Industrial Average (''DJIA'') is currently above 20,000 and is one of the most widely followed market indices.[6] Shares of DIA are currently priced around 1/100th of the DJIA. Accordingly, SPY and IVV strike prices—having a multiplier of $100—reflect a value roughly equal to 1/10th of the value of the S&P 500 Index. For example, if the S&P 500 Index is at 1972.56, shares of SPY and IVV might have a value of approximately 197.26 per share. Consequently, an at-the-money option on SPY or IVV, with a strike price of $197.00 will have a notional value of $19,700. In general, SPY and IVV (and, to a lesser extent, DIA) options provide retail investors and traders with the benefit of trading the broad market in a manageably sized contract.

The Exchange notes that the popularity of options on DIA and SPY (and, to a lesser extent, IVV) is evidenced by the existence of monthly, quarterly, and weekly expiration cycles in these ETFs.[7] Currently, Commentary .05(a) to Rule 6.4–O provides that the ''interval of strike prices of series of options on Exchange-Traded Fund Shares will be $1 or greater where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.'' [8] Thus, unless the Exchange is able to match strikes listed on other exchanges (see supra note 4), the current rule limits the trading and hedging possibilities for investors on the Exchange—particularly those investors that would like to execute strategies that are effective in $1 intervals. The Exchange therefore proposes to amend Commentary .05 to Rule 6.4–O to allow the Exchange to initiate $1 strike price intervals in options on SPY, IVV, and DIA. As proposed, the modified rule would provide that ''[n]otwithstanding any other provision of this rule regarding the interval of strike prices of series of options on Exchange-Traded Fund Shares, the interval of strike prices on options on [SPY, IVV, and DIA] will be $1 or greater.'' [9]

The Exchange believes that modifying the Rule to allow the Exchange to initiate finer—*i.e.,* one dollar—strike intervals in SPY, IVV, and DIA, would provide investors more efficient hedging and trading opportunities. In particular, the proposed ability to initiate $1 intervals, particularly above a $200 strike price, will result in having at-the-money series based upon the underlying SPY, IVV, or DIA moving less than 1%. The Exchange believes this strike setting regime is consistent with slower price movements of broad-based indices. Furthermore, the proposed ability to initiate $1 intervals would allow investors to continue to employ certain option trading strategies (*e.g.,* risk reduction/hedging strategies using SPY weekly options) without the Exchange having to wait for another exchange to list such strikes. Considering that $1 intervals already exist below the $200 price point, and that SPY, IVV, and DIA are above the $200 level, the Exchange believes it would be appropriate to modify the existing $200 level (above which intervals increase 500% to $5) for options on these ETFs. The Exchange believes that eliminating the existing $200 level would allow investors to continue investing, trading and utilizing

[4] *See, e.g.,* Chicago Board of Options Exchange (''CBOE'') Rule 5.5, Interpretation and Policy .08; NASDAQ PHLX LLC (''PHLX'') Rule 1012, Commentary .05. CBOE and PHLX both amended their rules regarding strike setting regimes for SPY and DIA in 2014. *See* Securities Exchange Act Release Nos. 72949 (August 29, 2014) 79 FR 53089 (September 5, 2014) (SR–Phlx–2014–46) and 72990 (September 4, 2014) 79 FR 53799 (September 10, 2014) (SR–CBOE–2014–068). Earlier this year, CBOE and PHLX further modified their rules to include IVV in the same strike setting regime as SPY. *See* Securities Exchange Act Release Nos. 80913 (June 13, 2017), 82 FR 27907 (June 19, 2017) (SR–CBOE–2017–048) and 81246 (July 28, 2017) 82 FR 36020 (August 2, 2017) (SR–Phlx–2017–57). The Exchange is authorized to match (and has matched) strikes in DIA, SPY, and IVV that are listed on other exchanges such as CBOE and PHLX. *See* Rule 6.4A–O(b)(vi) (providing that the Exchange ''may list an options series that is listed by another options exchange, provided that at the time such series was listed it was not prohibited under the provisions of the [Options Listing Procedure Plan or OLPP] or the rules of the exchange that initially listed the series''). The proposed rule change would allow the Exchange to initially list strike price intervals of $1 or greater in options on DIA, SPY, or IVV when the strike price is above $200 (regardless of whether other exchanges similarly list such strikes).

[5] On October 30, 2017, the S&P 500 Index closed at 2,572.83.

[6] On October 30, 2017, the DJIA closed at 23,348.74.

[7] For rules regarding quarterly or weekly options (also known as Short Term Options or STOS), *see* Commentaries .07 and .08, respectively, to Rule 6.4–O.

[8] *See* Rule 6.4–O, Commentary 5(a). *See also* Rule 6.4–O, Commentary .07 (e) (providing, in relevant part, that [i]f the class does not trade in $1 strike price intervals, the strike price interval for Short Term Option Series may be (i) $0.50 or greater where the strike price is less than $100; (ii) $1.00 or greater where the strike price is between $100 and $150; or (iii) $2.50 or greater for strike prices greater than $150. A non-Short Term Option that is on a class that has been selected to participate in the Short Term Option Series Program is referred to as a ''Related non-Short Term Option'').

[9] *See* proposed Rule 6.4–O, Commentary 5(d).

hedging strategies on these highly-liquid options.

Under the current rule, the Exchange is limited in its ability to initiate strikes in options on IVV, DIA, and SPY over $200. Assuming no other exchange lists the desired strike, investors and traders on the Exchange are unable to roll open positions from a lower strike to a higher strike in conjunction with the price movement of the underlying index because the next (higher) available series would be $5 away above a $200 strike price.[10] Thus, to initiate a position from $200 strike to a $205 strike under the current rule, an investor would need for the underlying product to move 2.5% and would not be able to execute a roll up until such a large movement occurred. With the proposed rule change to allow the Exchange to initiate finer strikes in options on IVV, DIA, and SPY over the $200 level, however, the investor would be in a significantly safer position of being able to roll his open options position from a $200 to a $201 strike price, which is only a 0.5% move for the underlying.[11]

The proposed rule change would allow the Exchange to better respond to customer demand for SPY, IVV, and DIA strike prices more precisely aligned with current S&P 500 Index and DJIA values.[12] The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, would benefit investors by continuing to provide investors the flexibility to more closely tailor their investment and hedging decisions using options on SPY, IVV, and DIA. By allowing the Exchange to initiate the listing of series of options on SPY, IVV, and DIA in $1 intervals between strike prices over $200, the proposal would moderately augment the potential total number of options series available on the Exchange.[13] However, the Exchange believes it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange also believes that members will not have a capacity issue due to the proposed rule change. Finally, the Exchange represents that it does not believe that this expansion will cause fragmentation of liquidity.

[10] *See* Rule 6.4–O, Commentary 5(a).

[11] *See* proposed Rule 6.4–O, Commentary 5(d).

[12] *See supra* notes 5, 6.

[13] As noted herein (*see supra* note 4), the Exchange has matched strikes listed by other exchanges in options on IVV, DIA and SPY.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[14] of the Act, in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would promote just and equitable principles of trade by allowing the Exchange to initiate strikes in options on IVV, DIA, and SPY over $200, which would result in continued trading and hedging opportunities in options on these ETFs. The proposed change would likewise ensure that such options investors are not at a disadvantage simply because of the strike price.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The rule change proposal allows the Exchange to respond to customer demand to allow options on SPY, IVV, and DIA to trade in $1 intervals above a $200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality.

As noted above, under the current rule (absent another exchange listing strikes that the Exchange could match),[16] ETF options trade in wider $5 intervals above a $200 strike price, whereas options at or below a $200 strike price trade in $1 intervals. This creates a situation where contracts on the same option class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the arbitrary $200 strike price above which options intervals increase by $5. This proposal establishes a clear exception to the current ETF interval regime for options on SPY, IVV, and DIA to allow the Exchange to initiate the listing of such options to trade in $1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change, like other strike price programs currently offered by the Exchange, would remove impediments to and perfect the mechanisms of a free and open market and a national market system to the benefit of investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. Finally, the proposal would foster cooperation and coordination with persons engaged in facilitating transactions in securities as this proposal would align Exchange rules with those of other exchanges—including CBOE and PHLX—to permit finer strikes in IVV, DIA, and SPY.[17]

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

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. Rather, the proposed rule change would enable the Exchange to better compete with other options exchanges that have already adopted the proposed strike setting regime.[13] Although the Exchange is able to match strikes listed by other exchanges, this proposal would allow the [sic] initiate strikes in IVV, DIA, and SPY regardless of strikes listed on other exchanges, which should help level the playing field for investors investing in, trading and utilizing hedging strategies on these options

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* note 4.

[17] *See supra* note 4.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

19b–4(f)(6) thereunder.[19] 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[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, the proposal would allow the Exchange to initiate $1 or greater strike price intervals above $200 for options on SPY, DIA, and IVV. Substantially similar rules are already in place at CBOE and PHLX, and the Exchange currently has the ability to list, and does list, these strike price intervals pursuant to its matching authority in Rule 903A(b)(vi). The Commission therefore believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2017–128 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–2017–128. 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 Web site (*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 Web site 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–2017–128 and should be submitted on or before December 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25229 Filed 11–21–17; 8:45 am]

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[19] 17 CFR 240.19b–4(f)(6).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82097; File No. SR–BatsBZX–2017–72]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Innovator S&P 500 15% Shield Strategy ETF Series, Innovator S&P 500 −5% to −35% Shield Strategy ETF Series, Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series, and Innovator S&P 500 Ultra Strategy ETF Series Under Rule 14.11(i)

November 16, 2017.

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 November 7, 2017, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') (formerly known as Bats BZX Exchange, Inc.) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposed rule change to list and trade shares of the Innovator S&P 500 15% Shield Strategy ETF Series, Innovator S&P 500 −5% to −35% Shield Strategy ETF Series, Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series and Innovator S&P 500 Ultra Strategy ETF Series under the Innovator ETFs Trust (formerly, Academy Funds Trust), under Rule 14.11(i) (''Managed Fund Shares'').

The text of the proposed rule change is available at the Exchange's Web site at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of up to twelve monthly Innovator S&P 500 15% Shield Strategy ETF Series (collectively, the ''Shield Funds''), Innovator S&P 500 −5% to −35% Shield Strategy ETF Series (collectively, the ''Ultra Shield Funds''), Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series (collectively, the ''Enhance and Shield Funds'') and Innovator S&P 500 Ultra Strategy ETF Series (collectively, the ''Ultra Funds'') (each a ''Fund'' and, collectively, the ''Funds'') under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3] Each Fund will be an actively managed exchange traded fund (''ETF'').

The Shares will be offered by Innovator ETFs Trust (formerly Academy Funds Trust) (the ''Trust''), which was established as a Delaware statutory trust on October 17, 2007. The Trust is registered with the Commission as an investment company and has filed, for each Fund, a registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of the Funds.[4] Each Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[5] Innovator Capital Management, LLC (the ''Adviser'') is the investment adviser to the Funds and Milliman Financial Risk Management LLC (the ''Sub-Adviser'') is the sub-adviser. Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Neither the Adviser nor the Sub-Adviser is a registered broker-dealer, and neither the Adviser nor the Sub-Adviser are affiliated with broker-dealers. In addition, Adviser or Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The investment objective of the Shield Funds is to provide investors, over a one-year period, with returns equal to those of the S&P 500 Price Return Index, while providing protection from S&P 500 Price Return Index losses. The investment objective of the Ultra Shield Funds is to provide investors, over a one-year period, with returns equal to those of the S&P 500 Price Return Index, while providing protection from S&P 500 Price Return Index losses. The investment objective of the Enhance and Shield Funds is to provide investors, over a one-year period, with returns that exceed those of the S&P 500 Price Return Index, while providing protection from S&P 500 Price Return Index losses. The investment objective of the Ultra Funds is to provide investors, over a one-year period, with returns that exceed those of the S&P 500 Price Return Index.

The Shield Funds and the Ultra Shield Funds are each actively managed funds that seek to exceed the returns of a benchmark index that employs a ''defined outcome strategy'' that is: (1) For the Shield Funds, the Cboe S&P 500 15% Buffer Protect Index Series (the ''Shield Index''), which seeks to provide investment returns that match those of the S&P 500 Price Return Index (the ''S&P 500 Index''), up to a maximized annual return (the ''Shield Cap Level''), while guarding against a decline in the S&P 500 Index of the first 15% (the ''Shield Strategy''); and (2) for the Ultra Shield Funds, Cboe S&P 500 30% (−5% to −35%) Buffer Protect Index Series (the ''Ultra Shield Index''), which seeks to provide investment returns that match those of the S&P 500 Index, up to a maximized annual return (the ''Ultra Shield Cap Level''), while guarding against a decline in the S&P 500 Index of between 5% and 35% (the ''Ultra Shield Strategy''). The Enhance and Shield Funds and the Ultra Funds do not utilize benchmark indexes and are each actively managed funds that employ a ''defined outcome strategy'' that: (1) For the Enhance and Shield Funds, seeks to provide investment returns that exceed the gains of the S&P 500 Index, up to a maximized annual return (the ''Enhance and Shield Cap Level''), while guarding against a decline in the S&P 500 Index of the first 10% (the ''Enhance and Shield Strategy''); and (2) for the Ultra Funds, seeks to provide investment returns that exceed gains of the S&P 500 Index, up to a maximized annual return (the ''Ultra Cap Level'') (the ''Ultra Strategy'' and, collectively with the Shield Strategy, Ultra Shield Strategy and Enhance and Shield Strategy, the

[3] The Commission originally approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

[4] *See* Post-Effective Amendment Nos. 59 and 60 to Registration Statement on Form N–1A for the Trust, dated September 8, 2017 (File Nos. 333–146827 and 811–22135) and Post-Effective Amendment Nos. 63 and 64 to Registration Statement on Form N–1A for the Trust, dated October 19, 2017 (File Nos. 333–146827 and 811–22135). The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

[5] 26 U.S.C. 851.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

''Strategies''). Pursuant to the Strategies, each Fund will invest primarily in exchange-traded options contracts that reference either the S&P 500 Index or ETFs that track the S&P 500 Index. Defined outcome strategies are designed to participate in market gains and losses within pre-determined ranges over a specified period (*i.e.* point to point). These outcomes are predicated on the assumption that an investment vehicle employing the strategy is held for the designated outcome periods. As such, the Exchange is proposing to list up to twelve monthly series of each of the Shield Funds, Ultra Shield Funds, Enhance and Shield Funds and the Ultra Funds, as named above.

The Exchange submits this proposal in order to allow each Fund to hold listed derivatives, in particular FLexible EXchange Options (''FLEX Options'') on the S&P 500 Index, in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b).[7] Otherwise, the Funds will comply with all other listing requirements of the Generic Listing Standards [8] for Managed Fund Shares on an initial and continued listing basis under Rule 14.11(i).

Innovator S&P 500 15% Shield Strategy ETF Series

The Shield Funds are actively managed funds that seek to provide total return which exceeds that of the Shield Index. Each Shield Fund will seek excess return above the Shield Index, before expenses are taken into account, solely through the active management of any available assets not required to be deposited for margin in connection with the Shield Fund's respective investments in the Shield Index components. Under Normal Market Conditions,[9] each Shield Fund will attempt to achieve its investment objective by taking positions that provide performance exposure substantially similar to the exposure provided by components of the Shield Index.[10] Pursuant to the Shield Strategy, each Shield Fund will invest primarily in the FLEX Options included in the Shield Index or other standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The Shield Index is composed of U.S. exchange-listed FLEX Options that reference the S&P 500 Index. The Shield Index is designed to produce returns that, over a period of approximately one year, match the returns of the S&P 500 Index up to the Shield Cap Level, while guarding against a decline in the S&P 500 Index of the first 15%. More specifically, the Shield Index is designed to produce the following outcomes during the outcome period:

- *If the S&P 500 Index appreciates over the outcome period:* The Shield Index will provide a total return that matches the percentage increase of the S&P 500 Index, up to the Shield Cap Level;
- *If the S&P 500 Index decreases over the outcome period by 15% or less:* The Shield Index will provide a total return of zero; and
- *If the S&P 500 Index depreciates over the outcome period by greater than 15%:* The Shield Index will provide a total return loss that is 15% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 85%.

The Shield Index will produce these outcomes by layering ''purchased'' and ''written'' FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising the Shield Index have terms that, when layered upon each other, are designed to buffer against losses of the S&P 500 Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains. Any FLEX Options that are written by the Shield Index that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Shield Index to create the right to buy or sell the same asset such that the Shield Index will always be in a net long position. That is, any theoretical obligations of a Shield Index created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Shield Index seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year.

Similarly, each of the Shield Funds will layer purchased and written FLEX Options that comprise the Shield Index. Any FLEX Options that are written by a Shield Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Shield Fund to create the right to buy or sell the same asset such that the Shield Fund will always be in a net long position. That is, any obligations of a Shield Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Shield Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year. The Shield Funds do not offer any protection against declines in the S&P 500 Index exceeding 15% on an annualized basis. Shareholders will bear all S&P 500 Index losses exceeding 15% on a one-to-one basis.

The FLEX Options owned by each of the Shield Funds will have the same terms (*i.e.* same strike price and expiration) for all investors of a Shield Fund within an outcome period. The Shield Cap Level will be determined with respect to each Shield Fund on the inception date of the Shield Fund and at the beginning of each outcome period.

Innovator S&P 500 −5% to −35% Shield Strategy ETF Series

The Ultra Shield Funds are actively managed funds that seek to provide total return which exceeds that of the Ultra Shield Index. Each Ultra Shield Fund will seek excess return above the Ultra Shield Index, before expenses are taken into account, solely through the active management of any available assets not required to be deposited for margin in

[7] Rule 14.11(i)(4)(C)(iv)(b) provides that ''the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).'' The Exchange is proposing that the Funds be exempt from the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

[8] For purposes of this proposal, the term ''Generic Listing Standards'' shall mean the generic listing rules for Managed Fund Shares under Rule 14.11(i)(4)(C).

[9] As defined in Rule 14.11(i)(3)(E), the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[10] The Shield Funds are not index tracking funds and are not required to invest in all components of the Shield Index.

connection with the Ultra Shield Fund's respective investments in the Ultra Shield Index components. Under Normal Market Conditions, each Ultra Shield Fund will attempt to achieve its investment objective by taking positions that provide performance exposure substantially similar to the exposure provided by components of the Ultra Shield Index.[11] Pursuant to the Ultra Shield Strategy, each Ultra Shield Fund will invest primarily in the FLEX Options included in the Ultra Shield Index or other standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The Ultra Shield Index is composed of U.S. exchange-listed FLEX Options that reference the S&P 500 Index. The Ultra Shield Index is designed to produce returns that, over a period of approximately one year, match the returns of the S&P 500 Index up the Ultra Shield Cap Level while guarding against a decline in the S&P 500 Index of between 5% and 35%. More specifically, the Ultra Shield Index is designed to produce the following outcomes during the outcome period:

- *If the S&P 500 Index appreciates over the outcome period:* The Ultra Shield Index seeks to provide a total return that matches the percentage increase of the S&P 500 Index, up to the Ultra Shield Cap Level;
- *If the S&P 500 Index decreases over the outcome period by 5% or less:* The Ultra Shield Index seeks to provide a total return loss that is equal to the percentage loss on the S&P 500 Index;
- *If the S&P 500 Index decreases over the outcome period by 5%–35%:* The Ultra Shield Index seeks to provide a total return loss of 5%; and
- *If the S&P 500 Index depreciates over the outcome period by greater than 35%:* The Ultra Shield Index seeks to provide a total return loss that is 30% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 70%.

The Ultra Shield Index will produce these outcomes by layering ''purchased'' and ''written'' FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising the Ultra Shield Index have terms that, when layered upon each other, are designed to buffer against losses of the S&P 500 Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains. Any FLEX Options that are written by the Ultra Shield Index that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Ultra Shield Index to create the right to buy or sell the same asset such that the Ultra Shield Index will always be in a net long position. That is, any theoretical obligations of an Ultra Shield Index created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Ultra Shield Index seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year.

Similarly, each of the Ultra Shield Funds will layer purchased and written FLEX Options that comprise the Ultra Shield Index. Any FLEX Options that are written by an Ultra Shield Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Ultra Shield Fund to create the right to buy or sell the same asset such that the Ultra Shield Fund will always be in a net long position. That is, any obligations of an Ultra Shield Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Ultra Shield Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year. The Ultra Shield Funds do not offer any protection against declines in the S&P 500 Index exceeding 35% on an annualized basis. Shareholders will bear all S&P 500 Index losses exceeding 35% on a one-to-one basis.

The FLEX Options owned by each of the Ultra Shield Funds will have the same terms (*i.e.* same strike price and expiration) for all investors of an Ultra Shield Fund within an outcome period. The Ultra Shield Cap Level will be determined with respect to each Ultra Shield Fund on the inception date of the Ultra Shield Fund and at the beginning of each outcome period.

Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series

Under Normal Market Conditions, each Enhance and Shield Fund will attempt to achieve its investment objective by employing a ''defined outcome strategy'' that seeks to provide investment returns that exceed the gains of the S&P 500 Index, up to the Enhance and Shield Cap Level, while shielding investors from S&P 500 Index losses of up to 10%. Pursuant to the Enhance and Shield Strategy, each Enhance and Shield Fund will invest primarily in FLEX Options or other standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The portfolio managers will invest in a portfolio of FLEX Options linked to an underlying asset, the S&P 500 Index, that, when held for the specified period, seeks to produce returns that, over a period of approximately one year, exceed the returns of the S&P 500 Index up to the Enhance and Shield Cap Level. Pursuant to the Enhance and Shield Strategy, each Enhance and Shield Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- *If the S&P 500 Index appreciates over the outcome period:* The Enhance and Shield Fund seeks to provide shareholders with a total return that exceeds that of the S&P 500 Index, up to and including the Enhance and Shield Cap Level;
- *If the S&P 500 Index depreciates over the outcome period by 10% or less:* The Enhance and Shield Fund seeks to provide a total return of zero;
- *If the S&P 500 Index decreases over the outcome period by more than 10%:* The Enhance and Shield Fund seeks to provide a total return loss that is 10% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 90%.

The Enhance and Shield Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising an Enhance and Shield Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or exceed the gains of the S&P 500 Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by an Enhance and Shield Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Enhance and Shield Fund to create the right to buy or sell the same asset such that the

[11] The Ultra Shield Funds are not index tracking funds and are not required to invest in all components of the Ultra Shield Index.

Enhance and Shield Fund will always be in a net long position. That is, any obligations of an Enhance and Shield Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Enhance and Shield Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year. The Enhance and Shield Funds do not offer any protection against declines in the S&P 500 Index exceeding 10% on an annualized basis. Shareholders will bear all S&P 500 Index losses exceeding 10% on a one-to-one basis.

The FLEX Options owned by each of the Enhance and Shield Funds will have the same terms (*i.e.* same strike price and expiration) for all investors of an Enhance and Shield Fund within an outcome period. The Enhance and Shield Cap Level will be determined with respect to each Enhance and Shield Fund on the inception date of the Enhance and Shield Fund and at the beginning of each outcome period.

Innovator S&P 500 Ultra Strategy ETF Series

Under Normal Market Conditions, each Ultra Fund will attempt to achieve its investment objective by employing a ''defined outcome strategy'' that seeks to provide investment returns that exceed the gains of the S&P 500 Index, up to the Ultra Cap Level. Pursuant to the Ultra Strategy, each Ultra Fund will invest primarily in FLEX Options or other standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The portfolio managers will invest in a portfolio of FLEX Options linked to an underlying asset, the S&P 500 Index, that, when held for the specified period, seeks to produce returns that, over a period of approximately one year, exceed the returns of the S&P 500 Index up to the Ultra Cap Level. Pursuant to the Ultra Strategy, each Ultra Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- *If the S&P 500 Index appreciates over the outcome period:* The Ultra Fund seeks to provide shareholders with a total return that exceeds that of the S&P 500 Index, up to the Ultra Cap Level;
- *If the S&P 500 Index decreases over the outcome period:* The Ultra Fund seeks to provide a total return loss that is equal to the percentage loss of the S&P 500 Index.

The Ultra Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allow for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising the Ultra Fund's portfolio have terms that, when layered upon each other, are designed to exceed the gains of the S&P 500 Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by the Ultra Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Ultra Fund to create the right to buy or sell the same asset such that the Ultra Fund will always be in a net long position. That is, any obligations of an Ultra Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced.

The FLEX Options owned by each of the Ultra Funds will have the same terms (*i.e.* same strike price and expiration) for all investors of an Enhance and Shield Fund within an outcome period. The Ultra Cap Level will be determined with respect to each Ultra Fund on inception date of the Ultra Fund and at the beginning of each outcome period.

Investment Methodology for the Funds

Under Normal Market Conditions, each Fund will invest primarily in U.S. exchange-listed FLEX Options on the S&P 500 Index. Each of the Funds may invest its net assets (in the aggregate) in other investments which the Adviser or Sub-Adviser believes will help each Fund to meet its investment objective and that will be disclosed at the end of each trading day (''Other Assets''). Other Assets include only the following: cash or cash equivalents, as defined in Rule 14.11(i)(4)(C)(iii) [12] and standardized options contracts listed on a U.S. securities exchange that reference either the S&P 500 Index or that reference ETFs that track the S&P 500 Index (''Reference ETFs'').

S&P 500 Index FLEX Options

The market for options contracts on the S&P 500 Index traded on Cboe Exchange, Inc. (''Cboe Options'') is among the most liquid markets in the world. In 2016, 1,023,623 options contracts on the S&P 500 Index were traded per day on Cboe Options, which is more than $200 billion in notional volume traded on a daily basis. While FLEX Options are traded differently than standardized options contracts, the Exchange believes that this liquidity bolsters the market for FLEX Options, as described below. Every FLEX Option order submitted to Cboe Options is exposed to a competitive auction process for price discovery. The process begins with a request for quote (''RFQ'') in which the interested party establishes the terms of the FLEX Options contract. The RFQ solicits interested market participants, including on-floor market makers, remote market makers trading electronically, and member firm traders, to respond to the RFQ with bids or offers through a competitive process. This solicitation contains all of the contract specifications-underlying, size, type of option, expiration date, strike price, exercise style and settlement basis. During a specified amount of time, responses to the RFQ are received and at the end of that time period, the initiator can decide whether to accept the best bid or offer. The process occurs under the rules of Cboe Options which means that customer transactions are effected according to the principles of a fair and orderly market following trading procedures and policies developed by Cboe Options.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and FLEX Options on the S&P 500 Index for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the S&P 500 Index results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe

[12] As defined in Rule 14.11(i)(4)(C)(iii), cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

Options [13] and the Financial Industry Regulatory Authority (''FINRA'') designed to detect violations of the federal securities laws and self-regulatory organization (''SRO'') rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised primarily of FLEX Options on the S&P 500 Index, will be acquired in extremely liquid and highly regulated markets,[14] the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the related Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain 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. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, options on the S&P 500 Index are among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500 Index securities, options on the S&P 500 Index, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

The Exchange represents that, except for the limitations on listed derivatives in BZX Rule 14.11(i)(4)(C)(iv)(b), the Funds' proposed investments will satisfy, on an initial and continued listing basis, all of the generic listing standards under BZX Rule 14.11(i)(4)(C) and all other applicable requirements for Managed Fund Shares under Rule 14.11(i). The Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of the Funds. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. In addition, the Exchange represents that the Shares of the Funds will comply with all other requirements applicable to Managed Fund Shares, which includes the dissemination of key information such as the Disclosed Portfolio,[15] Net Asset Value,[16] and the Intraday Indicative Value,[17] suspension of trading or removal,[18] trading halts,[19] surveillance,[20] minimum price variation for quoting and order entry,[21] and the information circular,[22] as set forth in Exchange rules applicable to Managed Fund Shares. Moreover, all of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. RFQ information for FLEX Options will be available directly from Cboe Options. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on cash equivalents is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [23] in general and Section 6(b)(5) of the Act [24] in particular in that

[13] The Exchange notes that Cboe Options is a member of the Option Price Regulatory Surveillance Authority, which was established in 2006, to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in insider trading and investigations for the U.S. options exchanges. For more information, *see http://www.cboe.com/aboutcboe/legal/departments/orsareg.aspx.*

[14] All exchange-listed securities that the Funds may hold will trade on a market that is a member of the Intermarket Surveillance Group (''ISG'') and the Funds will not hold any non-exchange-listed equities or options, however, not all of the components of the portfolio for the Funds may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, see *www.isgportal.org.*

[15] *See* Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

[16] *See* Rule 14.11(i)(4)(A)(ii).

[17] *See* Rule 14.11(i)(4)(B)(i).

[18] *See* Rule 14.11(i)(4)(B)(iii).

[19] *See* Rule 14.11(i)(4)(B)(iv).

[20] *See* Rule 14.11(i)(2)(C).

[21] *See* Rule 14.11(i)(2)(B).

[22] *See* Rule 14.11(i)(6).

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest in that the Shares will meet each of the initial and continued listing criteria in BZX Rule 14.11(i) with the exception of Rule 14.11(i)(4)(C)(iv)(b), which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).[25] Rule 14.11(i)(4)(C)(iv)(b) is intended to ensure that a fund is not subject to manipulation by virtue of significant exposure to a manipulable underlying reference asset by establishing concentration limits among the underlying reference assets for listed derivatives held by a particular fund.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and FLEX Options on the S&P 500 Index for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the S&P 500 Index results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised primarily of FLEX Options on the S&P 500 Index, will be acquired in extremely liquid and highly regulated markets, the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the related Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain 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. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As noted above, options on the S&P 500 Index are among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500 Index securities, options on the S&P 500 Index, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

The Exchange represents that, except as described above, the Funds will meet and be subject to all other requirements of the Generic Listing Standards and other applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements regarding the Disclosed Portfolio,[26] Intraday Indicative Value,[27] suspension of trading or removal,[28] trading halts,[29] disclosure,[30] and firewalls.[31] The Trust is required to comply with Rule 10A–3 under the Act

[25] As noted above, the Exchange is proposing that each Fund be exempt only from the requirements of Rule 14.11(i)(4)(C)(iv)(b) which prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures).

[26] *See* Rule 14.11(i)(4)(B)(ii).

[27] *See* Rule 14.11(i)(4)(B)(i).

[28] *See* Rule 14.11(i)(4)(B)(iii).

[29] *See* Rule 14.11(i)(4)(B)(iv).

[30] *See* Rule 14.11(i)(6).

[31] *See* Rule 14.11(i)(7).

for the initial and continued listing of the Shares of each Fund. Moreover, all of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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 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.

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–BatsBZX–2017–72 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–BatsBZX–2017–72. 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 Web site (*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 Web site 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–BatsBZX–2017–72 and should be submitted on or before December 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25226 Filed 11–21–17; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82098; File No. SR–CHX–2017–14]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to the Plan To Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS

November 16, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on November 9, 2017, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange (''CHX Rules'') related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[3] The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, together with the Cboe BZX Exchange, Inc.,[4] Cboe BYX Exchange, Inc.,[5] Cboe EDGA Exchange, Inc.,[6] Cboe EDGX Exchange, Inc.,[7] the Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,[8] NYSE Arca, Inc. and NYSE National, Inc.[9] (collectively with the Exchange, the ''Plan Participants'') are parties to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Exchange Act. The Plan Participants initially filed the Plan with the Commission on April 5, 2011, which was published for notice and comment.[10] On May 24, 2012, the Plan Participants filed an amendment to the Plan and the Plan, as amended, was approved by the Commission on May 31, 2012.[11] The Plan Participants filed a second amendment to the Plan, which was immediately effective on January 23, 2013.[12] On February 19, 2013, the Plan Participants filed a third amendment to the Plan, which the Commission approved on April 3, 2013.[13] The Plan Participants filed a fourth amendment to the Plan, which was immediately effective on July 18, 2013.[14] On July 18, 2013, the Plan Participants filed a fifth amendment to the Plan, which the Commission approved on September 26, 2013.[15] The Plan Participants filed a sixth amendment to the Plan, which was immediately effective on December 3, 2013.[16] On February 24, 2014, the Plan Participants filed a seventh amendment to the Plan, which the Commission approved on April 3, 2014.[17] On December 24, 2014, the Plan Participants filed an eighth amendment to the Plan, which the Commission approved on February 19, 2015.[18] On July 31, 2015, the Plan Participants filed a ninth amendment to the Plan to extend the pilot through April 22, 2016, and remove Chicago Board Options Exchange as a Plan Participant, which the Commission approved on October 22, 2015.[19] On February 19, 2016, the Plan Participants filed a tenth amendment to the Plan to extend the pilot through April 21, 2017 and make one modification to the Plan, which the Commission approved on April 21, 2016.[20] On August 1, 2016, the Investors Exchange LLC filed an amendment to the Plan to be added to the roster of Plan Participants.[21] By letter dated September 19, 2016,[22] the Plan Participants filed a twelfth amendment to the Plan (''Amendment 12''), which the Commission approved on January 19, 2017.[23] On February 13, 2017, the Plan Participants filed a thirteenth amendment to the Plan, which was approved on April 13, 2017.[24] The Plan Participants filed a fourteenth amendment to the Plan, which was immediately effective on April 13, 2017.[25] The Plan Participants filed a fifteenth amendment to the Plan, which was immediately effective on August 31, 2017.[26]

As of the date of this filing, the Amendment 12 implementation date is November 20, 2017. Amendment 12 provides that a Trading Pause[27] will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, even if such reopening is more than 10 minutes after the beginning of a Trading Pause, and to require that trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock.[28] Amendment 12 also provides that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures and reports a Reopening Price. Furthermore, Amendment 12 eliminated the current allowance for a trading center to resume trading in an NMS Stock following a Trading Pause if the Primary Listing Exchange has not reported a Reopening Price within ten minutes after the declaration of a Trading Pause and has not declared a Regulatory Halt. In addition, to preclude potential scenarios when trading may resume without Price Bands, Amendment 12 provides that a trading center may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock. To address potential scenarios in which there is no Reopening Price from the Primary Listing Exchange to use to calculate Price Bands, Amendment 12 adopted related provisions to the Plan to address when trading may resume if the Primary Listing Exchange is unable to reopen due to a systems or technology issue or if the Primary Listing Exchange reopens trading on a zero bid or zero quote, or both and how the Reference Price would be determined in such a scenario.

In conjunction with filing Amendment 12, each Primary Listing Exchange filed rule changes[29] with the

[4] Bats BZX Exchange, Inc. has been renamed Cboe BZX Exchange, Inc. *See* Exchange Act Release No. 81962 (October 26, 2017), 82 FR 50711 (November 1, 2017) (SR–BatsBZX–2017–70).

[5] Bats BYX Exchange, Inc. has been renamed Cboe BYX Exchange, Inc. *See* Exchange Act Release No. 81952 (October 26, 2017), 82 FR 50725 (November 1, 2017) (SR–BatsBYX–2017–27).

[6] Bats EDGA Exchange, Inc. has been renamed Cboe EDGA Exchange, Inc. *See* Exchange Act Release No. 81957 (October 26, 2017), 82 FR 50716 (November 1, 2017) (SR–BatsEDGA–2017–28).

[7] Bats EDGX Exchange, Inc. has been renamed Cboe EDGX Exchange, Inc. *See* Exchange Act Release No. 81963 (October 26, 2017), 82 FR 50697 (November 1, 2017) (SR–BatsEDGX–2017–41).

[8] NYSE MKT LLC has been renamed NYSE American LLC. *See* Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (SR–NYSEMKT–2017–14).

[9] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017) (SR–NSX–2016–16).

[10] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631) (''LULD Proposal'').

[11] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (''Approval Order'').

[12] *See* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (File No. 4–631).

[13] *See* Securities Exchange Act Release No. 69287 (April 3, 2013), 78 FR 21483 (April 10, 2013) (File No. 4–631).

[14] *See* Securities Exchange Act Release No. 70273 (August 27, 2013), 78 FR 54321 (September 3, 2013) (File No. 4–631).

[15] *See* Securities Exchange Act Release No. 70530 (September, 26, 2013), 78 FR 60937 (October 2, 2013) (File No. 4–631).

[16] *See* Securities Exchange Act Release No. 71247 (January 7, 2014), 79 FR 2204 (January 13, 2014) (File No. 4–631).

[17] *See* Securities Exchange Act Release No. 71851 (April 3, 2014), 79 FR 19687 (April 9, 2014) (File No. 4–631).

[18] *See* Securities Exchange Act Release No. 74323 (February 19, 2015), 80 FR 10169 (February 25, 2015) (File No. 4–631).

[19] *See* Securities Exchange Act Release No. 76244 (October 22, 2015), 80 FR 66099 (October 28, 2015) (File No. 4–631).

[20] *See* Securities Exchange Act Release No. 77679 (April 21, 2016), 81 FR 24908 (April 27, 2016) (File No. 4–631).

[21] *See* Securities Exchange Act Release No. 78703 (August 26, 2016), 81 FR 60397 (September 1, 2016) (File No. 4–631).

[22] *See* letter from Elizabeth K. King, General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated September 16, 2016 (''Amendment 12 Letter'').

[23] *See* Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017) (File No. 4–631).

[24] *See* Exchange Act Release No. 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017) (File No. 4–631).

[25] *See* Exchange Act Release No. 80549 (April 28, 2017), 82 FR 20928 (May 4, 2017) (File No. 4–631).

[26] *See* Exchange Act Release No. 81720 (September 26, 2017), 82 FR 45922 (October 2, 2017) (File No. 4–631).

[27] Unless otherwise specified, the terms used herein have the same meaning as set forth in the Plan.

[28] *See* Amendment 12 Letter, *supra* note 22.

[29] *See* Securities Exchange Act Release No. 81968 (October 27, 2017), 82 FR 50898 (November 2, 2017) (SR–NYSEAMER–2017–30); *see also* Securities Exchange Act Release No. 81880 (October 16, 2017),

Continued

Commission under Section 19(b) of the Exchange Act to amend their respective trading practice for automated reopenings following a Trading Pause consistent with a standardized approach agreed to by Plan Participants that would allow for extensions of a Trading Pause if equilibrium cannot be met for a Reopening Price within specified parameters. Accordingly, the Exchange is proposing to adopt changes to its rules, as described below, to implement the reopening procedures agreed upon by the Plan Participants that are applicable to the Exchange.

a. Proposal

The Exchange proposes to amend current Article 20, Rule 2A(c)(4) to adopt a requirement of Amendment 12 to only resume trading after a Trading Pause initiated by another exchange upon receiving Price Bands from the Processor. As noted above, Amendment 12 prohibits trading centers from resuming trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock. The Plan provides that if the Primary Listing Exchange is unable to reopen trading due to a systems or technology issue, trading should be permitted to resume in that NMS Stock upon receiving Price Bands from the processor. The Exchange notes that amended Article 20, Rule 2A(c)(4) is based, in part, on approved amendments to Nasdaq Rule 4120(a)(12)(H), which are not yet operative.[30]

The Exchange does not propose to amend CHX Rules to adopt other requirements of Amendment 12 related to reopening procedures as the Exchange is not currently a Primary Listing Exchange for any NMS Stocks and its primary listing program is currently dormant.

b. Operative Date

The Exchange proposes to implement the proposed rule change in coordination with other Plan Participants on November 20, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[31] and furthers the objectives of Section 6(b)(5) in particular,[32] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change, together with the approved amendments to the Plan, are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change would 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, because they are designed, together with the approved amendments to the Plan, to address the issues experienced on August 24, 2015 by reducing the number of repeat Trading Pauses in a single NMS Stock, and to harmonize CHX Rules with the Plan and the rules of other Plan Participants.[33]

The approved Plan amendments are an essential component to Plan Participants' goal of more standardized processes across Primary Listing Exchanges in reopening trading following a Trading Pause, and facilitates the production of an equilibrium Reopening Price by centralizing the reopening process through the Primary Listing Exchange, which would also improve the accuracy of the reopening Price Bands. The approved Plan amendments support this initiative by requiring trading centers to wait to resume trading following Trading Pause until there is a Reopening Price. As such, the Exchange's proposal to amend Article 20, Rule 2A(c)(4) to provide that, if a Trading Pause was initiated by another exchange, CHX may resume trading following the Trading Pause upon receipt of the Price Bands from the Processor would comport CHX Rules with the approved Plan Amendments and, thereby, harmonize CHX Rules with the rules of other national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather, to achieve the Plan Participants' goal of more standardized processes across Primary Listing Exchanges in reopening trading following a Trading Pause, and facilitates the production of an equilibrium reopening price by centralizing the reopening process through the Primary Listing Exchange, which would also improve the accuracy of the reopening Price Bands. The Exchange believes that the proposed rule change reduces the burden on competition for market participants because it promotes a transparent and consistent process for reopening trading following a Trading Pause regardless of where a security may be listed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[34] and Rule 19b–4(f)(6) thereunder.[35]

A proposed rule change filed under Rule 19b–4(f)(6)[36] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[37] the Commission may designate a shorter time if such

82 FR 48870 (October 20, 2017) (SR–NYSE–2017–51); *see also* Securities Exchange Act Release No. 79884 (January 26, 2017), 82 FR 8968 (February 1, 2017) (Approval Order for SR–BatsBZX–2016–61); *see also* Securities Exchange Act Release No. 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (Approval Order for SR–NASDAQ–2016–131); *see also* Securities Exchange Act Release No. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (Approval Order for SR–NYSEArca–2016–130).

[30] *See* Approval Order for SR–NASDAQ–2016–131, *supra* note 29, at 8889–8890.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] *See supra* note 29.

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[36] 17 CFR 240.19b–4(f)(6).

[37] 17 CFR 240.19b–4(f)(6)(iii).

action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on November 20, 2017. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Exchange's proposal does not raise any new or novel issues, and the waiver would permit the Exchange to implement the proposed rule change in coordination with other Plan Participants on the Amendment 12 implementation date of November 20, 2017. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative on November 20, 2017.[38]

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 under Section 19(b)(2)(B) of the Act[39] 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 proposal 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 No. SR–CHX–2017–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2017–14. 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 Web site (*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 changes 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 Web site 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 CHX. 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 No. SR–CHX–2017–14 and should be submitted on or before December 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25227 Filed 11–21–17; 8:45 am]

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[38] 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).

[39] 15 U.S.C. 78s(b)(2)(B).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82105; File No. SR–NYSEArca–2017–69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of ProShares QuadPro Funds Under NYSE Arca Rule 8.200–E

November 16, 2017.

I. Introduction

On July 31, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of ProShares QuadPro U.S. Large Cap, ProShares QuadPro Short U.S. Large Cap, ProShares QuadPro U.S. Small Cap, and ProShares QuadPro Short U.S. Small Cap (collectively, ''Funds'') under NYSE Arca Rule 8.200–E. The proposed rule change was published for comment in the **Federal Register** on August 18, 2017.[3] On September 28, 2017, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 29, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed. On November 14, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change as modified by Amendment No. 1.[6] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81388 (August 14, 2017), 82 FR 39477.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 81746, 82 FR 46315 (October 4, 2017). The Commission designated November 16, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 2, the Exchange: (1) Changed the names of the Funds; (2) provided the trading hours of the Chicago Mercantile Exchange (''CME''); (3) amended the description of the Funds' holdings of options and cash; (4) revised the description of the rolling of futures contracts; (5) amended and supplemented the description of the Funds' Net Asset Value (''NAV'') and Indicative Optimized Portfolio Value; (6) amended and supplemented the description of the availability of information relating to the Funds; (7) decreased the creation unit size from 50,000 Shares to 25,000 Shares; and (8) made other clarifications, corrections, and technical changes. Amendment No. 2 to the proposed rule change is available at *https://www.sec.gov/comments/sr-nysearca-2017-69/nysearca201769-2688277-161489.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2 [8]

The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Rule 8.200–E, which governs the listing and trading of Trust Issued Receipts on the Exchange. Each Fund is a commodity pool that is a series of the ProShares Trust II (''Trust'').[9] The Funds' sponsor and commodity pool operator is ProShare Capital Management LLC (''Sponsor''). Brown Brothers Harriman & Co. is the administrator, the custodian, and the transfer agent of each Fund and the Shares. SEI Investments Distribution Co. is the distributor for the Shares.

ProShares QuadPro U.S. Large Cap and ProShares QuadPro Short U.S. Large Cap

ProShares QuadPro U.S. Large Cap and ProShares QuadPro Short U.S. Large Cap (collectively, ''Large Cap Funds'') will seek results that correspond (before fees and expenses) to four times (4X) or four times the inverse (−4X), respectively, of the return of lead month E-Mini S&P 500 Stock Price Index Futures (''Large Cap Benchmark'') for a single day.[10] More specifically, the Large Cap Benchmark is the last traded price of lead month (*i.e.,* near-month or next-to-expire) E-Mini S&P 500 Stock Price Index Futures Contracts on the CME prior to the calculation of the Funds' NAV, which is typically calculated as of 4:00 p.m. each day that NYSE Arca is open for trading.

Each Large Cap Fund will seek to engage in daily rebalancing to position its portfolio so that its leveraged or inverse exposure to the Large Cap Benchmark is consistent with the Fund's daily investment objective. Daily rebalancing and the compounding of each day's return over time means that the return of each Fund for a period longer than a single day will be the result of each day's returns compounded over the period, which will very likely differ from four times or four times the inverse, as applicable, of the return of the Fund's benchmark for the same period.

Under normal market conditions,[11] each Large Cap Fund will attempt to gain leveraged or inverse leveraged exposure, as applicable, to the Large Cap Benchmark primarily through investments in lead month E-Mini S&P 500 Stock Price Index Futures. Each Large Cap Fund may also take positions in standard futures contracts on the S&P 500 Index (together with lead month E-Mini S&P 500 Stock Price Index Futures, ''Large Cap Futures Contracts''). In the event position, price, or accountability limits are reached with respect to Large Cap Futures Contracts, the Sponsor, in its commercially reasonable judgment, may cause each Large Cap Fund to obtain exposure to the Large Cap Benchmark through investment in swap transactions and forward contracts referencing the Large Cap Benchmark (''Large Cap Financial Instruments'' and, together with Large Cap Futures Contracts, ''S&P 500 Interests''). The Large Cap Funds may also invest in Large Cap Financial Instruments if the market for a specific Large Cap Futures Contract experiences an emergency (*e.g.,* natural disaster, terrorist attack or an act of God) or a disruption (*e.g.,* a trading halt or a flash crash) that prevents or makes it impractical for a Fund to obtain the appropriate amount of investment exposure using Large Cap Futures Contracts (*i.e.,* conditions other than normal market conditions). The Large Cap Funds do not intend to invest more than 25% of their respective net assets in Large Cap Financial Instruments.

Additionally, because an adverse Large Cap Benchmark move of 25% or more in a single day could cause the NAV of a Large Cap Fund to decline to zero and investors in the Fund to lose the full value of their investment, each Large Cap Fund will invest a limited portion of its assets (typically less than 5% of its net assets at the time of purchase) in listed option contracts that are designed to prevent a Large Cap Fund's NAV from going to zero and allow a Fund to recoup a small portion of the substantial losses that may result from significant adverse movements in the Large Cap Benchmark. Specifically, ProShares QuadPro U.S. Large Cap will hold CME-listed put options on Large Cap Futures Contracts, and ProShares QuadPro Short U.S. Large Cap will hold CME-listed call options on Large Cap Futures Contracts (collectively, ''Large Cap Stop Options'').[12] If it is not practicable for a Large Cap Fund to invest in Large Cap Stop Options, the Funds may invest in over-the-counter (''OTC'') options on Large Cap Future Contracts.

Each Large Cap Fund will invest the remainder of its assets in high-quality, short-term debt instruments that have terms-to-maturity of less than 397 days, such as U.S. government securities and repurchase agreements (''Money Market Instruments''). Each Large Cap Fund also may hold cash in order to pay expenses and distributions, if any, and satisfy redemption requests.

ProShares QuadPro U.S. Small Cap and ProShares QuadPro Short U.S. Small Cap

ProShares QuadPro U.S. Small Cap and ProShares QuadPro Short U.S. Small Cap (collectively, ''Small Cap Funds'') will seek results that correspond (before fees and expenses) to four times (4X) or four times the inverse (−4X), respectively, of the return of lead month E-Mini Russell 2000 Index Futures (''Small Cap Benchmark'') for a single day.[13] The Small Cap Benchmark is the last traded price of lead month (*i.e.,* near-month or next-to-expire) E-Mini Russell 2000 Index Futures Contracts on the CME prior to the calculation of the Funds' NAV, which is typically calculated as of 4:00 p.m. each day NYSE Arca is open for trading.

Each Small Cap Fund will seek to engage in daily rebalancing to position its portfolio so that its leveraged or inverse exposure to the Small Cap Benchmark is consistent with the Fund's daily investment objective. Daily rebalancing and the compounding of each day's return over time means that the return of each Fund for a period longer than a single day will be the result of each day's returns compounded over the period, which will very likely differ from four times or four times the inverse, as applicable, of the return of the Fund's benchmark for the same period.

[8] For more information regarding the Funds and the Shares, *see* Amendment No. 2, *supra* note 6.

[9] The Trust is registered under the Securities Act of 1933. On November 14, 2017, the Trust filed with the Commission Pre-Effective Amendment No. 1 to a registration statement on Form S–1 under the Securities Act of 1933 relating to the Funds (File No. 333–217767).

[10] A ''single day'' is measured from the time a Fund calculates its NAV to the time of the Fund's next NAV calculation.

[11] The term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[12] ProShares QuadPro U.S. Large Cap intends to hold Large Cap Stop Options with respect to all or substantially all of its S&P 500 Interests with strike prices at approximately 75% of the value of the applicable underlying S&P 500 Interests as of the end of the preceding business day. ProShares QuadPro Short U.S. Large Cap intends to hold Large Cap Stop Options with respect to all or substantially all of its S&P 500 Interests with strike prices at approximately 125% of the value of the Fund's S&P Interests as of the end of the preceding business day.

[13] *See supra* note 10.

Under normal market conditions,[14] each Small Cap Fund will attempt to gain leveraged or inverse exposure, as applicable, to the Small Cap Benchmark primarily through investments in lead month E-Mini Russell 2000 Index Futures (''Small Cap Futures Contracts''). In the event position, price, or accountability limits are reached with respect to Small Cap Futures Contracts, the Sponsor, in its commercially reasonable judgment, may cause each Small Cap Fund to obtain exposure to the Small Cap Benchmark through investment in swap transactions and forward contracts referencing the Small Cap Benchmark (''Small Cap Financial Instruments'' and, together with Small Cap Futures Contracts, ''Russell 2000 Interests''). The Small Cap Funds may also invest in Small Cap Financial Instruments if the market for a specific Small Cap Futures Contract experiences an emergency (*e.g.,* natural disaster, terrorist attack or an act of God) or disruption (*e.g.,* a trading halt or a flash crash) that prevents or makes it impractical for a Fund to obtain the appropriate amount of investment exposure using Small Cap Futures Contracts (*i.e.,* conditions other than normal market conditions). The Small Cap Funds do not intend to invest more than 25% of their respective net assets in Small Cap Financial Instruments.

Additionally, because an adverse Small Cap Benchmark move of 25% or more in a single day could cause the NAV of a Small Cap Fund to decline to zero and investors in the Fund to lose the full value of their investment, each Small Cap Fund will invest a limited portion of its assets (typically less than 5% of its net assets at the time of purchase) in listed option contracts that are designed to prevent a Small Cap Fund's NAV from going to zero and allow a Fund to recoup a small portion of the substantial losses that may result from significant adverse movements in the Small Cap Benchmark. Specifically, ProShares QuadPro U.S. Small Cap will hold CME-listed put options on Small Cap Futures Contracts and ProShares QuadPro Short U.S. Small Cap will hold CME-listed call options on Small Cap Futures Contracts (collectively, ''Small Cap Stop Options'').[15] If it is not practicable for a Small Cap Fund to invest in Small Cap Stop Options, the Funds may invest in OTC options on Small Cap Future Contracts.

Each Small Cap Fund will invest the remainder of its assets in Money Market Instruments. Each Small Cap Fund also may hold cash in order to pay expenses and distributions, if any, and satisfy redemption requests.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2017–69, as Modified by Amendment No. 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[16] to determine whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 2.

Pursuant to Section 19(b)(2)(B) of the Act,[17] the Commission is providing notice of the grounds for disapproval under consideration. As discussed above, the Exchange proposes to list and trade Shares of: (1) The Large Cap Funds, which will seek results that correspond (before fees and expenses) to four times and four times the inverse of the return of the Large Cap Benchmark for a single day, where the Large Cap Benchmark is the last traded price of lead month E-Mini S&P 500 Stock Price Index Futures Contracts on the CME prior to the calculation of the Funds' NAV; and (2) the Small Cap Funds, which will seek results that correspond (before fees and expenses) to four times and four times the inverse of the return of the Small Cap Benchmark for a single day, where the Small Cap Benchmark is the last traded price of lead month E-Mini Russell 2000 Index Futures Contracts on the CME prior to the calculation of the Funds' NAV. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [18]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[19]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by December 13, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 27, 2017. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 2, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment, including, where relevant, any specific data, statistics, or studies, on the following:

1. Would the proposed Funds impact daily volatility on the underlying indexes, or the underlying names comprising those indexes? Would any such impact be more or less than other leveraged or inverse leveraged exchange-traded products (''leveraged ETPs'') (such as 2X and 3X)? Would the addition of the proposed Funds change

[14] *See supra* note 11.

[15] ProShares QuadPro U.S. Small Cap intends to hold Small Cap Stop Options with respect to all or substantially all of its Russell 2000 Interests with strike prices at approximately 75% of the value of the applicable underlying Russell 2000 Interests as of the end of the preceding business day. ProShares QuadPro Short U.S. Small Cap intends to hold Small Cap Stop Options with respect to all or substantially all of its Russell 2000 Interests with strike prices at approximately 125% of the value of the Fund's Russell 2000 Interests as of the end of the preceding business day.

[16] 15 U.S.C. 78s(b)(2)(B).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

[19] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

the current leveraged (inverse, 2X, and 3X) ETP market? If so, how?

2. How much additional end-of-day volume in the underlying assets would the proposed Funds potentially add? How much volume do existing leveraged ETPs typically add to end-of-day trading in the underlying assets?

3. What is the expected daily volume of trades for the proposed Funds? How much daily creation and redemption activity is expected in the proposed Funds? How much current daily creation and redemption activity is there for leveraged ETPs?

4. Would the volume and activity increase during periods of downward market movement or high volatility, and exacerbate the downward movement or volatility? What type of hedging exposure is expected with these products, and during significant down market moves, how might related selling behavior be affected by such exposure?

5. What types of investors would purchase Shares of the proposed Funds? Would they be different from investors in existing leveraged ETPs? If so, please explain why.

6. Currently, are leveraged ETPs always accessed through a registered broker/dealer? If so, are transactions generally solicited or unsolicited? If not, how does an investor acquire a leveraged ETP? What is the proportion of volume from retail versus institutional trading?

7. Do institutional investors buy and sell leveraged ETPs? If so, what is the purpose of institutional investments in leveraged ETPs? For example, are they used for hedging or are they ever held in mutual funds? Would institutional investors use the proposed Funds for a different purpose than with the existing leveraged ETPs? If so, please explain why. Do firms hold the securities on their books (for example, as trading securities or available-for-sale securities)? If so, how are they held? If the investors are not institutional investors, are there any restrictions placed on access to these investments, including accreditation or options eligibility?

8. What exposures do retail investors seek when holding these ETPs? Would retail investors hold Shares of the proposed Funds to seek different types of exposures than with existing leveraged ETPs? If so, please explain why.

9. What is the typical holding period of leveraged ETPs by retail investors? Are they holding the products in tax-advantaged accounts, such as Individual Retirement Accounts (IRAs), meant for long-term investment horizons?

10. Do investors have access to information sufficient to fully understand the operation and risks of leveraged ETPs?

11. Would the potential loss of investment be limited to the amount invested? For example, do investors frequently buy leveraged ETPs on margin?

12. How does use of long positions versus short positions in leveraged ETPs differ across different types of investors?

13. Which types of broker/dealers are active with leveraged ETP investments? Do they tend to also hold these investments in their own portfolio?

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-2017–69 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–2017–69. 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 Web site (*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 Web site 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–2017–69 and should be submitted on or before December 13, 2017. Rebuttal comments should be submitted by December 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25241 Filed 11–21–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82099; File No. SR–NYSEARCA–2017–129]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees for NYSE Arca BBO and NYSE Arca Trades To Lower the Enterprise Fee for Those Products

November 16, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 3, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE Arca BBO and NYSE Arca Trades to lower the Enterprise Fee for those products. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[20] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE Arca BBO and NYSE Arca Trades market data products,[4] as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). Specifically, the Exchange proposes to lower the Enterprise Fee for those products. The Exchange proposes to make the fee change effective November 3, 2017.

The Exchange currently charges an enterprise fee of $34,500 per month for an unlimited number of professional and non-professional users for each of NYSE Arca BBO and NYSE Arca Trades.[5] A single Enterprise Fee applies for clients receiving both NYSE Arca BBO and NYSE Arca Trades.[6] The Exchange proposes to lower the enterprise fee to $22,000 per month.

As an example, under the current fee structure for per user fees, if a firm had 10,000 professional users who each received NYSE Arca Trades at $4 per month and NYSE Arca BBO at $4 per month, without the Enterprise Fee, the firm would pay $80,000 per month in professional user fees. Under the current pricing structure, this firm would pay a capped fee of $34,500 and effective November 3, 2017 it would pay a capped fee of $22,000.

Under the proposed reduced enterprise fee, the firm would pay a flat fee of $22,000 for an unlimited number of professional and non-professional users for both products. As is the case currently, a data recipient that pays the enterprise fee would not have to report the number of such users on a monthly basis.[7] However, upon request, a data recipient must provide the Exchange with a count of the total number of natural person users of each product, including both professional and non-professional users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The proposed fee change is also equitable and not unfairly discriminatory because it would apply to all data recipients that choose to subscribe to NYSE Arca BBO and NYSE Arca Trades.

The proposed enterprise fees for NYSE Arca BBO and NYSE Arca Trades are reasonable because they will result in a fee reduction for data recipients with sufficiently large numbers of professional and non-professional users, as described in the example above. If a data recipient has a smaller number of professional users of NYSE Arca BBO and/or NYSE Arca Trades, then it may continue to use the per user fee structure and the fees it pays will not change. By reducing prices for data recipients with a large number of professional and non-professional users, the Exchange believes that more data recipients may choose to offer NYSE Arca BBO and NYSE Arca Trades, thereby expanding the distribution of this market data for the benefit of investors. The Exchange also believes that offering a reduced enterprise fee expands the range of options for offering NYSE Arca BBO and NYSE Arca Trades and allows data recipients greater choice in selecting the most appropriate level of data and fees for the professional and non-professional users they are servicing.

The Exchange notes that NYSE Arca BBO and NYSE Arca Trades are entirely optional. The Exchange is not required to make NYSE Arca BBO and NYSE Arca Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE Arca BBO and NYSE Arca Trades. Firms that do purchase NYSE Arca BBO and NYSE Arca Trades do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE Arca BBO and NYSE Arca Trades or any other similar products are attractively priced or not.[10]

Firms that do not wish to purchase NYSE Arca BBO and NYSE Arca Trades have a variety of alternative market data products from which to choose,[11] or if NYSE Arca BBO and NYSE Arca Trades do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE Arca BBO and NYSE Arca Trades or use them at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[12]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

[4] *See* Securities Exchange Act Release Nos. 59308 (January 28, 2009), 74 FR 5955 (February 3, 2009) (SR–NYSEArca–2009–05) (notice—NYSE Arca Trades); 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05) (approval order—NYSE Arca Trades); 61937 (April 16, 2010), 78 FR 21378 (April 23, 2010) (SR–NYSEArca–2010–23) (notice—NYSE Arca BBO); and 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23) (approval order—NYSE Arca BBO).

[5] *See* Securities Exchange Act Release No. 79310 (November 14, 2016), 81 FR 81820 (November 18, 2016) (SR–NYSEArca–2016–142).

[6] *See* Securities Exchange Act Release No. 70213 (August 15, 2013), 78 FR 51796 (August 21, 2013) (SR–NYSEArca–2013–81).

[7] Professional users currently are subject to a per display device count. *See* Securities Act Release No. 73998 (January 6, 2015), 80 FR 1549 (January 12, 2015) (SR–NYSEArca–2014–148).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

[10] *See, e.g.*, Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[11] *See* Nasdaq Rule 7047 (Nasdaq Basic) and BZX Equities Rule 11.22 (Top and Last Sale).

[12] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [13]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the reduced fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[14]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

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. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [15]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [16] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[17]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For

[13] *NetCoalition,* 615 F.3d at 535.

[14] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[15] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in *U.S.* v. *Deutsche Borse AG* and *NYSE Euronext,* Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[16] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[17] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE Arca BBO or NYSE Arca Trades unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE Arca BBO and NYSE Arca Trades can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs.[18] The decision of whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[19] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[20]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, Bats Global Markets (''Bats'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[21] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive

[18] *See generally Pricing of Market Data Services, An Economic Analysis* at vi (''Given the general structure of electronic order books and electronic order matching, it is not possible to provide transaction services without generating market data, and it is not possible to generate trade transaction—or market depth—data without also supplying a trade execution service. In economic terms, trade execution and market data are joint products.'') (Oxera 2014).

[19] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[20] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis . . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[21] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, New York Stock Exchange LLC, NYSE American LLC, NASDAQ, Bats, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, Bats and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NYSE Arca BBO and NYSE Arca Trades, the data provided through these products appears both in (i) real-time core data products offered by the Securities Information Processors (SIPs) for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in similar products of competing venues.[22] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary share of consolidated market volume.

In determining the proposed changes to the fees for the NYSE Arca BBO and NYSE Arca Trades, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[23] of the Act and subparagraph (f)(2) of Rule 19b–4[24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2017–129 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2017–129. 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 Web site (*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 Web site 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–2017–129 and should be submitted on or before December 13, 2017.

[22] *See supra* note 11 [sic].

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25228 Filed 11–21–17; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2017–0064]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes an extension of an OMB-approved information collection, new information collections, and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2017–0064].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 22, 2018 Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Fee Agreement for Representation Before the Social Security Administration—0960–NEW. SSA requires individuals who represent a claimant before the Social Security Administration and want to receive a fee for their services to obtain SSA's authorization of the fee under the Social Security Act (Act). We currently have two different, but mutually exclusive, methods to authorize a fee for a representative's services before SSA. SSA authorizes the fee either via the agreement process, if the representative submits the fee agreement before the first favorable decision, or the fee petition process, if the representative submits the request after the favorable decision. Currently SSA has no standardized form for the fee agreement process. Therefore, we created the SSA–1693 to make it easier for representatives to obtain the authorization for a fee agreement. SSA will use the information we collect on the SSA–1693 to review the request and authorize any fee to representatives who seek to charge and collect from a claimant. The respondents are the representatives who help claimants through the application process.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1693	600,000	1	12	120,000

2. Statement of Interpreter—0960–NEW. SSA and the Disability Determination Services (DDS) will use Form SSA–4321, Statement of Interpreter, when a person requiring an interpreter prefers to provide their own interpreter during an interview or conversation between the person requiring an interpreter and SSA or DDS. SSA will require the interpreter to sign Form SSA–4321, and confirm, among other things, that: (1) They will not knowingly give false information; (2) they will act as an interpreter and witness, and (3) they will accurately interpret the interview to the best of their ability. Section 205(a) of the Act, as amended in 42 U.S.C. 405(a), authorizes SSA collect this information.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4321	5,170,399	1	5	430,867

3. Statement of Living Arrangements, In-Kind Support, and Maintenance—20 CFR 416.1130–416.1148–0960–0174. SSA determines Supplemental Security Income (SSI) payment amounts based on applicants' and recipients' needs. We measure individuals' needs, in part, by the amount of income they receive, including in-kind support and maintenance in the form of food and shelter other people provide. SSA uses Form SSA–8006–F4 to determine if in-kind support and maintenance exists for SSI applicants and recipients. This information also assists SSA in determining the income value of in-kind support and maintenance SSI applicants and recipients receive. The respondents are individuals who apply for SSI payments, or who complete an SSI eligibility redetermination.

Type of Request: Revision of an OMB-approved information collection.

[26] 17 CFR 200.30–3(a)(12).

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8006–F4	173,380	1	7	20,228

4. Claimant's Recent Medical Treatment—20 CFR 404.1512 and 416.912—0960–0292. When DDSs deny a claim at the reconsideration level, the claimant has a right to request a hearing before an administrative law judge (ALJ). For the hearing, SSA asks the claimant to complete and return the HA–4631 if the claimant's file does not reflect a current, complete medical history as the claimant proceeds through the appeals process. ALJs must obtain the information to update and complete the record and to verify the accuracy of the information. Through this process, ALJs can ascertain whether the claimant's situation changed. The ALJs and hearing office staff use the response to make arrangements for consultative examination(s) and the attendance of an expert witness(es), if appropriate. During the hearing, the ALJ offers any completed questionnaires as exhibits and may use them to: (1) Refresh the claimant's memory, and (2) shape their questions. The respondents are claimant's requesting hearings on entitlement to Old Age Survivors and Disabilty Insurance benefits or SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4631	200,000	1	10	33,333

5. Statement of Funds You Provided to Another and Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481. SSA uses Forms SSA–2854 (Statement of Funds You Provided to Another) and SSA–2855 (Statement of Funds You Received) to gather information to verify if a loan is bona fide for SSI recipients. The SSA–2854 asks the lender for details on the transaction, and Form SSA–2855 asks the borrower the same basic questions independently. Agency personnel then compare the two statements; gather evidence if needed; and make a decision on the validity of the bona fide status of the loan.

For SSI purposes, we consider a loan bona fide if it meets these requirements:

- Must be between a borrower and lender with the understanding that the borrower has an obligation to repay the money;
- Must be in effect at the time the cash goes to the borrower, that is, the agreement cannot come after the cash is paid; and
- Must be enforceable under State law, often there are additional requirements from the State.

SSA collects this information at the time of initial application for SSI, or at any point when an individual alleges being party to an informal loan while receiving SSI. SSA collects information on the informal loan through both interviews and mailed forms. The agency's field personnel conduct the interviews and mail the form(s) for completion, as needed. The respondents are SSI recipients and applicants, and individuals who lend money to them.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2854	20,000	1	10	3,333
SSA–2855	20,000	1	10	3,333
Totals	40,000	.....	.....	6,666

6. Filing Claims Under the Federal Tort Claims Act—20 CFR 429.101–429.110—0960–0667. The Federal Tort Claims Act is the legal mechanism for compensating people injured by negligent or wrongful acts that occur during the performance of Federal employees' official duties. In accordance with the law, SSA accepts monetary claims filed under the Federal Tort Claims Act for damages against the United States; loss of property; personal injury; or death resulting from an SSA employee's wrongful act or omission. The regulation sections cleared under this information collection request require claimants to provide information SSA can use to investigate and determine whether to make an award, compromise, or settlement under the Federal Tort Claims Act. The respondents are individuals or entities making a claim under the Federal Tort Claims Act.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
429.102; 429.103[1]	1	1	1	1
429.104(a)	11	1	5	1
429.104(b)	43	1	5	4
429.104(c)	1	1	5	0

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
429.106(b)	8	1	10	1
Totals	64			7

[1] The 1 hour represents a placeholder burden. We are not reporting a burden for this collection because respondents complete OMB-approved Form SF–95.

7. Application for Extra Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3101—0960–0696. The Medicare Modernization Act of 2003 mandated the creation of the Medicare Part D prescription drug coverage program and the provision of subsidies for eligible Medicare beneficiaries. SSA uses Form SSA–1020 or the Internet i1020, the Application for Extra Help with Medicare Prescription Drug Plan Costs, to obtain income and resource information from Medicare beneficiaries, and to make a subsidy decision. The respondents are Medicare beneficiaries applying for the Part D low-income subsidy.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1020 (paper application form)	531,715	1	30	265,858
i1020 (online application)	346,642	1	25	144,434
Field office interview	108,194	1	30	54,097
Totals	986,551			464,389

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 22, 2017. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Partnership Questionnaire—20 CFR 404.1080–404.1082(e)—0960–0025. SSA considers partnership income in determining entitlement to Social Security benefits. SSA uses information from Form SSA–7104 to determine several aspects of eligibility for benefits, including the accuracy of reported partnership earnings; the veracity of a retirement; and lag earnings where SSA needs this information to determine the status of the insured. The respondents are applicants for, and recipients of, Title II Social Security benefits who are reporting partnership earnings,

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7104	12,350	1	30	6,175

2. Supplement to Claim of Person Outside the United States—20 CFR 422.505(b), 404.460, 404.463, and 42 CFR 407.27(c)—0960–0051. Claimants or beneficiaries (both United States (U.S.) citizens and aliens entitled to benefits) living outside the U.S. complete Form SSA–21 as a supplement to an application for benefits. SSA collects the information to determine eligibility for U.S. Social Security benefits for those months an alien beneficiary or claimant is outside the U.S., and to determine if tax withholding applies. In addition, SSA uses the information to: (1) Allow beneficiaries or claimants to request a special payment exception in an SSA restricted country; (2) terminate supplemental medical insurance coverage for recipients who request it, because they are, or will be, out of the U.S.; and (3) allow claimants to collect a lump sum death benefit if the number holder died outside the United States and we do not have information to determine whether the lump sum death benefit is payable under the Social Security Act. The respondents are Social Security claimants, or individuals entitled to Social Security benefits, who are, were, or will be residing outside the United States for three months or longer.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Paper SSA–21—U.S. Residents	510	1	14	119
Paper SSA–21—Residents of a Tax Treaty Country	2,751	1	9	413
Paper SSA–21—Nonresident aliens	1,835	1	8	245
Modernized Claims System (MCS) Macros SSA-21—U.S. Residents	1,325	1	11	243

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
MCS Macros SSA 21—Residents of a Tax Treaty Country	7,153	1	6	715
MCS Macros SSA 21—Nonresident aliens	4,769	1	5	397
Totals	18,343			2,132

Dated: November 17, 2017.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2017–25282 Filed 11–21–17; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 10209]

U.S. National Commission for UNESCO Notice of Web Conference Meeting

The 2017 Annual Meeting of the U.S. National Commission for the United Nations Educational, Scientific and Cultural Organization (UNESCO) will take place on Tuesday, December 12, 2017, starting at 1:00 p.m. Eastern Standard Time. This will be a web conference meeting to discuss recent UNESCO developments, including the election of new UNESCO Director-General Azoulay; overall assessments/outcomes of the 39th General Conference; the U.S. decision to withdraw from UNESCO, effective December 31, 2018; and plans for the Commission during this time of transition. The Commission will accept brief oral comments during a portion of this web conference. The public comment period will be limited to approximately 30 minutes in total, with five minutes allowed per speaker. For more information, or to arrange to participate in the web conference, individuals are asked to contact the Executive Director of the National Commission by Friday, December 8, 2017, at the following email address: *DCUNESCO@state.gov.*

Paul Mungai,

Acting Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2017–25274 Filed 11–21–17; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice: 10205]

Notice of Public Meeting of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings

This notice announces a meeting of the Department of State's International Telecommunication Advisory Committee (ITAC). The ITAC will meet on December 7, 2017 at 10:00 a.m. EST at 1120 20th St. NW., 10th Floor, Washington, DC to report on the outcome of the World Telecommunication Development Conference, review the results of recent multilateral meetings, updates on preparations for the International Telecommunication Union (ITU) 2018 Plenipotentiary Conference (PP–18), and discuss preparations for upcoming multilateral meetings at ITU, the Organization for Economic Cooperation and Development (OECD), and the Asia Pacific Economic Cooperation (APEC). The meeting will focus on the following topics:

1. Results of Recent Multilateral Meetings
   a. ITU Council Working Groups
   b. World Telecommunication Development Conference
   c. ITU–R SG4, SG5, SG6, and SG7 block meetings
   d. Inter-American Telecommunication Commission (CITEL)
   - Permanent Consultative Committee on Radiocommunication (PCC–II)
2. Meeting of the Permanent Executive Committee (COM/CITEL) 2018 ITU Plenipotentiary Conference (PP–18) preparatory process and U.S. priorities
3. Preparations for upcoming Multilateral Activities
   a. ITU–R meetings
   b. ITU–T meetings
   c. ITU–D meetings
   d. ITU Council Working Groups and Experts Group on International Telecommunications Regulations (ITRs)
   e. WSIS Forum
   f. APEC Telecommunications Working Group (APEC TEL 56)—

December 11–15, 2017

PP–18 will take place in Dubai, United Arab Emirates, from October 29 to November 17, 2018. The Plenipotentiary Conference, which takes place every four years, is the highest policy-making body of the Union. PP–18 will determine the overall policy direction of the ITU; adopt the strategic and financial plans for the next four years; elect the 48 members of Council, 12 members of the Radio Regulations Board, and five Elected Officials; and consider and adopt, if appropriate, modifications to the ITU Constitution and Convention.

Attendance at this meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting at the invitation of the chair. Further details on this ITAC meeting will be announced on the Department of State's email list, *ITAC@lmlist.state.gov.* Use of the ITAC list is limited to meeting announcements and confirmations, distribution of agendas and other relevant meeting documents. The Department welcomes any U.S. citizen or legal permanent resident to remain on or join the ITAC listserv by registering by email via *ITAC@state.gov* and providing his or her name, email address, telephone contact and the company, organization, or community that he or she is representing, if any. Persons wishing to request reasonable accommodation during the meeting should send their requests to *ITAC@state.gov* no later than November 30, 2017. Requests made after that time will be considered, but might not be able to be fulfilled.

Please send all inquiries to *ITAC@state.gov.*

Cecily C. Holiday,

Acting Director, Multilateral Affairs, Cyber and International Communications, and Information Policy, Department of State.

[FR Doc. 2017–25235 Filed 11–21–17; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 10208]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Harald Szeemann: Museum of Obsessions'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Harald Szeemann: Museum of Obsessions,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Getty Research Institute at the Getty Center, Los Angeles, California, from on or about February 6, 2018, until on or about May 6, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–25236 Filed 11–21–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors meeting.

TIME AND DATE: The meeting will be held on November 30, 2017, from 12:00 Noon to 3:00 p.m. Eastern Standard Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: November 16, 2017.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2017–25400 Filed 11–20–17; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 the purchase price allocations in deemed and actual asset acquisitions.

DATES: Written comments should be received on or before January 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6529, 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 6529, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Purchase Price Allocation in Deemed and Actual Asset Acquisition.

OMB Number: 1545–1658.

Regulation Project Number: T.D. 8940.

Abstract: Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a ''deemed asset acquisition'') when an appropriate election is made. Section 1060 provides rules for the allocation of consideration when a trade or business is transferred. The collection of information is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594.

The burden for the collection of information in § 1.338–2(e)(4) is as follows:

Estimated Number of Respondents: 45.

Estimated Time per Respondent: 34 minutes.

Estimated Total Annual Burden Hours: 25.

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: November 15, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–25220 Filed 11–21–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 product liability losses and accumulations for product liability losses.

DATES: Written comments should be received on or before January 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6529, 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 6529, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Product Liability Losses and Accumulations for Product Liability Losses.

OMB Number: 1545–0863.

Regulation Project Number: T.D. 8096.

Abstract: T.D. 8096 provides final regulations relating to product liability losses and accumulations for the payment of reasonable anticipated product liability losses. Changes to the applicable tax law were made by the Revenue Act of 1978. Generally, a taxpayer who sustains a product liability loss must carry the loss back 10 years. However, a taxpayer may elect to have such loss treated as a regular net operating loss under section 172. If desired, such election is made by attaching a statement to the tax return. This statement will enable the IRS to monitor compliance with the statutory requirements.

Current Actions: There is no change to this existing regulation or to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,500.

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: November 15, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–25219 Filed 11–21–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes; Reporting and Recordkeeping Requirements.

DATES: Written comments should be received on or before January 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, at (202) 317–5753 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes; Reporting and Recordkeeping Requirements.

OMB Number: 1545–0723.

Regulation Project Number: T.D. 8043.

Abstract: Chapters 31 and 32 of the Internal Revenue Code impose excise taxes on the sale or use of certain articles. Code section 6416 allows a credit or refund of the tax to manufacturers in certain cases. Code sections 6420, 6421, and 6427 allow credits or refunds of the tax to certain users of the articles. This regulation contains reporting and recordkeeping requirements that enable the IRS and taxpayers to verify that the proper amount of tax is reported or excluded.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit or not-for-profit institutions.

Estimated Number of Respondents: 1,500,000.

Estimated Time per Response: 19 minutes.

Estimated Total Burden Hours: 475,000.

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: November 15, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–25302 Filed 11–21–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

DATES: Written comments should be received on or before January 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, at (202) 317–5753 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

OMB Number: 1545–1646.

Regulation Project Number: T.D. 8851.

Abstract: This document contains final regulations under section 6046A of the Internal Revenue Code relating to the requirement that United States persons, in certain circumstances, file a return if they acquire or dispose of an interest in a foreign partnership, or if their proportional interest in a foreign partnership changes. The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships.''

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals or households and not-for-profit institutions.

The burden is reflected in the burden of Form 8865.

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: November 13, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–25303 Filed 11–21–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Diesel Fuel and Kerosene Excise Tax; Dye Injection.

DATES: Written comments should be received on or before January 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, at (202) 317–5753 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Diesel Fuel and Kerosene Excise Tax; Dye Injection.

OMB Number: 1545–1418.

Regulation Project Number: T.D. 9199.

Abstract: In order for diesel fuel and kerosene that is used in a nontaxable use to be exempt from tax under section 4082(a), it must be indelibly dyed by use of a mechanical dye injection system that satisfies the requirements in the regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Response: 7 hrs.

Estimated Total Burden Hours: 1,400.

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: November 6, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–25301 Filed 11–21–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 3921 and 3922 and TD 9470

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Exercise of an Incentive Stock Option Under Section 422(b), Information Reporting Requirements Under Internal Revenue Service Code Section 6039, and Transfer of Stock Acquired through an Employee Stock Purchase Plan Under Section 423(c).

DATES: Written comments should be received on or before January 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, at (202) 317–5753 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 3921, Exercise of an Incentive Stock Option Under Section 422(b), Information Reporting Requirements Under Internal Revenue Service Code Section 6039, and Form 3922, Transfer of Stock Acquired through an Employee Stock Purchase Plan Under Section 423(c).

OMB Number: 1545–2129.

Form Number: 3921 and 3922 and TD 9470.

Abstract: Form 3921 is a copy of the information return filed with the Internal Revenue Service by the corporation which transferred shares of stock to a recipient. Form 3922 is used by the corporation to record a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in Internal Revenue Code section 423(c). These forms are required to be filed for stock transfers occurring after 2008. Treasury Decision 9470 contains the final regulations relating to the return and information statement requirements under Internal Revenue Code section 6039. These regulations reflect changes to section 6039 made by section 403 of the Tax Relief and Health Care Act of 2006. These regulations affect corporations that issue statutory stock options and provide guidance to assist corporations in complying with the return and information statement requirements under section 6039.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 51,000.

Estimated Time per Response: 29 mins.

Estimated Total Burden Hours: 25,205.

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: November 13, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–25300 Filed 11–21–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 sales of business property.

DATES: Written comments should be received on or before January 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545–0184.

Form Number: Form 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There have been no changes to the form that would affect burden. However, the agency has updated the estimated number of responses, based on its most recent data and creation of OMB Control Number's 1545–0074 and 1545–0123. All business filer estimates (including the worksheet burden) are being reported under 1545–0123, individual filing estimates under 1545–0074, and all other filers are being reported under this control number, 1545–0184.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 325,000.

Estimated Time per Respondent: 50 hours, 38 minutes.

Estimated Total Annual Burden Hours: 16,454,750.

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: November 15, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–25221 Filed 11–21–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 82 Wednesday,
No. 224 November 22, 2017

Part II

The President

Proclamation 9677—National Family Week, 2017
Proclamation 9678—Thanksgiving Day, 2017

Federal Register
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Wednesday, November 22, 2017

Presidential Documents

Title 3—

The President

Proclamation 9677 of November 17, 2017

National Family Week, 2017

By the President of the United States of America

A Proclamation

During National Family Week, we emphasize the importance of preserving and promoting strong families, the cornerstone of our society. Families are as diverse as our Nation. They often extend beyond moms, dads, and their children, and include adoptive and foster parents, grandparents, and extended relatives. But no matter their makeup, families share a unique quality—they naturally form the fundamental unit of our society. They hold more influence over our communities and our Nation than any other structure, so it is incumbent upon us, as a Nation, to strengthen and support them.

We cannot take strong families for granted. Each member of each family must work every day to nurture the bonds of love and loyalty that form the latticework of strong families. We can show support to our family members by loving selflessly, forgiving quickly, and spending quality time together.

In addition, Federal policy should be directed to facilitating the success of our families. Tax policy is a prime example. My Administration believes that Americans should be able to dedicate more of their resources and earnings to the task and duty of providing for their families. More of each paycheck should go toward supporting families and less should be directed to an all-too-often inefficient Federal Government. Our policies must also support working mothers, and enable them to reach their full potential. That is why I am committed to cutting taxes for middle-income families—including by expanding the child tax credit—and fundamentally reforming our Nation's outdated tax code. Our work will enable families to spend more of their hard-earned dollars on the success of their children.

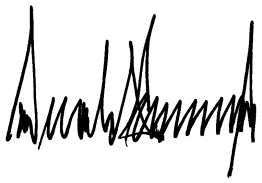
Federal policy must also guard against threats to the family. In 2016, we lost at least 64,000 lives to opioid and other drug overdoses, devastating American families and communities. To combat this growing crisis, my Administration has already dedicated more than $1 billion in funding to address the drug addiction and opioid crisis since taking office. Last month, my Administration declared the opioid epidemic to be a nationwide public health emergency in order to focus needed Federal resources and attention on this critical matter. We will not abandon our families as they fight the scourge of opioids.

Throughout our Nation's history, in times of both turmoil and triumph, the strength and hope of the American family has sustained our citizens. The family is our foundation, a pillar of our past, and a key to our future prosperity. Strong families teach integrity and patriotism, encourage and foster teamwork, and demonstrate unconditional love and acceptance. When these foundational principles overflow from our homes into neighborhoods and communities, they strengthen and fortify the Nation.

During National Family Week, we support and encourage American families to create healthy, nurturing environments for their children and future generations. I hope all Americans will join me in gratitude to our Creator for the many ways families bless and enrich our lives and our Nation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 19 through November 25, 2017, as National Family Week. I invite communities, churches, and individuals to observe this week with appropriate ceremonies and activities to honor our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2017–25492
Filed 11–21–17; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Proclamation 9678 of November 17, 2017

Thanksgiving Day, 2017

By the President of the United States of America

A Proclamation

On Thanksgiving Day, as we have for nearly four centuries, Americans give thanks to Almighty God for our abundant blessings. We gather with the people we love to show gratitude for our freedom, for our friends and families, and for the prosperous Nation we call home.

In July 1620, more than 100 Pilgrims boarded the Mayflower, fleeing religious persecution and seeking freedom and opportunity in a new and unfamiliar place. These dauntless souls arrived in Plymouth, Massachusetts, in the freezing cold of December 1620. They were greeted by sickness and severe weather, and quickly lost 46 of their fellow travelers. Those who endured the incredible hardship of their first year in America, however, had many reasons for gratitude. They had survived. They were free. And, with the help of the Wampanoag tribe, and a bountiful harvest, they were regaining their health and strength. In thanks to God for these blessings, the new governor of the Plymouth Colony, William Bradford, proclaimed a day of thanksgiving and gathered with the Wampanoag tribe for three days of celebration.

For the next two centuries, many individual colonies and states, primarily in the Northeast, carried on the tradition of fall Thanksgiving festivities. But each state celebrated it on a different day, and sometime on an occasional basis. It was not until 1863 that the holiday was celebrated on one day, nationwide. In the aftermath of the Battle of Gettysburg, of one of the bloodiest battles of our Nation's Civil War, President Abraham Lincoln proclaimed that the country would set aside one day to remember its many blessings. ''In the midst of a civil war of unequalled magnitude and severity,'' President Lincoln proclaimed, we recall the ''bounties, which are so constantly enjoyed that we are prone to forget the source from which they come.'' As President Lincoln recognized: ''No human counsel hath devised nor hath any mortal hand worked out these great things. They are the gracious gifts of the Most High God, who, while dealing with us in anger for our sins, hath nevertheless remembered mercy.''

Today, we continue to celebrate Thanksgiving with a grateful and charitable spirit. When we open our hearts and extend our hands to those in need, we show humility for the bountiful gifts we have received. In the aftermath of a succession of tragedies that have stunned and shocked our Nation—Hurricanes Harvey, Irma, and Maria; the wildfires that ravaged the West; and, the horrific acts of violence and terror in Las Vegas, New York City, and Sutherland Springs—we have witnessed the generous nature of the American people. In the midst of heartache and turmoil, we are grateful for the swift action of the first responders, law enforcement personnel, military and medical professionals, volunteers, and everyday heroes who embodied our infinite capacity to extend compassion and humanity to our fellow man. As we mourn these painful events, we are ever confident that the perseverance and optimism of the American people will prevail.

We can see, in the courageous Pilgrims who stood on Plymouth Rock in new land, the intrepidness that lies at the core of our American spirit. Just as the Pilgrims did, today Americans stand strong, willing to fight

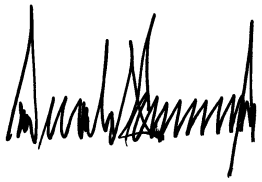
for their families and their futures, to uphold our values, and to confront any challenge.

This Thanksgiving, in addition to rejoicing in precious time spent with loved ones, let us find ways to serve and encourage each other in both word and deed. We also offer a special word of thanks for the brave men and women of our Armed Forces, many of whom must celebrate this holiday separated from the ones for whom they are most thankful.

As one people, we seek God's protection, guidance, and wisdom, as we stand humbled by the abundance of our great Nation and the blessings of freedom, family, and faith.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Thursday, November 23, 2017, as a National Day of Thanksgiving. I encourage all Americans to gather, in homes and places of worship, to offer a prayer of thanks to God for our many blessings.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2017–25497
Filed 11–21–17; 11:15 am]
Billing code 3295–F8–P

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