FEDERAL REGISTER

Vol. 83 Tuesday,

No. 167 August 28, 2018

Pages 43739–43960

OFFICE OF THE FEDERAL REGISTER

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Rules and Regulations

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS18–10]

Appraisal Subcommittee; Appraiser Regulation

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

ACTION: Final rule amendments.

SUMMARY: The ASC is adopting nonsubstantive amendments to its regulations. The amendments correct the street address for the ASC's office, which will be moved October 1, 2018, from 1401 H Street NW, Suite 760, Washington, DC 20005, to 1325 G Street NW, Suite 500, Washington, DC 20005.

DATES: Effective October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Alice M. Ritter, General Counsel, at (202) 595–7577 or *alice@asc.gov;* Appraisal Subcommittee; 1401 H Street NW, Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Authority and Section-by-Section Analysis

The ASC, since its creation under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI), has adopted and amended several regulations that appear at 12 CFR part 1102. These regulations, found in subparts A, B, C, D and E of that part, relate to the ASC's implementation of The Privacy Act of 1974, the Freedom of Information Act, and various sections of Title XI.

On October 1, 2018, the ASC is moving its offices to 1325 G Street NW, Suite 500. Part 1102, as adopted, contains references to the ASC's previous addresses at 2000 K Street and 2100 Pennsylvania Avenue, as well as the present address at 1401 H Street NW. The ASC is amending part 1102 by removing references to the K Street address, the Pennsylvania Avenue address and the H Street address, and replacing it with its new G Street address.

II. Administrative Requirements

A. Notice and Comment Requirements Under 5 U.S.C. 553

The ASC, under 12 U.S.C. 553, is required, among other things, to publish in the **Federal Register** for public notice and comment a general notice of proposed rulemaking, unless, in accordance with paragraph (b)(3)(B), the agency finds ''for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The ASC finds that notice and procedure are unnecessary in connection with these rule amendments because they are nonsubstantive and essentially are nomenclature changes, as that term is defined in the *Federal Register Document Drafting Handbook*, page 2–33, Revision 7 (May 15, 2018).

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

Text of the Rule

For the reasons set forth in the preamble, title 12, chapter XI of the Code of Federal Regulations is amended as follows:

PART 1102—APPRAISER REGULATION

■ 1. The authority citation for part 1102 continues to read as follows:

Authority: 12 U.S.C. 3348(a), 3332, 3335, 3338 (a)(4)(B), 3348(c), 5 U.S.C. 552a, 553(e); Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

■ 2. In part 1102:
■ a. Remove the words ''2100 Pennsylvania Avenue NW, Suite 200, Washington, DC 20037'' wherever they appear and add in their place the words, ''1325 G Street NW, Suite 500, Washington, DC 20005'';
■ b. Remove the words ''2000 K Street NW, Suite 310, Washington, DC 20006'' wherever they appear and add in their place the words, ''1325 G Street NW, Suite 500, Washington, DC 20005'';
■ c. Remove the words ''2000 K Street NW, Suite 310, Washington, DC'' wherever they appear and add in their place the words, ''1325 G Street NW, Suite 500, Washington DC 20005''; and
■ d. Remove the words ''1401 H Street NW, Suite 760, Washington, DC 20005'' wherever they appear and add in their place the words, ''1325 G Street NW, Suite 500, Washington, DC 20005''.

By the Appraisal Subcommittee.

Dated: August 21, 2018.

James R. Park,

Executive Director.

[FR Doc. 2018–18566 Filed 8–27–18; 8:45 am]

BILLING CODE 6700–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0792; Product Identifier 2017–NE–28–AD; Amendment 39–19336; AD 2018–15–04]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain General Electric Company (GE) CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F turbofan engines. This AD was prompted by an uncontained failure of a high-pressure turbine (HPT) stage 2 disk that resulted in a fire. This AD requires ultrasonic inspection (UI) of HPT stage 1 and 2 disks. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 2, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 2, 2018.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH, 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0792.

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–2017–0792; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain GE CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F turbofan engines with HPT disks with part numbers and serial numbers (S/Ns) listed in Table 1 and 2 of Appendix A in GE Service Bulletin (SB) CF6–80C2 SB 72–1562 R03, dated January 10, 2018 and Table 1 of Appendix A in GE SB CF6–80A SB 72–0869 R01, dated October 19, 2017. The SNPRM published in the **Federal Register** on March 30, 2018 (83 FR 13703). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on September 7, 2017 (82 FR 42261). The NPRM proposed to require UI of HPT stage 1 and 2 disks. The NPRM was prompted by an uncontained failure of an HPT stage 2 disk that resulted in a fire. The SNPRM proposed to require the same UI of HPT stage 1 and 2 disks, remove certain engine models, and to add a new part number to the applicability of this AD. The SNPRM also proposed to revise references to the service information in this AD because, since the publication of the NPRM, GE published the list of affected HPT S/Ns in two separate SBs applicable to the CF6–80A and CF6–80C2 engines. We are issuing this AD to address the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the SNPRM and the FAA's response to each comment.

Request To Change the Applicability

All Nippon Airways (ANA) and Japan Airlines (JAL) requested that we change the applicability, paragraph (c), to include S/Ns that are listed in revisions of GE CF6–80C2 SB 72–1562 and GE CF6–80A SB 72–0869 that have not yet been published. ANA and JAL reasoned that the SB revisions will include an updated list of affected S/Ns.

We disagree. While future SB revisions may include additional affected S/Ns, we do not require compliance based on service information that has not been published. The applicability of this AD is based on the most recently published service information. Any further change in applicability would require a notice and comment rulemaking for those affected S/Ns. We did not change this AD.

Request To Improve the UI Criteria

JAL requested that we improve the UI criteria to avoid false-positive indications resulting in rejection of disks. JAL reasoned that GE may publish a GE CF6–80C2 SB 72–1562 revision in which GE will modify the UI criteria.

We disagree. While a future SB revision may include updated UI criteria, we do not require compliance based on service information that has not yet been published. We based the UI criteria on the most recently published service information. We will review any Alternative Methods of Compliance (AMOC) requests submitted if different UI criteria, not specified in this AD, are desired. We did not change this AD.

Request To Change the Definition of ''Piece-Part Exposure''

ANA requested that we change the definition of ''piece-part exposure'' to the separation of the HPT stage 1 or stage 2 disk from the thermal shield within the HPT rotor module.

We disagree. The current definition is sufficient to describe the piece-part exposure. We did not change this AD.

Support for the AD

Boeing Company, FedEx, and United Airlines expressed support for the SNPRM as written.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

We reviewed GE CF6–80C2 SB 72–1562 R03, dated January 10, 2018. The SB describes procedures for UI of CF6–80C2 turbofan engine HPT stage 1 and 2 disks. We also reviewed GE CF6–80A SB 72–0869 R01, dated October 19, 2017. The SB describes procedures for UI of CF6–80A turbofan engine HPT stage 2 disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 640 HPT disks on engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
UI of HPT disk	10 work-hours × $85 per hour = $850	$0	$850	$544,000

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 engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–15–04 General Electric Company: Amendment 39–19336; Docket No. FAA–2017–0792; Product Identifier 2017–NE–28–AD.

(a) Effective Date

This AD is effective October 2, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F turbofan engines with high-pressure turbine (HPT) disks with serial numbers listed in Table 1 and 2 of Appendix A in GE CF6–80C2 Service Bulletin (SB) 72–1562 R03, dated January 10, 2018; and Table 1 of Appendix A in GE CF6–80A SB 72–0869 R01, dated October 19, 2017.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine/Turboprop Engine—Turbine Section.

(e) Unsafe Condition

This AD was prompted by an uncontained failure of an HPT stage 2 disk. We are issuing this AD to prevent failure of the HPT stage 1 disk (CF6–80C2) and the HPT stage 2 disk (CF6–80C2 and CF6–80A). The unsafe condition, if not addressed, could result in an uncontained HPT disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

After the effective date of this AD, perform an ultrasonic inspection (UI) for cracks in HPT stage 1 and stage 2 disks on the CF6–80C2 turbofan engine and in HPT stage 2 disks on the CF6–80A turbofan engine at each piece-part level exposure in accordance with the Accomplishment Instructions, paragraph 3.A.(2), in GE CF6–80C2 SB 72–1562 R03, dated January 10, 2018, or the Accomplishment Instructions, paragraph 3.A.(2) in GE CF6–80A SB 72–0869 R01, dated October 19, 2017, as applicable to the engine model.

(h) Non-Required Actions

The reporting requirements specified in the Accomplishment Instructions, paragraphs 3.A.(2)(c) and 3.A.(2)(f), of GE CF6–80C2 SB 72–1562 R03, dated January 10, 2018, are not required by this AD.

(i) Definition

For the purpose of this AD, ''piece-part exposure'' of the HPT stage 1 or stage 2 disk is separation of that HPT disk from its mating rotor parts within the HPT rotor module (thermal shield and HPT stage 1 and stage 2 disk respectively).

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) General Electric Company (GE) CF6–80A Service Bulletin (SB) 72–0869 R01, dated October 19, 2017.

(ii) GE CF6–80C2 SB 72–1562 R03, dated January 10, 2018.

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH, 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 21, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–18576 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0723; Product Identifier 2018–NE–17–AD; Amendment 39–19350; AD 2018–16–10]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain GE Aviation Czech H80–200 turboprop engines. This AD requires replacing the beta switch and adjusting the engine push-pull control to prevent the propeller governor control from going to a negative thrust position. This AD was prompted by an accident involving an Aircraft Industries (AI) L 410 UVP–E20 airplane caused by one propeller going to a negative thrust position during the landing approach. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 12, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 12, 2018.

We must receive comments on this AD by October 12, 2018.

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

- *Federal eRulemaking Portal:* Go to *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 final rule, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9—Letňany, Czech Republic; phone: +420 222 538 111; fax: +420 222 538 222. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0723.

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–2018–0723; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0075, dated April 5, 2018 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

> A fatal accident of an L 410 UVP–E20 aeroplane has been reported. Preliminary investigation determined that there was an annunciation of Beta mode on right hand engine, that the propeller went inadvertently behind the fine pitch position and reached a negative thrust position, and that the pitch lock system did not intervene.
>
> This event occurred on approach at a speed and altitude which did not allow the crew to recover this control system malfunction.
>
> This condition, if not corrected, could lead to reduced control or loss of control of the aeroplane.
>
> To address this unsafe condition, GE Aviation Czech issued the SB, providing modification instructions.
>
> For the reason described above, this [EASA] AD requires modification of the engine. Addressing the same unsafe condition at aeroplane level, EASA also issued AD 2018–0057, requiring modification of affected AI L 410 UVP–E20 and L 410 UVP–E20 CARGO aeroplanes, if equipped with GE Aviation H80–200 engines and Avia Propeller AV 725 propellers.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0723.

Related Service Information Under 1 CFR Part 51

We reviewed GE Aviation Czech Service Bulletin (SB) SB–H80–76–00–00–0036, Revision No. 02, dated March 29, 2018. The SB describes procedures for inspecting and adjusting engine push-pull control, part number (P/N) M601–76.3, and replacing beta switch, P/N P–S–2, with beta switch, P/N P–S–2A. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of

the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires adjusting the engine push-pull control and replacing the beta switch to prevent the propeller governor control going to a negative thrust position.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0723 and Product Identifier 2018–NE–17–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection, adjustment of the engine push-pull control, and replacement of beta switch.	8 work-hours × $85 per hour = $680	$1,916	$2,596	$0

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 engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

(2) 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–16–10 GE Aviation Czech s.r.o. (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Amendment 39–19350; Docket No. FAA–2018–0723; Product Identifier 2018–NE–17–AD.

(a) Effective Date

This AD is effective September 12, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GE Aviation Czech H80–200 turboprop engines with propeller governor part number, (P/N) P–W22–1, and Avia Propeller AV–725 propellers installed. These engines are installed on Aircraft Industries (AI) L 410 UVP–E20 and L 410 UVP–E20 CARGO airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by an accident on an AI L 410 UVP–E20 airplane caused by one propeller going to a negative thrust position during the landing approach. We are issuing

this AD to require engine modification to prevent asymmetric thrust. The unsafe condition, if not addressed, could result in failure of the beta switch, loss of engine thrust control, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Within 25 flight hours, 20 flight cycles, or 30 days, whichever occurs first after the effective date of this AD, inspect and adjust the engine push-pull control, P/N M601–76.3, and replace beta switch, P/N P–S–2, with beta switch, P/N P–S–2A, in accordance with paragraphs 1.6. and 1.7. of GE Aviation Czech Service Bulletin (SB) SB–H80–76–00–00–0036, Revision No. 02, dated March 29, 2018.

(h) Installation Prohibition

After the effective date of this AD:

(1) Do not install beta switch, P/N P–S–2, on any engine.

(2) Do not install a GE Aviation Czech H80–200 turboprop engine on any airplane unless the required actions in paragraph (g) of this AD have been complied with. This engine installation prohibition does not apply to an engine removal and subsequent re-installation on the same airplane during an airplane maintenance visit.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2018–0075, dated April 5, 2018, for more information. You may examine the European Aviation Safety Agency AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0723.

(k) Material Incorporated by Reference

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

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

(i) GE Aviation Czech Service Bulletin SB–H80–76–00–00–0036, Revision No. 02, dated March 29, 2018.

(ii) Reserved.

(3) For service information identified in this AD, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9—Letňany, Czech Republic; phone: +420 222 538 111; fax: +420 222 538 222.

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 21, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–18575 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0554; Product Identifier 2016–NM–201–AD; Amendment 39–19370; AD 2018–17–16]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This AD was prompted by a static analysis performed by Airbus SAS that revealed some areas of the wing structure cannot sustain the damage limits previously published in certain structural repair manuals. This AD requires an inspection to determine whether repair or damage to certain wing areas is beyond the allowable limits; and repair if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 2, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in this AD as of October 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0554.

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–2017–0554; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The NPRM published in the **Federal Register** on June 12, 2017 (82 FR 26869).

We are issuing this AD to address any repair or damage on the wing structure that is outside the allowable structural limits. Such conditions could reduce the structural integrity of the wings and could result in loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0229, dated November 15, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The MCAI states:

A static analysis performed by Airbus on A300, A310, A300–600, and A300–600ST aeroplanes, revealed that some areas of the wing structure cannot sustain the damage previously published in the A300, A310, A300–600, and A300–600ST Structural Repair Manuals (SRM).

The SRMs were therefore amended to reduce the dimensions of allowable damage and to indicate the areas of the wing structure where damage is no longer acceptable.

This condition, if not detected, could reduce the structural integrity of the wings.

Consequently, Airbus issued Service Bulletins (SB) A300–57–0256, A310–57–2102, A300–57–6114, and A300–57–9027 (hereafter referred to as ''the applicable Airbus SB''), as applicable for A300, A310, A300–600, and A300–600ST aeroplanes, to inspect the areas identified in these SBs and determine if the repair(s) or damage(s) found stay within the limits indicated in the latest SRM issue (including temporary revisions).

For the reason described above, this [EASA] AD requires accomplishment of an inspection of the aeroplane records. If aeroplane records are missing or incomplete, a Detail Inspection (DET) of specific wing areas is required to ensure that no repair or damage is beyond the limits allowed in the current revision of the SRM (including temporary revisions) [and repair if necessary].

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0554.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. FedEx stated that it supported the NPRM.

Request To Delay the Issuance Pending New Service Information

Airbus and United Parcel Service (UPS) requested that we delay issuance of the final rule until new service information is released. Airbus stated that a configuration issue and an allowable damage limit issue has been identified for certain freighter manufacturer serial numbers, as specified in Airbus Service Bulletin A300–57–6114, Revision 00, dated August 3, 2015. Airbus also stated that it intends to update the service information.

UPS stated that certain configurations specified in Airbus Service Bulletin A300–57–6114, Revision 00, dated August 3, 2015, do not meet the intent of the proposed AD because airplanes with a freighter configuration have an additional inspection of the wing lower skin between ribs 26 and 27. UPS also stated that the allowable damage limitations are inconsistent between Airbus Service Bulletin A300–57–6114, Revision 00, dated August 3, 2015, and applicable SRM references.

We agree with the commenters' request. Since the NPRM has been issued, Airbus SAS has issued Service Bulletin A300–57–6114, Revision 01, dated June 19, 2018, and has updated the applicable SRMs referenced in the service information. Airbus Service Bulletin A300–57–6114, Revision 01, dated June 19, 2018, does not contain substantive changes. Therefore, we have revised paragraph (i)(2) of this AD to refer to Airbus Service Bulletin A300–57–6114, Revision 01, dated June 19, 2018. We have also added paragraph (j) of this AD to give credit for actions in paragraph (g) of this AD completed before the effective date of this AD using Airbus Service Bulletin A300–57–6114, Revision 00, dated August 3, 2015. We redesignated subsequent paragraphs accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

We reviewed the following Airbus SAS Service Information.

- Airbus Service Bulletin A300–57–0256, Revision 00, dated August 3, 2015 (Airbus Model A300 series airplanes).
- Airbus Service Bulletin A300–57–6114, Revision 01, dated June 19, 2018 (for Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes)).
- Airbus Service Bulletin A310–57–2102, Revision 00, dated August 3, 2015 (for Model A310 series airplanes).

This service information describes a review of the airplane maintenance records and a detailed inspection of the left-hand and right-hand wing areas to determine whether any repair or damage is beyond the allowable limits in the current revision of the SRM, and repair if necessary. These documents are distinct since they apply to different airplane models in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 128 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 18 work-hours × $85 per hour = $1,530	$0	Up to $1,530	Up to $195,840.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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 transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–17–16 Airbus SAS: Amendment 39–19370; Docket No. FAA–2017–0554; Product Identifier 2016–NM–201–AD.

(a) Effective Date

This AD is effective October 2, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a static analysis performed by Airbus SAS that revealed that some areas of the wing structure cannot sustain the damage limits previously published in the Airbus A300, A310, A300–600, and A300–600ST Structural Repair Manuals. We are issuing this AD to detect and correct any repair or damage on the wing structure that is outside the allowable structural limits. Such conditions could reduce the structural integrity of the wings and could result in loss of control of the airplane.

(f) Compliance

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

(g) Inspection

Within 36 months after the effective date of this AD: Do a detailed inspection of the left-hand and right-hand wing areas to determine whether any repair or damage exceeds the allowable structural limits, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (i) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if it can be positively determined from that review whether any repair or damage exceeds the allowable structural limits and the airplane configuration can be conclusively determined from that review.

(h) Corrective Action

If, during any review or inspection, as required by paragraph (g) of this AD, any repair or damage is found that is outside the allowable structural limits specified in the applicable service information in paragraph (i) of this AD: Within 3 months after accomplishing the review or inspection required by paragraph (g) of this AD, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Service Information for the Actions Specified in Paragraph (g) of This AD

Use the applicable service information for the actions specified in paragraph (g) of this AD.

(1) Airbus Service Bulletin A300–57–0256, Revision 00, dated August 3, 2015 (for Airbus Model A300 series airplanes).

(2) Airbus Service Bulletin A300–57–6114, Revision 01, dated June 19, 2018 (for Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes)).

(3) Airbus Service Bulletin A310–57–2102, Revision 00, dated August 3, 2015 (for Model A310 series airplanes).

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A300–57–6114, Revision 00, dated August 3, 2015.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0229, dated November 15, 2016, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0554.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A300–57–0256, Revision 00, dated August 3, 2015.

(ii) Airbus Service Bulletin A300–57–6114, Revision 01, dated June 19, 2018.

(iii) Airbus Service Bulletin A310–57–2102, Revision 00, dated August 3, 2015.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; internet *http://www.airbus.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on August 16, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18272 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0118; Product Identifier 2017–NM–083–AD; Amendment 39–19371; AD 2018–17–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–400 series airplanes. This AD was prompted by reports of arcing and smoke emanating from the windshields. This AD requires a revision to the maintenance or inspection program, as applicable, to include an inspection of the windshield moisture seal for signs of cracks, erosion, wear, and other deterioration; doing that inspection and repair if necessary; and re-torqueing the screws that fasten the windshield heater terminal lugs and applying sealant to the screw heads of the windshield heaters. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 2, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0118.

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–2018–0118; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Steve Dzierzynski, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on March 1, 2018 (83 FR 8810). The NPRM was prompted by reports of arcing and smoke emanating from the windshields. The NPRM proposed to require a revision to the maintenance or inspection program, as applicable, to include an inspection of the windshield moisture seal for signs of cracks, erosion, wear, and other deterioration; doing that inspection and repair if necessary; and re-torqueing the screws that fasten the windshield heater terminal lugs and applying sealant to the screw heads of the windshield heaters.

We are issuing this AD to detect and correct loose windshield heater terminal lugs. Loose terminal lugs could create sparks that lead to burning of the lugs and, due to the excessive heat, cracking of the windshields. If not corrected, such a condition could cause a loss of cabin pressure resulting in an emergency descent.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD

CF–2017–18, dated May 26, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–400 series airplanes. The MCAI states:

> There have been numerous reports of arcing and smoke emanating from the windshields. Review of these incidents revealed that the windshield heater terminal lugs tend to loosen over time. Loose terminal lugs could create sparks that lead to burning of the lugs and, due to the excessive heat, cracking of the windshields. If not corrected, this condition could cause a loss of cabin pressure resulting in an emergency descent.

Required actions include a revision to the maintenance or inspection program, as applicable, to include an inspection of the windshield moisture seal for signs of cracks, erosion, wear, or other deterioration; doing that inspection and repair if necessary; and re-torqueing the screws that fasten the windshield heater terminal lugs and applying sealant (Humiseal) to the screw heads of the windshield heaters. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0118.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Requirements Related to Temporary Revision (TR)

Horizon Air requested that paragraph (g) of the proposed AD be revised to either refer to Bombardier Q400 Dash 8 Maintenance Requirements Manual (MRM) Part 1, Revision 13, dated March 15, 2017 (''MRM Part 1, Revision 13''), or include a statement that, ''When this temporary revision has been included in general revisions of the PSM [product support manual], the general revisions may be inserted in the maintenance or inspection program, as applicable, provided the relevant information in the general revision is identical to that in Bombardier [Q400 Dash 8 Maintenance Review Board Report] TR MRB–0099 [dated December 9, 2016 (''TR MRB–0099'')].'' The commenter noted that paragraph (g) of the proposed AD would require incorporation of TR MRB–0099 and that this TR has already been incorporated into MRM Part 1, Revision 13.

We agree to clarify the requirement in paragraph (g) of the AD. As noted by the commenter, the TR has already been incorporated into MRM Part 1, Revision 13. Therefore, if operators incorporate MRM Part 1, Revision 13, into the maintenance or inspection program, as applicable, they are in compliance with paragraph (g)(1) of this AD (*i.e.,* since the MRM Part 1, Revision 13, contains the information in TR MRB–0099, by incorporating MRM Part 1, Revision 13, the operator is complying with the requirement to incorporate the information specified in TR MRB–0099). We have revised paragraph (g) of this AD to include a statement in paragraph (g)(2) of this AD that specifies if the information in TR MRB–0099 has been included in the general revisions of the maintenance requirements manual and the general revisions have been inserted in the maintenance or inspection program, as applicable, the requirement of paragraph (g)(1) of this AD is met.

Request To Include Instructions for Doing Inspection

Horizon Air requested that Bombardier Q400 Dash 8 MRB Task 561001E201, ''General Visual Inspection of the Windshield Moisture Seal,'' (''MRB Task 561001E201''), Task 56–10–01–210–801, of the Bombardier Q400 Dash 8 Airplane Maintenance Manual, be included in paragraph (i) of the proposed AD as approved instructions for doing the inspection of the moisture seal on the left and right windshields.

We agree with the commenter's request. We have included information in Note 1 to paragraph (i) of this AD that guidance for doing the inspection of the moisture seal can be found in MRB Task 561001E201. We also re-designated Note 1 to paragraph (i) of the proposed AD to Note 2 to paragraph (i) of this AD.

Request To Include Additional Information in Note 1 to Paragraph (i) of the Proposed AD

Horizon Air requested that Note 1 to paragraph (i) of the proposed AD include PPG Sierracin Component Maintenance Manual (CMM) 56–10–12, Revision B, dated October 21, 2004. The commenter observed that Note 1 to paragraph (i) of the proposed AD provided additional guidance for repair of the moisture seal and referred to PPG Aerospace Transparencies Abbreviated CMM, Part Number NP–157901, Revision 6, dated June 16, 2015. The commenter did not provide justification for this request.

We partially agree with the commenter's request. We have moved the content of Note 1 to paragraph (i) of the proposed AD into Note 2 to paragraph (i) of this AD. Instead of Revision B, we have included Revision D, dated April 6, 2017, of PPG Sierracin CMM, 56–10–12, as an additional source of guidance for repair of the moisture seal.

Request To Exclude Job Set-Up and Close Out From Required Actions

Horizon Air requested that only the sections of the Accomplishment Instructions of Bombardier Service Bulletin 84–30–16, Revision A, dated September 27, 2017, that address the unsafe condition be specified in paragraph (j) of the proposed AD. The commenter stated that including the job set-up and close out sections of the Accomplishment Instructions restricts an operator's ability to perform other maintenance in conjunction with the incorporation of the actions specified in this service bulletin.

We agree with the commenter's request to clarify which section of the Accomplishment Instructions of Bombardier Service Bulletin 84–30–16, Revision A, dated September 27, 2017, that operators must use to accomplish the actions required by paragraph (j) of this AD. We have revised paragraph (j) of this AD to specify that operators must do the applicable actions in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–30–16, Revision A, dated September 27, 2017.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 84–30–16, Revision A, dated September 27, 2017. This service information describes procedures for re-torqueing the screws that fasten the windshield heater terminal lugs and applying sealant to the screw heads of the windshield heaters.

Bombardier has also issued Q400 Dash 8 Maintenance Review Board Report Temporary Revision (TR) MRB–0099, dated December 9, 2016. This

temporary revision describes procedures for inspecting the moisture seal for the left and right windshields for signs of cracks, erosion, wear, and other deterioration.

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

Costs of Compliance

We estimate that this AD affects 54 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/Re-torque/ Seal.	Up to 3 work-hours × $85 per hour = $255	$0	Up to $255	Up to $13,770.

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

We have received no definitive data that will enable us to provide a cost estimate for the on-condition repair specified in this AD.

Authority for This Rulemaking

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

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 transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

2. 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–17–17 Bombardier, Inc.: Amendment 39–19371; Docket No. FAA–2018–0118; Product Identifier 2017–NM–083–AD.

(a) Effective Date

This AD is effective October 2, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4524 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by reports of arcing and smoke emanating from the windshields. We are issuing this AD to detect and correct loose windshield heater terminal lugs. Loose terminal lugs could create sparks that lead to burning of the lugs and, due to the excessive heat, cracking of the windshields. If not corrected, such a condition could cause a loss of cabin pressure resulting in an emergency descent.

(f) Compliance

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

(g) Revision to Inspection or Maintenance Program

(1) Within 30 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate the task specified in Bombardier Q400 Dash 8 Maintenance Review Board Report Temporary Revision (TR) MRB–0099, dated December 9, 2016.

(2) If the information in Bombardier Q400 Dash 8 Maintenance Review Board Report Temporary Revision (TR) MRB–0099, dated December 9, 2016, has been included in the general revisions of the Bombardier Q400 Dash 8 Maintenance Requirements Manual and the general revisions have been inserted into the maintenance or inspection program, as applicable, the requirement in paragraph (g)(1) of this AD is met.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the

procedures specified in paragraph (k)(1) of this AD.

(i) Inspection and Corrective Action

Within 1,600 flight hours or 12 months after the effective date of this AD, whichever occurs first, do a general visual inspection of the moisture seal on the left and right windshields for signs of cracks, erosion, wear, and other deterioration (including discoloration, warping, or missing material). If any crack, erosion, wear, or other deterioration is found, before further flight, repair the moisture seal in accordance with a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

Note 1 to paragraph (i) of this AD: Additional guidance for inspection of the moisture seal can be found in Bombardier Q400 Dash 8 Maintenance Review Board (MRB) Task 561001E201, ''General Visual Inspection of the Windshield Moisture Seal,'' (Task 56–10–01–210–801, of the Bombardier Q400 Dash 8 Airplane Maintenance Manual).

Note 2 to paragraph (i) of this AD: Additional guidance for repair of the moisture seal can be found in PPG Aerospace Transparencies Abbreviated Component Maintenance Manual, Part Number NP–157901, Revision 6, dated June 16, 2015; and PPG Sierracin Component Maintenance Manual, 56–10–12, Part Number 802600, Revision D, dated April 6, 2017.

(j) Re-Torqueing and Sealing Screws

Within 8,000 flight hours or 60 months after the effective date of this AD, whichever occurs first: Re-torque the windshield heater terminal lug screws for the left and right windshields and apply Humiseal to the screw heads of the windshield heaters, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–30–16, Revision A, dated September 27, 2017.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2017–18, dated May 26, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0118.

(2) For more information about this AD, contact Steve Dzierzynski, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531.

(m) Material Incorporated by Reference

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

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

(i) Bombardier Q400 Dash 8 Maintenance Review Board Report Temporary Revision (TR) MRB–0099, dated December 9, 2016.

(ii) Bombardier Service Bulletin 84–30–16, Revision A, dated September 27, 2017.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* internet: *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on August 16, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18273 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0437; Airspace Docket No. 18–ASO–5]

RIN 2120–AA66

Establishment and Modification of Area Navigation Routes, Florida Metroplex Project; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 16 high altitude area navigation (RNAV) routes (Q-routes), and modifies 7 existing Q-routes, in support of the Florida Metroplex Project. The routes were developed to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems that cause system inefficiencies due to their limitations. This action also makes minor corrections to the waypoint names and geographic coordinates of certain Q-routes.

DATES: Effective date 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it supports the air traffic service route structure in the southeastern United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2018–0437 (83 FR 26612; June 8, 2018) to establish 16 high altitude area navigation (RNAV) routes (Q-routes), and modify 7 existing Q-routes in support of the Florida Metroplex Project. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received.

Area navigation routes are published in paragraph 2006, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The area navigation routes listed in this document will be subsequently published in the Order.

Discussion of Comment

The commenter did not present an objection to the proposal, but posed questions regarding the benefits of the stated reduction in air traffic control sector complexity; reduced pilot-to-air traffic controller communications; and details of the expected increases in NAS capacity that were noted in the NPRM.

The implementation of these routes will reduce sector complexity and air traffic controller workload by reducing the need for offset radar vectors when climbing and descending air traffic. The routes will deconflict dedicated route options when transitioning departures and arrivals from the overhead streams. Additionally, the routes will create parallel, de-conflicted routes to achieve higher throughput, more optimal altitudes, and increased routing options, particularly in constricted airspace along the mid-Atlantic U.S. coast. These initiatives are expected to reduce air traffic controller and pilot workload as well as enhance NAS efficiency.

Regarding NAS capacity improvements, the implementation of the routes will contribute to the integration of recent Metroplex work along the East Coast into the high altitude enroute structure. Capacity will be enhanced through more efficient routings, reduced delays, and increased flexibility for users. Further, the routes will eliminate reliance on the ground-based navigation aid (NAVAID) structure and will enable the VOR Minimum Operational Network (VOR MON) Program to achieve its cost reduction objectives associated with the decommissioning of designated NAVAIDs. The FAA monitors a number of NAS performance metrics on a daily basis. Additionally, various forecasts are available, such as the FAA Aerospace Forecast, which projects future aviation activity and demand for FAA services. Based on analysis of these data, adjustments can be made where necessary.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Differences From the NPRM

Minor editorial corrections are made to the descriptions of a number of Q-routes as listed below:

In Q–65: The ''LORN'' WP is corrected to read ''LORNN'' WP.

In Q–77: The latitude coordinate for the WIGVO, GA, WP is changed from ''lat. 32°37′24.00″ N,'' to read ''lat. 32°27′24.00″ N''.

In Q–81: The ''BITN'' WP is corrected to read ''BITNY'' WP.

In Q–89: The following WP is inserted between the PRMUS, FL, and the YANTI, GA, WPs: ''SHRKS, FL WP (lat. 30°37′23.23″ N, long. 81°45′59.13″ W)''.

In Q–93 and Q–97: The ''WOPN'' WP is corrected to read ''WOPNR'' WP.

In Q–109: The spelling of ''LAAN, NC'' in the route title line is corrected to read ''LAANA, NC.'' Additionally, the location for the SESUE WP was incorrectly listed as ''GA''. The correct location is ''SC''.

In Q–409: The location for the SESUE WP was incorrectly listed as ''GA''. The correct location is ''SC''.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by establishing 16 new Q-routes, and amend 7 existing Q-routes, in the southeastern United States in support of the Florida Metroplex Project. The new routes are designated Q–75, Q–77, Q–79, Q–81, Q–83, Q–85, Q–87, Q–89, Q–93, Q–97, Q–99, Q–109, Q–113, Q–135, Q–172, and Q–409. In addition, existing routes Q–65, Q–69, Q–103, Q–104, Q–110, Q–116, and Q–118 are amended. The end points of the new and amended routes are listed below. Full route descriptions are in ''The Amendment'' section of this rule. The full route descriptions include the corrections listed in the ''Differences from the NPRM'' section, above.

The new Q-routes are as follows:

Q–75: Q–75 extends between the ENEME, GA, WP (in southeast GA) and the Greensboro, NC, VORTAC.

Q–77: Q–77 extends between the OCTAL, FL, WP (on the southeast FL coast) and the WIGVO, GA, WP (near Union, GA).

Q–79: Q–79 extends between the MCLAW, FL, WP (near the Florida Keys) and the Atlanta, GA, VORTAC. This provides linkage to routes going to the Caribbean area.

Q–81: Q–81 extends between the TUNSL, FL, WP (near the FL Keys) and the HONID, GA, WP (in southwest GA).

Q–83: Q–83 extends between the JEVED, GA, WP (off the southeast GA coast) and the SLOJO, SC, WP (in northern SC).

Q–85: Q–85 extends between the LPERD, FL, WP (off the northeast FL coast) and the SMPRR, NC, WP (in southern NC).

Q–87: Q–87 extends between the PEAKY, FL, WP (near Marathon, FL) and the LCAPE, SC, WP (near the SC–NC line).

Q–89: Q–89 extends between the MANLE, FL, WP (off the central Florida coast) and the Atlanta, GA, VORTAC.

Q–93: Q–93 extends between the MCLAW, FL, WP (near the Florida Keys) and the QUIWE, SC, WP (in southwest SC).

Q–97: Q–97 extends between the TOVAR, FL, WP (along the southeast Florida coast) and the ELLDE, NC, WP (in southern NC).

Q–99: Q–99 extends between the DOFFY, FL, WP (in northern Florida) and the POLYY, NC, WP (near the SC–NC line).

Q–109: Q–109 extends between the DOFFY, FL, WP (in northern Florida) and the LAANA, NC, WP (in southern NC).

Q–113: Q–113 extends between the RAYVO, SC, WP (in east central SC) and the SARKY, SC, WP (near the SC–NC line).

Q–135: Q–135 extends between the JROSS, SC, WP (north of Beaufort, SC) and the RAPZZ, NC, WP (in southern NC).

Q–172: Q–172 extends between the YUTEE, SC, WP (in western SC) and the RAPZZ, NC, WP (in southern NC).

Q–409: Q–409 extends between the ENEME, GA, WP (in southeast GA) and the MRPIT, NC, WP (in southern NC).

The amended Q-routes are as follows:

Q–65: Q–65 currently extends between the JEFOI, GA, WP and the Rosewood, OH,

VORTAC. The route is extended to approximately 200 nautical miles (NM) south of the JEFOI, GA, WP to the KPASA, FL, WP. The KPASA, FL; DOFFY, FL; FETAL, FL; and ENEME, GA, WPs are added prior to the JEFOI, GA, WP. The TRASY, GA, WP is added between the JEFOI, GA, and the CESKI, GA, WPs.

Q–69: Q–69 currently extends between the BLAAN, SC, WP and the RICCS, WV, WP. The route is extended approximately 210 NM to the south of the BLAAN, SC, WP to the VIYAP, GA, Fix (located near Brunswick, GA). The extended route segments consist the of VIYAP, GA, fix; OLBEC, GA, WP; ISUZO, GA, WP; and the GURGE, SC, WP. The EMCET, SC, WP is inserted between the BLAAN, SC, WP and the RYCKI, NC, WP.

Q–103: Q–103 currently extends between the Pulaski, VA, VORTAC and the AIRRA, PA, WP. The route is extended to the south of the Pulaski, VA, VORTAC to the CYNTA, GA, WP (in southeastern GA). The extended segments consist of the CYNTA, GA, WP; PUPYY, GA, WP; RIELE, SC, WP; EMCET, SC, WP; and the SLOJO, SC, WP.

Q–104: Q–104 currently extends between the DEFUN, FL, fix, and the Cypress, FL, VOR/DME. The route is amended by removing the DEFUN, FL, fix; and the Cypress, FL, VOR/DME from the route. The ACORI, AL, WP, and the CABLO, GA, WP, are added prior to the HEVVN, FL, fix. The ENDEW, FL, WP is added between the SWABE, FL, fix and the St. Petersburg, FL, VORTAC.

Q–110: Q–110 currently extends between the BLANS, IL, WP, and the THNDR, FL, Fix. The amended route is the same as currently charted between the BLANS, IL, WP and the JYROD, AL, WP. Beyond that point, the route is realigned to terminate at the new OCTAL, FL, WP (on the southeast FL coast). The FEONA, GA; GULFR, FL; BRUTS, FL; KPASA, FL; RVERO, FL; WPs, and the THNDR, FL, fix, are removed. The DAWWN, GA; JOKKY, FL; AMORY, FL; SMELZ, FL; and SHEEK, FL waypoints are inserted between the JYROD, AL, WP and the JAYMC, FL, WP. After JAYMC, the route proceeds to the OCTAL, FL, WP.

Q–116: Q–116 currently extends between the KPASA, FL, WP, and the CEEYA, GA, WP. The current KPASA, FL; BRUTS, FL; GULFR, FL; and CEEYA, GA, waypoints are removed. The route is expanded and realigned to extend between the Vulcan, AL, VORTAC and the OCTAL, FL, WP (on the southeast FL coast). The following waypoints are added between the Vulcan, AL, VORTAC and the OCTAL, FL, WP: DEEDA, GA; JAWJA, FL; MICES, FL; PATOY, FL; SMELZ, FL; SHEEK, FL; and JAYMC, FL.

Q–118: Q–118 currently extends between the Marion, IN, VOR/DME and the KPASA, FL, WP. The amended route adds the Atlanta, GA, VORTAC between the KAILL, GA, WP and the JOHNN, GA, WP; adds the JAMIZ, FL, WP between the JOHNN, GA, and BRUTS, FL, WPs; and adds the JINOS, FL, WP between the BRUTS, FL, and the KPASA, FL, WPs. Additionally, the route is extended to the south of the KPASA, FL, WP to the PEAKY, FL, WP (near Marathon in the Florida Keys). The SHEEK, FL, WP; CHRRI, FL, fix; FEMID, FL, WP and BRIES, FL, WPs are added between the KPASA, FL WP and the PEAKY, FL WP. Q–118 provides linkage to routes from the Caribbean area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of establishing 16 high altitude area navigation (RNAV) routes (Q-routes), and modifying 7 existing Q-routes, in support of the Florida Metroplex Project qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F—Environmental Impacts: Policies and Procedures, paragraph 5–6.5i—Establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL), procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas, modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017 and effective September 15, 2017, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

Q–75 ENEME, GA TO GREENSBORO, NC (GSO) [NEW]

ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
TEUFL, GA	WP	(Lat. 31°52′00.46″ N, long. 082°01′04.56″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
SHRIL, GA	WP	(Lat. 32°54′42.21″ N, long. 081°34′09.78″ W)
FISHO, SC	WP	(Lat. 33°16′46.25″ N, long. 081°24′43.52″ W)
ILBEE, SC	WP	(Lat. 34°18′41.66″ N, long. 081°01′07.88″ W)
SLOJO, SC	WP	(Lat. 34°38′46.31″ N, long. 080°39′25.63″ W)
Greensboro, NC (GSO)	VORTAC	(Lat. 36°02′44.49″ N, long. 079°58′34.95″ W)

Q–77 OCTAL, FL TO WIGVO, GA [NEW]

OCTAL, FL	WP	(Lat. 26°09′01.91″ N, long. 080°06′37.51″ W)
MATLK, FL	WP	(Lat. 27°49′36.54″ N, long. 080°57′04.27″ W)
STYMY, FL	WP	(Lat. 28°01′09.65″ N, long. 081°08′41.27″ W)

WAKKO, FL	WP	(Lat. 28°18′00.69″ N, long. 081°24′53.94″ W)
WASUL, FL	WP	(Lat. 28°41′10.59″ N, long. 081°35′14.53″ W)
MJAMS, FL	WP	(Lat. 28°55′37.59″ N, long. 081°36′33.30″ W)
ETORE, FL	WP	(Lat. 29°41′49.00″ N, long. 081°40′47.75″ W)
SHRKS, FL	WP	(Lat. 30°37′23.23″ N, long. 081°45′59.13″ W)
TEUFL, GA	WP	(Lat. 31°52′00.46″ N, long. 082°01′04.56″ W)
WIGVO, GA	WP	(Lat. 32°27′24.00″ N, long. 082°02′18.00″ W)

Q–79 MCLAW, FL TO ATLANTA, GA (ATL) [NEW]

MCLAW, FL	WP	(Lat. 24°33′49.00″ N, long. 081°01′00.00″ W)
VAULT, FL	WP	(Lat. 24°45′54.75″ N, long. 081°00′33.72″ W)
FEMID, FL	WP	(Lat. 26°06′29.59″ N, long. 081°27′23.07″ W)
WULFF, FL	WP	(Lat. 27°04′03.14″ N, long. 081°58′44.99″ W)
MOLIE, FL	WP	(Lat. 28°01′55.53″ N, long. 082°18′25.55″ W)
DOFFY, FL	WP	(Lat. 29°15′22.73″ N, long. 082°31′38.10″ W)
YUESS, GA	WP	(Lat. 31°41′00.00″ N, long. 083°33′31.20″ W)
Atlanta, GA (ATL)	VORTAC	(Lat. 33°37′44.68″ N, long. 084°26′06.23″ W)

Q–81 TUNSL, FL TO HONID, GA [NEW]

TUNSL, FL	WP	(Lat. 24°54′02.43″ N, long. 081°31′02.80″ W)
KARTR, FL FIX	WP	(Lat. 25°29′45.76″ N, long. 081°30′46.24″ W)
FIPES, OG	WP	(Lat. 25°41′30.15″ N, long. 081°37′13.79″ W)
THMPR, FL	WP	(Lat. 26°46′00.21″ N, long. 082°20′23.99″ W)
LEEHI, FL	WP	(Lat. 27°07′21.91″ N, long. 082°34′54.57″ W)
FARLU, FL	WP	(Lat. 27°45′32.56″ N, long. 082°50′43.77″ W)
ENDEW, FL	WP	(Lat. 28°18′01.73″ N, long. 082°55′56.70″ W)
BITNY, OG	WP	(Lat. 28°46′11.98″ N, long. 083°07′53.01″ W)
NICKI, FL	WP	(Lat. 29°15′20.19″ N, long. 083°20′31.80″ W)
HONID, GA	WP	(Lat. 31°38′50.31″ N, long. 084°23′42.60″ W)

Q–83 JEVED, GA TO SLOJO, SC [NEW]

JEVED, GA	WP	(Lat. 31°15′02.60″ N, long. 081°03′40.14″ W)
ROYCO, GA	WP	(Lat. 31°35′10.38″ N, long. 081°02′22.45″ W)
TAALN, GA	WP	(Lat. 31°59′56.18″ N, long. 081°01′41.91″ W)
KONEY, SC	WP	(Lat. 32°17′01.62″ N, long. 081°01′23.79″ W)
WURFL, SC	WP	(Lat. 32°31′46.59″ N, long. 081°01′08.07″ W)
EFFAY, SC	WP	(Lat. 34°15′30.67″ N, long. 080°30′37.94″ W)
SLOJO, SC	WP	(Lat. 34°38′46.31″ N, long. 080°39′25.63″ W)

Q–85 LPERD, FL TO SMPRR, NC [NEW]

LPERD, FL	WP	(Lat. 30°36′09.18″ N, long. 081°16′52.16″ W)
GIPPL, GA	WP	(Lat. 31°22′53.96″ N, long. 081°09′53.70″ W)
ROYCO, GA	WP	(Lat. 31°35′10.38″ N, long. 081°02′22.45″ W)
IGARY, SC	WP	(Lat. 32°34′41.37″ N, long. 080°22′36.01″ W)
PELIE, SC	WP	(Lat. 33°21′23.88″ N, long. 079°44′43.43″ W)
BUMMA, SC	WP	(Lat. 34°01′58.09″ N, long. 079°11′07.50″ W)
KAATT, NC	WP	(Lat. 34°15′35.43″ N, long. 078°59′42.38″ W)
SMPRR, NC	WP	(Lat. 34°26′28.32″ N, long. 078°50′31.80″ W)

Q–87 PEAKY, FL TO LCAPE, SC [NEW]

PEAKY, FL	WP	(Lat. 24°35′23.72″ N, long. 081°08′53.91″ W)
GOPEY, FL	WP	(Lat. 25°09′32.92″ N, long. 081°05′17.11″ W)
GRIDS, FL	WP	(Lat. 26°24′54.27″ N, long. 080°57′11.40″ W)
TIRCO, FL	WP	(Lat. 27°19′05.75″ N, long. 080°51′16.67″ W)
MATLK, FL	WP	(Lat. 27°49′36.54″ N, long. 080°57′04.27″ W)
ONEWY, FL	WP	(Lat. 28°21′53.66″ N, long. 081°03′21.04″ W)
ZERBO, FL	WP	(Lat. 28°54′56.68″ N, long. 081°17′40.13″ W)
DUCEN, FL	WP	(Lat. 29°16′33.83″ N, long. 081°19′23.24″ W)
FEMON, FL	WP	(Lat. 30°27′31.57″ N, long. 081°23′36.20″ W)
VIYAP, GA FIX	WP	(Lat. 31°15′08.15″ N, long. 081°26′08.18″ W)
TAALN, GA	WP	(Lat. 31°59′56.18″ N, long. 081°01′41.91″ W)
JROSS, SC	WP	(Lat. 32°42′40.00″ N, long. 080°37′38.00″ W)
RAYVO, SC	WP	(Lat. 33°38′44.12″ N, long. 080°04′00.84″ W)
HINTZ, SC	WP	(Lat. 34°10′11.02″ N, long. 079°44′48.12″ W)
REDFH, SC	WP	(Lat. 34°22′36.35″ N, long. 079°37′08.34″ W)
LCAPE, SC	WP	(Lat. 34°33′03.47″ N, long. 079°30′39.47″ W)

Q–89 MANLE, FL TO ATLANTA, GA (ATL) [NEW]

MANLE, FL	WP	(Lat. 28°42′26.16″ N, long. 080°24′23.71″ W)
WAKUP, FL	WP	(Lat. 28°51′47.62″ N, long. 080°40′26.97″ W)
PRMUS, FL	WP	(Lat. 29°49′05.67″ N, long. 081°07′20.74″ W)
SHRKS, FL	WP	(Lat. 30°37′23.23″ N, long. 081°45′59.13″ W)
YANTI, GA	WP	(Lat. 31°47′22.38″ N, long. 082°51′32.65″ W)
Atlanta, GA (ATL)	VORTAC	(Lat. 33°37′44.68″ N, long. 084°26′06.23″ W)

Q–93 MCLAW, FL TO QUIWE, SC [NEW]

MCLAW, FL	WP	(Lat. 24°33′49.00″ N, long. 081°01′00.00″ W)
VAULT, FL	WP	(Lat. 24°45′54.75″ N, long. 081°00′33.72″ W)
LINEY, FL	WP	(Lat. 25°16′44.02″ N, long. 080°53′15.43″ W)

FOBIN, FL	WP	(Lat. 25°47′02.00″ N, long. 080°46′00.89″ W)
EBAYY, FL	WP	(Lat. 27°43′40.20″ N, long. 080°30′03.59″ W)
MALET, FL FIX	WP	(Lat. 28°41′29.90″ N, long. 080°52′04.30″ W)
DEBRL, FL	WP	(Lat. 29°17′48.73″ N, long. 081°08′02.88″ W)
KENLL, FL	WP	(Lat. 29°34′28.35″ N, long. 081°07′25.26″ W)
PRMUS, FL	WP	(Lat. 29°49′05.67″ N, long. 081°07′20.74″ W)
WOPNR, OA	WP	(Lat. 30°37′36.03″ N, long. 081°04′26.44″ W)
GIPPL, GA	WP	(Lat. 31°22′53.96″ N, long. 081°09′53.70″ W)
ISUZO, GA	WP	(Lat. 31°57′47.85″ N, long. 081°14′14.79″ W)
FISHO, SC	WP	(Lat. 33°16′46.25″ N, long. 081°24′43.52″ W)
QUIWE, SC	WP	(Lat. 33°57′05.56″ N, long. 081°30′07.93″ W)

Q–97 TOVAR, FL TO ELLDE, NC [NEW]

TOVAR, FL	WP	(Lat. 26°33′05.09″ N, long. 080°02′19.75″ W)
EBAYY, FL	WP	(Lat. 27°43′40.20″ N, long. 080°30′03.59″ W)
MALET, FL FIX	WP	(Lat. 28°41′29.90″ N, long. 080°52′04.30″ W)
DEBRL, FL	WP	(Lat. 29°17′48.73″ N, long. 081°08′02.88″ W)
KENLL, FL	WP	(Lat. 29°34′28.35″ N, long. 081°07′25.26″ W)
PRMUS, FL	WP	(Lat. 29°49′05.67″ N, long. 081°07′20.74″ W)
WOPNR, OA	WP	(Lat. 30°37′36.03″ N, long. 081°04′26.44″ W)
JEVED, GA	WP	(Lat. 31°15′02.60″ N, long. 081°03′40.14″ W)
CAKET, SC	WP	(Lat. 32°31′08.63″ N, long. 080°16′09.21″ W)
ELMSZ, SC	WP	(Lat. 33°40′36.61″ N, long. 079°17′59.56″ W)
YURCK, NC	WP	(Lat. 34°11′14.80″ N, long. 078°52′40.62″ W)
ELLDE, NC	WP	(Lat. 34°24′14.57″ N, long. 078°41′50.60″ W)

Q99 DOFFY, FL TO POLYY, NC [NEW]

DOFFY, FL	WP	(Lat. 29°15′22.73″ N, long. 082°31′38.10″ W)
CAMJO, FL	WP	(Lat. 30°30′32.00″ N, long. 082°41′11.00″ W)
HEPAR, GA	WP	(Lat. 31°05′13.00″ N, long. 082°33′46.00″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
BLAAN, SC	WP	(Lat. 33°51′09.38″ N, long. 080°53′32.78″ W)
BWAGS, SC	WP	(Lat. 34°00′03.77″ N, long. 080°45′12.26″ W)
EFFAY, SC	WP	(Lat. 34°15′30.67″ N, long. 080°30′37.94″ W)
WNGUD, SC	WP	(Lat. 34°41′53.16″ N, long. 080°06′12.12″ W)
POLYY, NC	WP	(Lat. 34°48′37.54″ N, long. 079°59′55.81″ W)

Q–109 DOFFY, FL TO LAANA, NC [NEW]

DOFFY, FL	WP	(Lat. 29°15′22.73″ N, long. 082°31′38.10″ W)
CAMJO, FL	WP	(Lat. 30°30′32.00″ N, long. 082°41′11.00″ W)
HEPAR, GA	WP	(Lat. 31°05′13.00″ N, long. 082°33′46.00″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
RIELE, SC	WP	(Lat. 32°37′27.14″ N, long. 081°23′34.97″ W)
PANDY, SC	WP	(Lat. 33°28′29.39″ N, long. 080°26′55.21″ W)
RAYVO, SC	WP	(Lat. 33°38′44.12″ N, long. 080°04′00.84″ W)
SESUE, SC	WP	(Lat. 33°52′02.58″ N, long. 079°33′51.88″ W)
BUMMA, SC	WP	(Lat. 34°01′58.09″ N, long. 079°11′07.50″ W)
YURCK, NC	WP	(Lat. 34°11′14.80″ N, long. 078°52′40.62″ W)
LAANA, NC	WP	(Lat. 34°19′41.35″ N, long. 078°35′37.16″ W)

Q–113 RAYVO, SC TO SARKY, SC [NEW]

RAYVO, SC	WP	(Lat. 33°38′44.12″ N, long. 080°04′00.84″ W)
CEELY, SC	WP	(Lat. 34°12′54.72″ N, long. 079°27′57.01″ W)
SARKY, SC	WP	(Lat. 34°25′41.43″ N, long. 079°14′17.50″ W)

Q–135 JROSS, SC TO RAPZZ, NC [NEW]

JROSS, SC	WP	(Lat. 32°42′40.00″ N, long. 080°37′38.00″ W)
PELIE, SC	WP	(Lat. 33°21′23.88″ N, long. 079°44′43.43″ W)
ELMSZ, SC	WP	(Lat. 33°40′36.61″ N, long. 079°17′59.56″ W)
RAPZZ, NC	WP	(Lat. 34°15′03.34″ N, long. 078°29′17.58″ W)

Q–172 YUTEE, SC TO RAPZZ, NC [NEW]

YUTEE, SC	WP	(Lat. 33°47′28.54″ N, long. 081°33′19.15″ W)
BWAGS, SC	WP	(Lat. 34°00′03.77″ N, long. 080°45′12.26″ W)
HINTZ, SC	WP	(Lat. 34°10′11.02″ N, long. 079°44′48.12″ W)
CEELY, SC	WP	(Lat. 34°12′54.72″ N, long. 079°27′57.01″ W)
OKNEE, SC	WP	(Lat. 34°15′39.92″ N, long. 079°10′40.68″ W)
KAATT, NC	WP	(Lat. 34°15′35.43″ N, long. 078°59′42.38″ W)
RAPZZ, NC	WP	(Lat. 34°15′03.34″ N, long. 078°29′17.58″ W)

Q–409 ENEME, GA TO MRPIT, NC [NEW]

ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
PUPYY, GA	WP	(Lat. 31°24′35.58″ N, long. 081°49′06.19″ W)
ISUZO, GA	WP	(Lat. 31°57′47.85″ N, long. 081°14′14.79″ W)
KONEY, SC	WP	(Lat. 32°17′01.62″ N, long. 081°01′23.79″ W)
JROSS, SC	WP	(Lat. 32°42′40.00″ N, long. 080°37′38.00″ W)
SESUE, SC	WP	(Lat. 33°52′02.58″ N, long. 079°33′51.88″ W)
OKNEE, SC	WP	(Lat. 34°15′39.92″ N, long. 079°10′40.68″ W)
MRPIT, NC	WP	(Lat. 34°26′05.09″ N, long. 079°01′45.10″ W)

Q–65 KPASA, FL TO ROSEWOOD, OH (ROD) [AMENDED]

KPASA, FL	WP	(Lat. 28°10′34.00″ N, long. 081°54′27.00″ W)
DOFFY, FL	WP	(Lat. 29°15′22.73″ N, long. 082°31′38.10″ W)
FETAL, FL	WP	(Lat. 30°11′03.69″ N, long. 082°30′24.76″ W)
ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
JEFOI, GA	WP	(Lat. 31°35′37.02″ N, long. 082°31′18.38″ W)
TRASY, GA	WP	(Lat. 31°55′25.92″ N, long. 082°35′50.51″ W)
CESKI, GA	WP	(Lat. 32°16′21.27″ N, long. 082°40′38.96″ W)
DAREE, GA	WP	(Lat. 34°37′35.72″ N, long. 083°51′35.03″ W)
LORNN, TN	WP	(Lat. 35°21′16.33″ N, long. 084°14′19.35″ W)
SOGEE, TN	WP	(Lat. 36°31′50.64″ N, long. 084°11′35.39″ W)
ENGRA, KY	WP	(Lat. 37°29′02.34″ N, long. 084°15′02.15″ W)
OCASE, KY	WP	(Lat. 38°23′59.05″ N, long. 084°11′05.32″ W)
Rosewood, OH (ROD)	VORTAC	(Lat. 40°17′16.08″ N, long. 084°02′35.15″ W)

Q–69 VIYAP, GA TO RICCS, WV [AMENDED]

VIYAP, GA FIX	WP	(Lat. 31°15′08.15″ N, long. 081°26′08.18″ W)
OLBEC, GA	WP	(Lat. 31°28′32.85″ N, long. 081°26′17.61″ W)
ISUZO, GA	WP	(Lat. 31°57′47.85″ N, long. 081°14′14.79″ W)
GURGE, SC	WP	(Lat. 32°29′02.26″ N, long. 081°12′41.48″ W)
BLAAN, SC	WP	(Lat. 33°51′09.38″ N, long. 080°53′32.78″ W)
EMCET, SC	WP	(Lat. 34°09′41.99″ N, long. 080°50′12.51″ W)
RYCKI, NC	WP	(Lat. 36°24′43.05″ N, long. 080°25′07.50″ W)
LUNDD, VA	WP	(Lat. 36°44′22.38″ N, long. 080°21′07.11″ W)
ILLSA, VA	WP	(Lat. 37°38′55.85″ N, long. 080°13′18.44″ W)
EWESS, WV	WP	(Lat. 38°21′50.31″ N, long. 080°06′52.03″ W)
RICCS, WV	WP	(Lat. 38°55′14.65″ N, long. 080°05′01.68″ W)

Q–103 CYNTA, GA TO AIRRA, PA [AMENDED]

CYNTA, GA	WP	(Lat. 30°36′27.06″ N, long. 082°05′35.45″ W)
PUPYY, GA	WP	(Lat. 31°24′35.58″ N, long. 081°49′06.19″ W)
RIELE, SC	WP	(Lat. 32°37′27.14″ N, long. 081°23′34.97″ W)
EMCET, SC	WP	(Lat. 34°09′41.99″ N, long. 080°50′12.51″ W)
SLOJO, SC	WP	(Lat. 34°38′46.31″ N, long. 080°39′25.63″ W)
Pulaski, VA (PSK)	VORTAC	(Lat. 37°05′15.74″ N, long. 080°42′46.44″ W)
ASBUR, WV FIX	WP	(Lat. 37°49′24.41″ N, long. 080°27′51.44″ W)
OAKLE, WV FIX	WP	(Lat. 38°07′13.80″ N, long. 080°21′44.84″ W)
PERRI, WV FIX	WP	(Lat. 38°17′50.49″ N, long. 080°18′05.11″ W)
PERKS, WV FIX	WP	(Lat. 38°39′40.84″ N, long. 080°10′29.36″ W)
RICCS, WV	WP	(Lat. 38°55′14.65″ N, long. 080°05′01.68″ W)
EMNEM, WV	WP	(Lat. 39°31′27.12″ N, long. 080°04′28.21″ W)
AIRRA, PA	WP	(Lat. 41°06′16.48″ N, long. 080°03′48.73″ W)

Q–104 ACORI, AL TO ST PETERSBURG, FL (PIE) [AMENDED]

ACORI, AL	WP	(Lat. 31°46′23.36″ N, long. 085°51′29.51″ W)
CABLO, GA	WP	(Lat. 30°46′29.00″ N, long. 084°50′24.00″ W)
HEVVN, FL FIX	WP	(Lat. 29°49′19.11″ N, long. 083°53′42.89″ W)
LEGGT, FL FIX	(Lat. 29°13′22.56″ N, long. 083°30′38.60″ W)	
PLYER, FL FIX	WP	(Lat. 28°56′51.36″ N, long. 083°20′08.59″ W)
SWABE, FL FIX	WP	(Lat. 28°35′16.32″ N, long. 083°06′31.16″ W)
ENDEW, FL	WP	(Lat. 28°18′01.73″ N, long. 082°55′56.70″ W)
St Petersburg, FL (PIE)	VORTAC	(Lat. 27°54′27.95″ N, long. 082°41′03.51″ W)

Q–110 BLANS, IL TO OCTAL, FL [AMENDED]

BLANS, IL	WP	(Lat. 37°28′09.27″ N, long. 088°44′00.68″ W)
BETIE, TN	WP	(Lat. 36°07′29.88″ N, long. 087°54′01.48″ W)
SKIDO, AL	WP	(Lat. 34°31′49.10″ N, long. 086°53′11.16″ W)
BFOLO, AL	WP	(Lat. 34°03′33.98″ N, long. 086°31′30.49″ W)
JYROD, AL	WP	(Lat. 33°10′53.29″ N, long. 085°51′54.85″ W)
DAWWN, GA	WP	(Lat. 31°28′49.96″ N, long. 084°36′46.69″ W)
JOKKY, FL	WP	(Lat. 30°11′31.47″ N, long. 083°38′41.86″ W)
AMORY, FL	WP	(Lat. 29°13′17.02″ N, long. 082°55′42.90″ W)
SMELZ, FL	WP	(Lat. 28°04′59.00″ N, long. 082°06′34.00″ W)
SHEEK, FL	WP	(Lat. 27°35′15.40″ N, long. 081°46′27.82″ W)
JAYMC, FL	WP	(Lat. 26°58′51.00″ N, long. 081°22′08.00″ W)
OCTAL, FL	WP	(Lat. 26°09′01.91″ N, long. 080°06′37.51″ W)

Q–116 VULCAN, AL (VUZ) TO OCTAL, FL [AMENDED]

Vulcan, AL (VUZ)	VORTAC	(Lat. 33°40′12.48″ N, long. 086°53′59.41″ W)
DEEDA, GA	WP	(Lat. 31°34′13.55″ N, long. 085°00′31.10″ W)
JAWJA, FL	WP	(Lat. 30°10′25.55″ N, long. 083°48′58.94″ W)
MICES, FL	WP	(Lat. 29°51′37.65″ N, long. 083°33′18.30″ W)
PATOY, FL	WP	(Lat. 29°03′52.49″ N, long. 082°54′00.09″ W)
SMELZ, FL	WP	(Lat. 28°04′59.00″ N, long. 082°06′34.00″ W)
SHEEK, FL	WP	(Lat. 27°35′15.40″ N, long. 081°46′27.82″ W)
JAYMC, FL	WP	(Lat. 26°58′51.00″ N, long. 081°22′08.00″ W)

OCTAL, FL	WP	(Lat. 26°09′01.91″ N, long. 080°06′37.51″ W)
Q–118 MARION, IN (MZZ) TO PEAKY, FL [AMENDED]		
Marion, IN (MZZ)	VOR/DME	(Lat. 40°29′35.99″ N, long. 085°40′45.30″ W)
HEVAN, IN	WP	(Lat. 39°21′08.86″ N, long. 085°07′46.70″ W)
VOSTK, KY	WP	(Lat. 38°28′15.86″ N, long. 084°43′03.58″ W)
HELUB, KY	WP	(Lat. 37°42′54.84″ N, long. 084°44′28.31″ W)
JEDER, KY	WP	(Lat. 37°19′30.54″ N, long. 084°45′14.17″ W)
GLAZR, TN	WP	(Lat. 36°25′20.78″ N, long. 084°46′49.29″ W)
KAILL, GA	WP	(Lat. 34°01′47.21″ N, long. 084°31′24.18″ W)
Atlanta, GA (ATL)	VORTAC	(Lat. 33°37′44.68″ N, long. 084°26′06.23″ W)
JOHNN, GA	FIX	(Lat. 31°31′22.94″ N, long. 083°57′26.55″ W)
JAMIZ, FL	WP	(Lat. 30°13′46.91″ N, long. 083°19′27.78″ W)
BRUTS, FL	WP	(Lat. 29°30′58.00″ N, long. 082°58′57.00″ W)
JINOS, FL	WP	(Lat. 28°27′45.60″ N, long. 082°08′04.60″ W)
KPASA, FL	WP	(Lat. 28°10′34.00″ N, long. 081°54′27.00″ W)
SHEEK, FL	WP	(Lat. 27°35′15.40″ N, long. 081°46′27.82″ W)
CHRRI, FL	FIX	(Lat. 27°03′00.70″ N, long. 081°39′14.81″ W)
FEMID, FL	WP	(Lat. 26°06′29.59″ N, long. 081°27′23.07″ W)
BRIES, FL	WP	(Lat. 25°03′56.03″ N, long. 081°14′38.35″ W)
PEAKY, FL	WP	(Lat. 24°35′23.72″ N, long. 081°08′53.91″ W)

Issued in Washington, DC, on August 20, 2018.

Rodger A. Dean, Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2018–18508 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0770; Amendment No. 71–50]

RIN 2120–AA66

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.11C, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: These regulations are effective September 15, 2018, through September 15, 2019. The incorporation by reference of FAA Order 7400.11C is approved by the Director of the Federal Register as of September 15, 2018, through September 15, 2019.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.11B, Airspace Designations and Reporting Points, effective September 15, 2017, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective September 15, 2017, through September 15, 2018. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.11B in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.11C, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.11C in section 71.1, as of September 15, 2018, through September 15, 2019. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.11C.

Availability and Summary of Documents for Incorporation by Reference

This document incorporates by reference FAA Order 7400.11C, airspace Designations and Reporting Points, dated August 8, 2017, and effective September 15, 2018, in section 71.1. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.11C, effective September 15, 2018, through September 15, 2019. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.11C in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in

the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

Regulatory Notices and Analyses

The FAA has determined that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 8, 2018. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.11C is effective September 15, 2018, through September 15, 2019. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.11C may be obtained from Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, (202) 267–8783. An electronic version of the Order is available on the FAA website at *http://www.faa.gov/air_traffic/publications.* Copies of FAA Order 7400.11C may be inspected in Docket No. FAA–2018–0770; Amendment No. 71–50, on *http://www.regulations.gov.* A copy of FAA Order 7400.11C may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.33 [Amended]

■ 6. Paragraph (c) of section 71.33 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of section 71.71 are amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

§ 71.901 [Amended]

■ 11. Paragraph (a) of section 71.901 is amended by removing the words ''FAA Order 7400.11B'' and adding, in their place, the words ''FAA Order 7400.11C.''

Issued in Washington, DC, on August 21, 2018.

Rodger A Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2018–18507 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0548]

RIN 1625–AA08

Special Local Regulation; Ohio River, Owensboro, KY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 754.0 to MM 760.0. This action is necessary to provide for the safety of persons, vessels, and the marine environment during the Owensboro Airshow. This rulemaking will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from noon through 4 p.m. on September 13, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0548 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Riley Jackson, Sector Ohio Valley, U.S. Coast Guard;

telephone 502–779–5348, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The City of Owensboro notified the Coast Guard that it would be conducting an airshow practice over the Ohio River from mile marker (MM) 754.0 to MM 760.0 from noon to 4 p.m. on September 13, 2018. In response, on June 27, 2018 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Ohio River, Owensboro, KY (83 FR 30089). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this airshow. During the comment period that ended July 27, 2018, we received no comments.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the airshow on September 13, 2018 will be a safety concern for anyone on a six-mile stretch of the Ohio River. The purpose of this rule is to ensure safety of persons, vessels, and the marine environment on the navigable waters in the regulated area before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 27, 2018. There are no changes in the regulatory text of this rule from the text proposed in the NPRM.

This rule establishes a special local regulation from noon through 4 p.m. on September 13, 2018. The special local regulation area will cover all navigable waters of the Ohio River, extending the entire width of the river, between MM 754.0 and MM 760.0 in Owensboro, KY. The duration of the special local regulation is intended to ensure the safety of persons, vessels, and the marine environment on these navigable waters before, during, and after the Owensboro Airshow.

No vessel or person will be permitted to enter the special local regulation area without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley. They may be contacted on VHF–FM Channel 16 or by telephone at 1–800–253–7465. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''. All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

Spectator vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and, when so directed by that officer, will be operated at a minimum safe navigation speed in a manner which will not endanger any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the airshow.

The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the regulated area, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate enforcement of the special local regulation at the conclusion of the airshow. The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017). This regulatory action determination is based on the size, location, duration, and time-of-day of the temporary special local regulation. This special local regulation restricts transit on a six-mile stretch of the Ohio River for four hours on one day. Moreover, the Coast Guard will issue BNMs, LNMs, and MSIBs about this special local regulation so that

waterway users may plan accordingly for this short restriction on transit. In addition, the rule allows vessels to request permission to enter the regulated area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security (DHS) Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves special local regulation that will prohibit entry on a six-mile stretch of the Ohio River for four hours on one day. It is categorically excluded from further review under paragraph L(61) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 33 CFR 1.05–1.

■ 2. Add § 100.35T08–0548 to read as follows:

§ 100.35T08–0548 Special Local Regulation; Ohio River, Owensboro, KY.

(a) *Location.* The following area is a temporary special local regulation: All navigable waters of the Ohio River, extending the entire width of the river, between mile marker (MM) 754.0 and MM 760.0, Owensboro, KY.

(b) *Effective period.* This section is effective from noon through 4 p.m. on September 13, 2018.

(c) *Special local regulations.* (1) In accordance with the general regulations in § 100.801 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley. They may be contacted on VHF–FM Channel 16 or by telephone at 1–800–253–7465. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official

patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the airshow.

(6) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the regulated area, citation for failure to comply, or both.

(7) The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The COTP or a designated representative can terminate enforcement of the special local regulation at the conclusion of the airshow.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

Dated: August 23, 2018.

M.B. Zamperini,

Captain, U.S. Coast Guard Captain of the Port Sector Ohio Valley.

[FR Doc. 2018–18625 Filed 8–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0799]

Drawbridge Operation Regulation; Columbia River, Portland, OR and Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Interstate 5 (I–5) Bridge, north bound, across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The deviation is necessary to conduct gear alignment and bearing clearances. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 12:01 a.m. on September 10, 2018, to 11:59 p.m. on September 19, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0799 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 temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: Oregon Department of Transportation (bridge owner) requested a temporary deviation from the operating schedule for the I–5 Bridge, north bound, mile 106.5, across the Columbia River between Vancouver, WA, and Portland, OR, to align lift span operating rope drive gear and sheave bearing clearances. The I–5 Bridge provides three designated navigation channels with vertical clearances ranging from 39 to 72 feet above Columbia River Datum 0.0 while the lift span is in the closed-to-navigation position. The normal operating schedule for the I–5 Bridge is 33 CFR 117.869. The deviation is effective from 12:01 a.m. on September 10, 2018 until 11:59 p.m. on September 19, 2018. The I–5 Bridges (north bound) are to remain in the closed to navigation position for the duration of the deviation, and need not be raised upon signal. Waterway usage on this part of the Columbia River includes vessels ranging from large commercial ships and tug and tow vessels to recreational pleasure craft.

Vessels able to pass under the bridge in the closed-to-navigation positions may do so at any time. The bridge will not be able to open for emergencies, and there is no immediate alternate route for vessels to pass except for the fixed height spans. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: August 22, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–18592 Filed 8–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0810]

RIN 1625–AA00

Safety Zone; Delaware River Fireworks Display, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Delaware River in the vicinity of Penn's Landing, Philadelphia, PA, from 8:30 p.m. through 9:30 p.m. on September 1, 2018, during the Delaware River Waterfront Corp Fireworks Display. The safety zone is necessary to ensure the safety of participant vessels, spectators, and the boating public during the event. This regulation prohibits persons and non-participant vessels from entering, transiting through, anchoring in or remaining within the safety zone unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective from 8:30 p.m. through 9:30 p.m. on September 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0810 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone (215) 271–4814, email *Thomas.J.Welker@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. The rule must be established by September 1, 2018, to serve its purpose of ensuring the safety of spectators and the general public from hazards associated with the fireworks display. Hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with a fireworks display in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the fireworks display on September 1, 2018, will be a safety concern for anyone within a 500-yard radius of the fireworks barge, which will be anchored in approximate position 39°56′49.66″ N, 075°08′11.69″ W. This rule is needed to protect persons, vessels and the public near the fireworks barge during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8:30 p.m. through 9:30 p.m. on September 1, 2018, for the navigable waters in the vicinity of Penn's Landing, Philadelphia, PA, during a fireworks display from a barge. The event is scheduled to take place at approximately 9 p.m. on September 1, 2018. The safety zone will extend 500 yards around the barge, which will be anchored at approximate position 39°56′49.66″ N, 075°08′11.69″ W. Persons or vessels will not be permitted to enter, transit through, anchor in or remain within the safety zone without obtaining permission from the COTP or the COTP's designated representative. If authorization to enter, transit through, anchor in or remain within the safety zone is granted by the COTP or the COTP's designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or the COTP's designated representative. The Coast Guard will provide public notice of the safety zone by Broadcast Notice to Mariners and by on-scene actual notice.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Delaware River for one hour during the evening when vessel traffic is normally low. Although persons and vessels may not enter, transit through, anchor in or remain within the safety zone without authorization from the COTP or a designated representative of the COTP, they may operate in the surrounding area during the enforcement period. Additionally, persons and vessels will be able to enter, transit through, anchor in or remain within the safety zone if authorized by the COTP or the COTP's designated representative. The Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners, and by on-scene actual notice from designated representatives.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in or remaining within a limited area on the navigable water in the Delaware Bay, during a fireworks display lasting one hour. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0810 to read as follows:

§ 165.T05–0810 Safety Zone; Delaware River Fireworks Display, Delaware River, Philadelphia, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Delaware River in the vicinity of Penn's Landing, Philadelphia, PA, within 500 yards of the fireworks barge anchored in approximate position 39°56′49.66″ N, 075°08′11.69″ W. All coordinates are based on Datum NAD 1983.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's designated representative via VHF–FM channel 16 or 215–271–4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

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

(e) *Enforcement period.* This zone will be enforced from approximately 8:30 p.m. through 9:30 p.m. on September 1, 2018.

Dated: August 23, 2018.

S.E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2018–18596 Filed 8–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0838]

RIN 1625–AA00

Safety Zones, Hurricane Lane Port Closures for Hawaiian Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing 9 temporary safety zones encompassing Hawaii's commercial

harbors to include Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. These temporary safety zones are necessary to protect the harbors from the potential impacts of Hurricane Lane and when enforced functionally close the port to commercial vessel traffic and require the evacuation of vessels in accordance with the Coast Guard Sector Honolulu Heavy Weather and Hurricane Plan.

DATES: This rule is effective without actual notice from August 28, 2018 until August 29, 2018. For the purposes of enforcement, actual notice will be used from August 22, 2018, until August 28, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0838 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John E. Bannon, Waterways Management Division, U.S. Coast Guard; telephone 808–541–4359, email *John.E.Bannon@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to the imminent approach of Hurricane Lane and its potential impacts to the island of Hawaii. Closing the ports and ordering evacuation of vessels over 200 gross tons is in accordance with Coast Guard Sector Honolulu's Maritime Heavy Weather and Hurricane Plan. It is impracticable to publish an NPRM because of the rapid escalation of the tropical storm to hurricane status and the imminent threat posed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels due to the imminent threat of the approaching hurricane.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Honolulu (COTP) has determined that potential hazards associated with Hurricane Lane constitute a safety concern for all commercial harbors in Hawaii. This rule is needed to protect personnel, vessels, maritime commercial facilities, and the marine environment in the navigable waters of Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. This temporary rulemaking implements the closure of the port and evacuation of vessels called for in the Coast Guard Sector Honolulu Heavy Weather & Hurricane Plan. Consistent with the Plan, the Captain of the Port finds sufficient indications that the approaching Hurricane Lane poses considerable safety concerns, creating the need for these safety zones.

IV. Discussion of the Rule

This rule establishes nine safety zones encompassing Hawaii's 9 commercial harbors; Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. The Coast Guard is closing all commercial harbors to vessels over 200 gross tons, in accordance with the Coast Guard Sector Honolulu's Heavy Weather & Hurricane Plan and requires the evacuation of all vessels over 200 gross tons. Notice of actual port closure times will be given to the maritime community via marine safety information bulletins and broadcast notice to mariners. All vessels unable to comply with this safety zone and seeking to remain in port, must submit a request to remain in port detailing vessel specifics and a mooring plan for approval from the Captain of the Port. Vessels are not authorized to enter or remain in port without the specific authorization of the COTP Honolulu. The harbors will remain closed until the Coast Guard issues an ''All Clear'' for the harbor after the storm passes and a survey of the Harbor for potential hazards is completed by the Coast Guard.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the anticipated short duration of the storm and protection of personnel, vessels, maritime commercial facilities, and the marine environment from potential impacts of Hurricane Lane. Moreover, the Coast Guard will issue marine safety information bulletins and broadcast notice to mariners on marine channel 16 about the safety zones and the rule allows vessels to seek permission to enter the safety zones.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator. This rule may affect the following small entities: The owners or operations of vessels intending to transit, anchor, or moor within nine safety zones encompassing Hawaii's 9 commercial harbors; Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii between August 22, 2018 and August 29, 2018. Upon passing of the hurricane and verification of the safety of the waterways, all vessels will be allowed to reenter or exit the commercial ports of Hawaii as soon as reasonably expected and safe to allow.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones lasting 7 days that will prohibit entry into 9 Hawaii commercial harbors; Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination will be made available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–0838 to read as follows:

§ 165.T14–0838 Safety Zones, Hurricane Lane Port Closures for Hawaiian Islands.

(a) *Location.* The following commercial harbors are safety zones:

(1) All waters of Barber's Point Harbor, Oahu inland from a line drawn between 21°19′30″ N, 158°07′14″ W and 21°19′18″ N, 158°07′18″ W;

(2) All waters of Honolulu Harbor, Oahu inland from a line drawn between 21°17′56″ N, 157°52′15″ W and 21°17′45″ N, 157°52′10″ W;

(3) All waters of Kaunakakai Harbor, immediately adjacent to the Interisland Cargo Terminal out to 100 yards of the west face of the pier;

(4) All waters of Kaumalapau Harbor, Lanai inland from a line drawn between 20°47′10″ N, 156°59′32″ W and 21°47′01″ N, 156°59′31″ W;

(5) All waters of Kahului Harbor, Maui inland from a line drawn between 20°54′01″ N, 156°28′26″ W and 20°54′02″ N, 156°28′18″ W;

(6) All waters of Kawaihae Harbor, Hawaii inland from a line drawn between 20°02′14″ N, 158°50′02″ W and 20°02′19″ N, 155°49′55″ W;

(7) All waters of Hilo Harbor, Hawaii inland from a line drawn between 19°44′17″ N, 155°05′22″ W and 19°44′34″ N, 155°04′31″ W;

(8) All waters of Nawiliwili Harbor, Kauai inland from a line drawn between 21°56′58″ N, 159°21′28″ W and 21°57′11″ N, 159°21′10″ W;

(9) The Port Allen, Kauai from all waters immediately adjacent to the Department of Transportation commercial pier (located at 21°53′59″ N, 157°35′21″ W) extending out to 100 yards from the piers faces;

(b) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23, Subpart C, apply to the safety zones created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing safety zones found in 33 CFR part 165.

(2) Entry into or remaining in this zone is prohibited unless authorized by the COTP Honolulu or his designated representative.

(3) Persons or vessels desiring to transit the safety zones identified in paragraph (a) of this section may contact the COTP Honolulu through his designated representatives at the Command Center via telephone: (808) 842–2600 and (808) 842–2601; fax: (808) 842–2642; or on VHF channel 16 (156.8 Mhz) to request permission. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative.

(5) The commercial ports of the Hawaiian Islands will be closed to all inbound traffic when the COTP Honolulu issues a marine safety information bulletin twelve hours before the onset of tropical storm force winds are forecasted to impact the port. All vessels over 200 gross tons must evacuate.

(6) All vessels unable to comply with this safety zone may request a waiver from the COTP Honolulu by submitting a request with their hurricane plans for review and approval by the designated representative of COTP Honolulu.

(7) The harbors will remain closed until the Coast Guard issues an ''All Clear'' for the harbor after the storm passes and a survey of the Harbor for potential hazards is completed by the Coast Guard.

(c) *Definitions.* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP Honolulu to assist in enforcing the security zone described in paragraph (a) of this section.

(f) *Enforcement period.* This rule will be enforced from 11 a.m. on August 22, 2018, through 11 a.m. on August 29, 2018.

(g) *Notice of enforcement.* The COTP Honolulu will cause Notice of the Enforcement of these safety zones described in this section to be made by Broadcast to the maritime community via marine safety information bulletins and broadcast notice to mariners on VHF channel 16 (156.8 MHz).

Dated: August 22, 2018.

M.C. Long,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2018–18581 Filed 8–27–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0282; FRL–9981–98—Region 9]

Approval of Air Plan Revisions; Approvals and Promulgations: California; Placer County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing action on a revision to the Placer County Air Pollution Control District (PCAPCD or District) portion of the California State Implementation Plan (SIP). This revision concerns the District's Prevention of Significant Deterioration (PSD) permitting program for new and modified sources of air pollution. We are finalizing action on a local rule under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule will be effective on September 27, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2018–0282. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

Table of Contents

I. Proposed Action

On June 14, 2018 (83 FR 27738), the EPA proposed to fully approve the following rule that was submitted for incorporation into the PCAPCD portion of the California SIP.

TABLE 1—SUBMITTED RULE

Rule No.	Rule title	Adopted or amended	Submitted
518	Prevention of Significant Deterioration (PSD) Permit Program	10/13/16	1/24/17

We proposed approval of this rule because we determined that the rule met the statutory requirements for SIP revisions as specified in section 110(l) of the CAA, as well as the substantive statutory and regulatory requirements for a PSD permit program as contained in CAA section 110(a)(2)(C) and 40 CFR 51.166.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received two comments on the proposed rule. These comments raised issues that are outside the scope of our proposed approval of Rule 518, including air pollution monitoring in China and India, climate change, and wind and solar power costs and regulations. None of those comments are germane to our evaluation of Rule 518.

The EPA is required to approve a state SIP submission if the submittal meets

all of the applicable requirements of the Act. 42 U.S.C. 7410(k)(3). None of the submitted comments indicate that the District's submittal of Rule 518 does not meet the requirements of the Act.

III. EPA Action

No comments were submitted that change our assessment that submitted Rule 518 satisfies the applicable CAA requirements. Therefore, under CAA sections 110(k)(3) and 301(a), and for the reasons set forth in our June 14, 2018 proposed rule, we are fully approving Rule 518. This action incorporates the submitted rule into the PCAPCD portion of the California SIP and makes it federally enforceable. In addition, because we are finalizing our proposed action, we are removing the existing Rule 518 from the PCAPCD portion of the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the PCAPCD rule listed in Table 1 of this document. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New source review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 27, 2018.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(391)(i)(C)(*2*) and (c)(497)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(391) * * *

(i) * * *

(C) * * *

(*2*) Previously approved on December 10, 2012 in paragraph (c)(391)(i)(C)(*1*) of this section and now deleted with replacement in paragraph (c)(497)(i)(B)(*2*) of this section, Rule 518, ''Prevention of Significant Deterioration (PSD) Permit Program.''

* * * * *

(497) * * *

(i) * * *

(B) * * *

(*2*) Rule 518, ''Prevention of Significant Deterioration (PSD) Permit Program,'' amended on October 13, 2016.

* * * * *

■ 3. Section 52.270 is amended by revising paragraph (b)(6) to read as follows:

§ 52.270 Significant deterioration of air quality.

* * * * *

(b) * * *

(6) The PSD program for the Placer County Air Pollution Control District (PCAPCD), as incorporated by reference in § 52.220(c)(497)(i)(B)(*2*), is approved under part C, subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the PCAPCD, this approval includes the authority for the PCAPCD

to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

* * * * *

[FR Doc. 2018–18529 Filed 8–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0474; FRL–9981–27]

Aspartic Acid, N-(1,2-dicarboxyethyl)-, Tetrasodium Salt; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt (CAS Reg. No. 144538–83–0) when used as an inert ingredient in antimicrobial pesticide products for which, when ready for use, the end-use concentration does not exceed 5,000 parts per million (ppm) of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt. Lanxess Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt, when used in accordance with the terms of the exemption.

DATES: This regulation is effective August 28, 2018. Objections and requests for hearings must be received on or before October 29, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0474, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0474 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 29, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0474, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of December 15, 2017 (82 FR 59604) (FRL–9970–50), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11063) by Lanxess Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275. The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt (CAS Reg. No. 144538–83–0) when used as an inert ingredient as a chelating agent in antimicrobial pesticide formulations (food-contact surface sanitizing solutions). That document referenced a summary of the petition prepared by Lanxess Corporation, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no relevant comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has limited the maximum end-use concentration, when ready for use, of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt not to exceed 5,000 ppm in

antimicrobial formulations. The reason for this change is explained in Unit V.B. below.

III. Inert Ingredient Definition

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

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

In a mammalian metabolism study, only 37% of the administered dose was systematically available (34.7% urine and 2.2% tissues and carcass), and most of that was from second phase absorption. Primary radioactivity recovered after 72 hours was from urine and feces, with 68.7% of the radioactive dose being excreted in the feces and 34.7% of the radioactive dose being excreted in the urine.

Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt exhibits low levels of acute toxicity. An acute study in rats showed an oral Lethal Dose ($LD)_{50}$ >2,000 milligram/kilogram (mg/kg). The dermal LD_{50} in rats was >2,000 mg/kg. It was not shown to be a skin or eye irritant or dermal sensitizer. There are no inhalation studies available.

Two 28-day studies (drinking water and gavage) were conducted with Wistar rats using aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt. There were no toxicologically related adverse effects seen at dosed up to and including 1,750 kg/kg/day or 1,000 mg/kg/day, respectively.

Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt was administered to rats (drinking water and gavage) in two 90-day toxicity studies. In both studies effects were seen in the kidneys and urinary bladder. In the drinking water study, the most sensitive endpoint (*i.e.,* moderate diffuse transitional cell hyperplasia in the urinary bladder) was seen in both the main group and satellite groups (recovery phase) males exposed to 300 mg/kg/day and greater. Therefore, the NOAEL was 100 mg/kg/day and the LOAEL was 300 mg/kg/day based on this diffuse transitional cell hyperplasia in the urinary bladder.

In the 90-say gavage study, again effects were seen in the kidney and urinary bladder, this time the most sensitive endpoint was based on the effects seen at 1,000 mg/kg/day: Hyperplasia of the transitional cell epithelium of the bladder, basophilic cortical tubules in the kidneys, and other urinary changes (*e.g.,* increased urinary pH, as well as some changes observed in clinical pathology (increased blood urea concentrations in males; slightly lower blood concentrations of potassium and chloride)). The NOAEL for this study was 200 mg/kg/day and the LOAEL was 1,000 mg/kg/day based on hyperplasia of the transitional cell epithelium of the bladder, basophilic cortical tubules in the kidneys, and other urinary changes.

In a developmental toxicity study, groups of inseminated female rats were treated with aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt daily by oral gavage from day 6 to day 19 post coitum in doses of 0, 100, 300, or 1,000 mg/kg/day. Decreased food consumption and body weight gain were seen in treated females at 1,000 mg/kg/day. No developmental effects were observed in this study at doses up to and including 1,000 mg/kg/day.

Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt was administered to groups of rats in drinking water in a one generation reproductive toxicity study. Reproduction parameters were not affected at dose levels up to 16,000 ppm (~2081 mg/kg/day). The body weight development of F_1 pups was decreased at 16,000 ppm. The concentration of

4,000 ppm (~411 mg/kg/day) was established as the NOAEL for the parent animals based on macroscopic and microscopic changes in the kidneys at the LOAEL of 16,000 ppm. The reproductive NOAEL was 16,000 ppm. The offspring toxicity NOAEL was 4,000 ppm based on decreased body weight development of F_1 pups seen at 16,000 ppm.

Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt was administered in drinking water to Wistar rats for up to two years, groups of inseminated female rats were treated daily by oral gavage from day 6 to day 19 post coitum in doses of 0, 100, 300, or 1,000 mg/kg/day. Decreased food consumption and body weight gain were seen in treated females at 1,000 mg/kg/day. No developmental effects were observed in this study at doses up to and including 1,000 mg/kg/day.

Body weight development of males treated at 1,000 mg/kg/day was slightly decreased but statistically significant. Water consumption was increased in all treated groups; however, at 100 mg/kg/day the differences were slight. Increased urine excretion and changed feces consistency (soft) observed at clinical observation of the animals are regarded to be secondary to the increased water intake. The most consistent finding in the urinalysis was an increase of the pH of the urine at 1,000 mg/kg/day in both sexes at most all time points.

At microscopy of urinary sediment, erythrocytes were more frequently observed at 1,000 mg/kg/day mainly in males at the first three of four time points. At necropsy, kidneys weights were increased starting at 300 mg/kg/day in females and 1,000 mg/kg/day in males. Furthermore, the kidneys of females treated for two years showed discoloration and increased surface changes starting at 300 mg/kg/day. Histopathological evaluation of the kidneys revealed increased incidence of small mineralizations in the renal parenchyma in males at 1,000 mg/kg/day, mineralized concretions in the renal pelvis in both sexes starting at 300 mg/kg/day, and increased severity of chronic progressive nephropathy (CPN) in females starting at 300 mg/kg/day. These findings likely indicate a mineral imbalance/influence on calcium homeostasis, leading to an increased incidence of parenchymal and pelvic mineralizations. The NOAEL for this study was 100 mg/kg/day with a LOAEL of 300 mg/kg/day based on increased water consumption, increased severity of CPN, and macroscopic and microscopic changes in the kidney. Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt was not carcinogenic in this study.

There is no evidence that oral exposure to aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt suppresses or otherwise harms immune function in mammalian systems. No signs of neurotoxicity were reported in acute or repeat-dose oral studies. There were also no signs of carcinogenicity in the database including the 2-year feeding study. Similarly, all tests for genotoxicity, mutagenicity, and clastogenicity were negative.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

The point of departure for this risk assessment for all durations (except acute) and routes of exposure is from the two-year drinking water toxicity study in rats. The NOAEL is 100 mg/kg/day and the LOAEL is 300 mg/kg/day based on increased water consumption, CPN, macroscopic and microscopic changes in the kidney. Similar effects were seen in a 90-day drinking water study and the same NOAEL and LOAEL were recorded. A 100-fold uncertainty factor was used (10X interspecies extrapolation, 10X for intraspecies variability, and 1X Food Quality Protection Act Safety Factor (FQPA SF)). The FQPA SF is reduced to 1X because the reproductive and developmental toxicity database is complete and there is no evidence of increased risk to infants and children. See Section VII below for more information on the FQPA SF.

Because no acute effect was attributed to aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt, an acute assessment was not conducted. When the 100X uncertainty or safety factor is applied, the cPAD is 1 mg/kg/day. The residential and aggregate LOC is for MOEs that are less than 100 and is based on 10X interspecies extrapolation, 10X for intraspecies variability and 1X FQPA factor. In the absence of dermal absorption data, dermal absorption is estimated to be 100%

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt in food as follows:

To assess dietary exposure, the Agency calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI) using US Food and Drug Administration (FDA) Food Contact Surface Sanitizing Solution Dietary Exposure Assessment Model. EPA's assessment used FDA's default assumptions for the amount of residual solution or quantity of solution remaining on the treated surface without rinsing with potable water (1 mg/cm^2); surface area of the treated surface which comes into contact with food (4,000 cm^2); and the pesticide migration fraction (100%). EPA used an application rate of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt of 5,000 ppm, which was provided by the submitter. EPA also derived exposure amounts for population subgroups by accounting for body weights and adjusting for relative food consumption using data from the National Health and Nutrition Examination Survey (NHANES) (specifically the 2003–2008 survey data).

The use of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt as a bleaching stabilizer in the manufacture of paper and paperboard has been approved by the FDA as an indirect food additive in food-contact paper and paperboard at levels not to exceed 0.18 percent by weight of the dry pulp. The migration of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt from

food contact paper and paperboard into food, and subsequent dietary exposure has been including in the overall dietary exposure.

2. *Dietary exposure from drinking water.* The proposed inert ingredient will be used in low concentrations in food-contact antimicrobial pesticide products (food-contact surface sanitizing solutions), which will be used indoors. This use pattern would not be expected to result in measurable levels in surface waters or drinking water. Therefore, for the purpose of the screening-level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt, drinking water values were considered negligible and are not expected to contribute to the overall dose.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt will be used in residential settings in antimicrobial pesticide products applied to food-contact surfaces. As such, dermal exposure to aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt is possible; therefore, a residential exposure assessment was completed. The Agency conducted a conservative assessment of potential residential exposure by assessing aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt in antimicrobial pesticide formulations used for hard-surface disinfection in and around the home. The Agency's residential exposure includes dermal exposures only as based on the lack of volatility of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt, inhalation exposure is not expected to occur.

The wiping scenario was utilized for this assessment. In this scenario, residential handlers (*i.e.,* applicators) are assumed to be wearing shorts and short-sleeve shirts, shoes, and socks (and no gloves). Residential post-application exposures were not assessed for this scenario as such exposures would be expected to be negligible. Reliable exposure data from non-pesticidal uses such as use in cosmetics was not available.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt to share a common mechanism of toxicity with any other substances, and aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No effects on infants and children were seen in either a reproductive or developmental study in the absence of maternal effects at the limit dose of 1,000 mg/kg/day. A reproductive study showed no effect on reproductive parameters or fertility at doses >2,000 mg/kg/day (16,000 ppm). Decreased body weight gain was seen in pups at 16,000 ppm. This effect was observed in the presence of maternal toxicity indicating that there is no increase in susceptibility to offspring.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt is complete.

ii. There is no indication that aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt results in increased susceptibility in *in utero* rats in the prenatal developmental studies or in young rats in the reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. In order to account for all potential exposure, a conservative exposure assessment was performed assuming a 100% transfer coefficient and 100% dermal absorption. This model assumes a worst case scenario of no gloves, shorts and short sleeved shirt. Based on these conservative assumptions, EPA believes that using this model will not underestimate the exposure and risk from aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt as an inert ingredient in antimicrobial pesticide products.

E. Aggregate Risks and Determination of Safety

Determination of safety section. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to aspartic acid, N-(1,2 dicarboxyethyl)-, tetrasodium salt from food will utilize 72% of the cPAD for children (1–2 year old), the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus

chronic exposure to food and water (considered to be a background exposure level). Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt may be used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposure to aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt.

Using the exposure assumptions described above for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 200. Because EPA's level of concern for aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt may be used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposure to aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt.

Using the exposure assumptions described above for intermediate-term exposures, EPA has concluded the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 200. Because EPA's level of concern for aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in rodent carcinogenicity studies, aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt in or on any food commodities. EPA is establishing limitations on the amount of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt that may be used in pesticide formulations applied to semi-permanent or permanent food-contact surfaces. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for use in antimicrobial pesticide products for sale or distribution that exceeds 5,000 ppm of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt in the final formulation unless additional data are submitted that demonstrate a higher concentration would be safe.

B. Revisions to Petitioned for Tolerances

Although the petition did not specify a limitation on concentration of this inert ingredient in end-use antimicrobial pesticide formulations, the Agency is establishing this exemption with the limitation of 5,000 ppm in pesticide formulations. Based upon an evaluation of the data included in the petition, unlimited use resulted in risks of concern; therefore, EPA is establishing a limitation in formulation when ready for use, (*i.e.,* the end-use concentration is not to exceed 5,000 ppm) in order to support the safety finding for this tolerance exemption. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document *IN–11063; Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt: Human Health Risk and Ecological Effects Assessment of a Food Use Pesticide Inert Ingredient* in docket ID number EPA–HQ–OPP–2017–0474.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.940(a) for aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt (CAS Reg. No. 144538–83–0) when used as an inert ingredient (as a chelating agent) in antimicrobial pesticide formulations (food-contact surface sanitizing solutions) applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum of 5,000 parts per million (ppm) in final formulation.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10,

1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: August 15, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Program.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.940 in paragraph (a), add alphabetically the inert ingredient ''Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt'' to the table to read as follows:

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

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * * * * * *		
Aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt	144538–83–0	When ready for use, the end-use concentration is not to exceed 5000 ppm.
* * * * * * *		

* * * * *

[FR Doc. 2018–18404 Filed 8–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R09–2018–RCRA–0267; FRL–9982–86—Region 9]

Hawaii: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting final authorization of changes to Hawaii's hazardous waste program submitted to EPA in the authorization application. As a result of EPA's authorization, Hawaii's revised program will become part of the authorized state hazardous waste program, and therefore will be federally enforceable. The Agency published a proposed rule on June 25, 2018, and provided for public comment. No substantive comments were received that were relevant to our proposed action.

DATES: This final authorization is effective August 28, 2018.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, *phone number:* 415–972–3364, email: *amaro.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Authorization of Revisions to Hawaii's Hazardous Waste Program

On December 13, 2017, Hawaii submitted a final complete program revision application (with subsequent corrections) seeking authorization in accordance with 40 CFR 271.21. Having received no public comments relevant to our proposed authorization, we have determined that Hawaii's hazardous waste program revisions satisfy all requirements necessary to qualify for final authorization. For a list of rules that become effective with this final action, please see the proposed rule published in the **Federal Register** (83 FR 29520, June 25, 2018).

B. What is codification and is EPA codifying Hawaii's hazardous waste program as authorized in this rule?

Codification is the process of placing a state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized state rules in 40 CFR part 272. EPA is not codifying the authorization of Hawaii's revisions as part of today's action.

C. Statutory and Executive Order Reviews

This final authorization revises Hawaii's authorized hazardous waste management program pursuant to RCRA section 3006 and imposes no requirements other than those currently imposed by state law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the proposed rule published in the **Federal Register** (83 FR 29520, June 25, 2018).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 14, 2018.

Deborah Jordan,

Acting Regional Administrator, Region 9.

[FR Doc. 2018–18527 Filed 8–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2003–0010; FRL–9982–84—Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Omaha Lead Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) Region 7 announces the deletion of 101 residential parcels of the Omaha Lead Superfund site (Site or OLS) located in Omaha, Nebraska, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Nebraska, through the Nebraska Department of Environmental Quality, determined that all appropriate Response Actions under CERCLA were completed at the identified parcels. However, this deletion does not preclude future actions under CERCLA.

This partial deletion pertains to 101 residential parcels. The remaining parcels will remain on the NPL and are not being considered for deletion as part of this action.

DATES: This action is effective August 28, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID no. EPA–HQ–SFUND–2003–0010. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, and viewing hours of the Site information repositories are:

- EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, open from 8 a.m. to 4 p.m. Monday–Friday.
- W. Dale Clark Library, located at 215 S 15th Street, Omaha, NE 68102, open 10 a.m. to 8 p.m. Monday–Thursday; 10 a.m. to 6 p.m. Friday and Saturday; and 1 p.m. to 6 p.m. Sunday.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hagenmaier, Remedial Project Manager, U.S. Environmental Protection Agency, Region 7, SUPR/LMSE, 11201 Renner Boulevard, Lenexa, KS 66219, telephone (913) 551–7939, email: *hagenmaier.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL are 101 residential parcels of the Omaha Lead Superfund site, Omaha, Nebraska. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** (83 FR 29731) on June 26, 2018.

The closing date for comments on the Notice of Intent for Partial Deletion was July 26, 2018. One public comment was received which was not site-related and EPA has determined it will proceed with the partial deletion.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

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

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.

Dated: August 10, 2018.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2018–18525 Filed 8–27–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17–289, FCC 18–114]

Rules and Policies To Promote New Entry and Ownership Diversity in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission establishes the requirements that will govern the incubator program that the Commission decided to adopt to support the entry of new and diverse voices into the broadcast industry.

DATES: This action contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the approval date for the information collection requirements.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, *Radhika.Karmarkar@fcc.gov,* or 202–418–1523.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 18–114, in MB Docket No. 17–289, adopted on August 2, 2018, and released on August 3, 2018. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at *https://apps.fcc.gov/edocs_public/* (*https://apps.fcc.gov/edocs_public/*). The complete document is available for inspection and copying in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554 (for hours of operation, see *https://www.fcc.gov/general/fcc-reference-information-center*). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. With this *Report and Order,* we establish the requirements that will govern the incubator program that the Commission previously decided to adopt to support the entry of new and diverse voices into the broadcast industry. Last year, the Commission decided to adopt an incubator program with the goal of creating ownership opportunities for new entrants and small businesses, thereby promoting competition and diversity in the broadcast industry. We recognize the need for more innovative approaches to encourage access to capital, as well as technical, operational, and management training, for those new entrants and small businesses that, without assistance, would not be able to own broadcast stations. Thus, the incubator program is designed with those specific entities in mind—small businesses, struggling station owners, and new entrants that do not have any other means to access the financial assistance and operational support the incubator program seeks to provide. In keeping with that goal, the program requirements we adopt today will enable the pairing of small aspiring, or struggling, broadcast station owners with established broadcasters. These incubation relationships will provide new entrants and struggling small broadcasters access to the financing, mentoring, and industry connections that are necessary for success in the industry but to date have been unavailable to many.

II. Background

2. The Commission has long contemplated the potential for an incubator program to provide new sources of capital and support to entities that may otherwise lack access to financing or operational experience. In concept, an incubator program seeks to provide an established broadcaster with an inducement in the form of an ownership rule waiver or similar benefit to invest the time, money, and resources needed to facilitate broadcast station ownership by new and diverse entrants. An incubator program contemplates that, in exchange for a defined benefit, an established company could assist a new owner by providing ''management or technical assistance, loan guarantees, direct financial assistance through loans or equity investments, training, or business planning assistance.''

3. Although the concept of an incubator program has been discussed since at least the early 1990s and has received general support, the Commission had never undertaken the creation of such a program, and explicitly declined to adopt a program as part of its 2010/2014 Quadrennial Media Ownership Review. In late 2017, however, the Commission reconsidered that determination and at long last decided to adopt an incubator program to help address the lack of access to capital and technical expertise faced by potential new entrants and small businesses. While the Commission committed to initiating an incubator program, it desired further input regarding how best to structure and implement a comprehensive program in light of current market and regulatory conditions. Accordingly, the *NPRM* sought comment on eligibility criteria for the incubated entity; appropriate incubating activities; potential benefits to the incubating entity; how such a program would be reviewed, monitored, and enforced; and the attendant costs and benefits created. See 83 FR 774 (Jan. 8, 2018).

4. The record developed in this proceeding presents a range of thoughtful suggestions and recommendations for the incubator program. We are particularly grateful to the Commission's Advisory Committee on Diversity and Digital Empowerment (ACDDE) for the group's extensive consideration of the incubator program and the elements that should define it. The ACDDE working group members devoted many hours to meetings and review of empirical data before making recommendations to the full committee on how to structure the incubator program. The resulting extensive comments provided invaluable research and proposals that the Commission has carefully considered.

5. With this *Report and Order,* we implement a long overdue mechanism to address the primary barriers to station ownership by new and diverse entities: Lack of access to capital and the need for technical and operational experience. In implementing this program, our expectation is that each successful incubation relationship will result in the acquisition of a broadcast radio station by a new entrant or small business, or the preservation of an existing, but struggling, small broadcaster. Accordingly, successful implementation of the incubator program we adopt today will promote ownership diversity by fostering entry into the broadcasting sector by entrepreneurs and small businesses, including those owned by women and minorities.

Services Eligible for Incubator Program

6. The incubator program we outline today will apply to full-service AM and FM radio broadcast stations, as we find that the radio industry provides the best opportunities for successful incubation relationships and the best opportunity for an appropriate reward. In the *NPRM,* the Commission sought comment on whether its incubator program should be focused on radio, as the proposal was initially conceived, or should apply to television as well. The *NPRM* further queried whether the Commission should adopt a phased approach, whereby the incubator program would be implemented on a trial basis in radio and then evaluated for possible expansion to the television market. Based on the record of this proceeding, we find that the radio market has several advantages over the television market as an incubation setting.

7. Perhaps most importantly, the cost of obtaining a radio station is significantly lower than the cost of obtaining a television station. Indeed, the cost of acquiring a television station is generally many times that of a radio station. For example, in 2016 the average sales price of a radio station on the secondary market was approximately $1 million, and the average price of a television station was $53 million. Due to their lack of broadcasting experience and financial collateral, new entrants and small broadcasters often face significant difficulties in accessing the capital needed to purchase broadcast stations in the secondary market or to participate in Commission broadcast auctions for new construction permits. Indeed, the record reveals that access to capital is most often the barrier to broadcast station ownership. Furthermore, given the larger numbers of radio stations in the country (11,371 commercial, full-service AM and FM stations) versus television stations (1,377 commercial, full-service stations), we find that radio is a more accessible entry point than television. In addition, the operating costs of running a radio station are significantly lower than those for operating a television broadcast station. As a going concern, radio is less cash flow intensive, requires fewer personnel to operate, and requires programming resources that are less costly than those for television stations. For these reasons, we find that transitioning from a qualifying incubation relationship to independent ownership will be more feasible for incubated entities in the radio service than in television. Consequently, for entities with already limited capital resources and operational experience,

we conclude that radio is a significantly more accessible entry point into the broadcasting industry than television.

7. We expect that implementing an incubator program focused on the radio market will also motivate the participation of incumbent broadcasters, who are key to the success of the program, as they have the power to ensure that the new entrants and small businesses attracted to the radio industry are able to acquire, operate, and grow a broadcast station. As noted above, we anticipate that the inducement of a waiver of the Commission's Local Radio Ownership Rule will provide sufficient incentive for incumbent broadcasters to participate in the program. That is, we expect that radio station group owners will seek to incubate a new entrant or small broadcaster in order to obtain permission to exceed the applicable ownership limit in a market. In reaching this conclusion, we note that the local radio numerical limits and the AM/FM service caps have remained unchanged since they were prescribed by Congress over 20 years ago in the Telecommunications Act of 1996. Thus, the existing Local Radio Ownership Rule has restricted the ability of incumbent broadcasters to grow larger in any given market for over two decades. In addition, Joint Sales Agreements (JSAs) for greater than 15 percent of a station's time remain attributable in radio. Accordingly, given the longstanding strictures remaining on radio ownership, we believe a waiver of the Local Radio Ownership Rule will provide an effective incentive for incumbent broadcasters to incubate either new entities seeking entry into the broadcasting industry or small broadcasters.

8. By contrast, the Commission has recently revised the rules governing local television ownership, including eliminating the attribution of television JSAs; eliminating the eight voices test, which required that at least eight independently owned television stations remain in the market after combining ownership of two stations in a market; and, adopting a hybrid approach to application of the top-four prohibition, permitting case-by-case review of the restriction on ownership of two top-four ranked stations in the same market. In light of these changes and the state of the record in this proceeding as it pertains to television station incubation, we do not believe that it would be appropriate at this time to offer a waiver of the Local Television Ownership Rule as a reward for incubating a television station. However, we do not foreclose the possibility of reaching a different conclusion following the completion of our next quadrennial review depending on the record that is compiled regarding the local television marketplace in that proceeding. Additionally, were Congress to provide an alternative benefit for incubating broadcasters, we would be strongly inclined to expand the program to include television stations.

9. Based on our consideration of the record and the current broadcast marketplace, including the existing broadcast ownership rules, we conclude that an incubator program has the greatest likelihood of success in the radio industry. Although some commenters, including NAB, advocate for an incubator program for both radio and television broadcast services, for the reasons stated in this section, we determine that the better approach at this time is to focus our program on the radio market. We note, however, that the ''leg up'' provided to these new and small broadcasters via the incubator program, by allowing them to establish a track record of successful station ownership and providing them increased access to capital, may ultimately position them to add television stations to their radio holdings. For all the reasons provided above, we determine that our initial foray into the use of an incubator program as a mechanism to increase broadcast ownership diversity should be limited to full-service radio. As we gain more experience with the program and assess evolving market and regulatory trends in the television sector, we will be able to analyze whether it is appropriate to expand the program to television.

Defining Entities Eligible for Incubation

10. In this section, we establish the eligibility criteria governing which entities may qualify for incubation under our program. Our criteria consist of both a numeric limit on the number of stations a potential incubated entity may own prior to entering into a qualifying incubation relationship (based on our existing new entrant bidding credit), as well as a revenue cap (based on our existing eligible entity definition). Additionally, as discussed below, we adopt certain safeguards to ensure further that a potential incubated entity genuinely lacks the necessary resources that would have enabled it to enter or succeed in the broadcast industry absent the incubation relationship. Finally, we also address alternative eligibility criteria that were proposed in our record.

11. The *NPRM* sought comment on how to determine eligibility for participation in the incubator program and put forth several options, including the new entrant bidding credit model, a revenue-based eligible entity standard, a socially and economically disadvantaged businesses (SDB) model, and an Overcoming Disadvantages Preference (ODP) standard. The *NPRM* also sought comment on which of these standards best aligns with the Commission's goal of facilitating ownership opportunities for entities that lack access to capital and operational experience and, thereby, best promotes competition and viewpoint diversity in local markets.

12. The ultimate goal of the incubator program is to encourage new entry into the broadcast industry, an industry which—as our record demonstrates—is extremely capital-intensive. The Commission has previously recognized, and the record here confirms, that new entrants and small businesses have had longstanding difficulties accessing the needed capital to participate in broadcast ownership. For example, Diane Sutter, President of ShootingStar Inc., notes that ''[t]he size of a deal is extremely important to most banks. Many entrants are limited to purchasing smaller broadcast stations, given their resources; however, banks often consider it not worth the potential risk to finance smaller deals for a new owner.'' For our incubator program to redress the lack of access to capital, as well as to facilitate operational, managerial, and technical support, it is critical that our eligibility criteria properly identify those entities that are most likely to benefit from program participation and, thereby, increase diversity in the broadcast sector.

13. After careful consideration of the record in this proceeding and the various standards discussed in the *NPRM,* we adopt today a two-pronged eligibility standard that combines a modified version of the existing new entrant bidding credit standard, long used in the context of broadcast auctions, with the revenue-based eligible entity definition contained in our broadcast rules. As detailed below, under the first prong, the potential incubated entity, including its attributable interest holders, may hold attributable interests in no more than three full-service AM or FM radio stations and no TV stations. The ownership limit of three full-service radio stations does not include the radio station to be incubated. Under the second prong of our standard, the entity must also qualify as a small business consistent with the SBA standards for

the radio industry based on annual revenue, currently $38.5 million or less.

14. *New Entrant Prong.* With respect to the first prong of our standard, we find that modifying the new entrant eligibility standard for this purpose by limiting permissible interests to three full-service AM or FM radio broadcast stations (licenses or unbuilt construction permits) and no TV stations will focus the program on entities that are new or comparatively new to the broadcasting industry (*i.e.,* those with no existing broadcast interests) and small broadcasters (*i.e.,* those with three or fewer full-service radio stations, and no TV stations). The record reflects that individuals seeking to purchase their first or second broadcast station are the ones that often face the most challenging financial hurdles. Thus, the eligibility standard we adopt today is targeted specifically to benefit those small entities seeking to enter the broadcast industry for the first time and to help broadcasters with one, two, or three radio stations to secure the toehold they have obtained in the industry. While we acknowledge that an entity with interests in four or more radio stations or a television station may not necessarily be considered a large or established broadcaster, we expect that a broadcaster with such interests will have more access to traditional financing and capital resources available, such that the resources anticipated to flow through the Commission's incubator program would not be as critical to their entry or survival. Consequently, limiting the eligibility criteria to those who have no more than three radio stations (consistent with the current new entrant bidding credit rule's limitation to ''three mass media facilities''), and no TV stations, best promotes the purposes of the program.

15. Moreover, analyses of Commission broadcast auctions data provided in the record show that the new entrant bidding credit—a modified version of which we adopt herein—has increased successful participation of small businesses owned by women and minorities in the auction of construction permits for AM, FM, and TV stations. NAB performed an analysis of the Commission's broadcast auctions data and found that winning bidders relying on the Commission's new entrant bidding credits were more likely to have indicated that they were owned by women and minorities than winning bidders who did not use the credit. NAB's analysis focused on nine FM broadcast auctions that utilized the new entrant bidding credit. Its study concluded that winning bidders relying on new entrant bidding credits were 93 percent more likely to be women, and 40 percent more likely to be minorities, than winning bidders who did not use the credit. In addition, NAB found that collectively winning bidders using new entrant bidding credits were 64 percent more likely to be minorities or women than other winning bidders.

16. We note that the ACDDE also found that the use of the ''new entrant'' standard in auctions revealed a statistically significant improvement in female and minority participation after its review of 20 FCC broadcast auctions, more than twice the number evaluated by NAB. The ACDDE determined that these auctions attracted a total of 2,531 applicants, of which 1,681 were determined to be qualified bidders. Of the 1,681 qualified bidders, the ACDDE found that (1) 1,457 were new entrants (*i.e.,* held three or fewer mass media interests); (2) qualified minority new entrants (12.4 percent) were more prevalent than qualified minority-owned applicants who were not new entrants (8.7 percent); and (3) qualified women-owned new entrants (10.8 percent) were more prevalent than qualified women-owned bidders who were not new entrants (7.9 percent). Based on this review, the ACDDE agrees that, while not its preferred approach, the new entrant definition ''might have some utility'' as a means of determining eligibility for participation in the incubator program.

17. Commission staff also evaluated data from a number of Commission broadcast auctions conducted over the past several years, and that data reveal that the new entrant bidding credit has increased successful participation of small businesses owned by women and minorities in the auction process for AM, FM, and TV construction permits. The Commission collects data on information voluntarily filed by auction participants utilizing FCC Form 175. Staff analysis of auctions data for 20 auctions shows that of the 2,534 total applicants for those auctions, 1,457 of them, or 57.5 percent of the applicants, indicated that they qualified for the new entrant bidding credit. A total of 408 new entrant bidders were successful in their auction. The percentage of winning bidders that used a new entrant bidding credit and identified as women-owned was three times larger (12 percent) than the percentage of bidders that won without a new entrant bidding credit and were women-owned (4 percent). Similarly, the percentage of winning bidders that used a new entrant bidding credit and identified as minority-owned was almost three times larger (14 percent) than the percentage of bidders that won without the new entrant bidding credit and were minority-owned (5 percent).

18. NAB's and the ACDDE's evaluations of the Commission's broadcast auctions data, like the Commission staff's analysis, suggest that the Commission's use of the new entrant bidding credit standard has been effective in diversifying the pool of successful bidders in the broadcast auctions context. Our assessment encompassed twice as many auctions as those reviewed by NAB, and the overall results of those evaluations were similar—that the percentage of winning bidders who used a new entrant bidding credit and identified as either women-owned or minority-owned consistently exceeded the percentage of winning bidders who did not use a new entrant bidding credit and were women-owned or minority-owned. Thus, we expect that use of a similar new entrant eligibility standard will be an effective means to diversify the applicant pool for the incubator program, by targeting those small broadcasters most in need of the support provided by the incubator program, including minority and female applicants.

19. *Small Business Prong.* The second prong of our eligibility standard requires that incubated entities also qualify as small businesses consistent with the SBA standards for their industry grouping, based on annual revenue, currently $38.5 million or less for radio. NAB supports use of a revenue-based eligible entity standard in combination with a new entrant standard. The ACDDE objects to a revenue-based standard standing alone, asserting that this type of definition ''has little or no value in advancing ownership diversity in the broadcast context.'' We conclude, however, that the revenue cap, in conjunction with the first eligibility prong as well as other safeguards discussed herein, will assist in identifying entities that are more likely to be in need of incubation by established broadcasters. The combination of the new entrant eligibility criteria and the small business revenue standard will narrow the scope of eligible applicants to those applicants most in need of assistance via our incubator program. In this way, we expect to achieve our overarching goal of increasing ownership diversity by facilitating entry and developing broadcast expertise amongst new and small broadcasters.

20. After close review of the record, we find that the eligibility standard set forth above is the best means for identifying incubated entities whose lack of access to capital and operational

experience has impeded their ability to participate successfully in the broadcast sector. We expect that pairing such entities with established incumbent broadcasters who can provide the necessary capital, knowledge, and operational support will ultimately promote competition and viewpoint diversity in local markets. The combination of a numerical cap on broadcast interests and a revenue limitation will ensure that incubated entities participating in the program are truly new or small broadcasters.

21. Moreover, drawn from existing Commission rules, the standard we adopt today provides a clear, objective metric that is familiar to broadcasters. Use of an objective standard has the advantage of being straightforward and transparent for potential applicants, as well as administrable for the Commission without application of significant additional processing resources. Furthermore, unlike some of the other proposals contained in the record, because the new entrant bidding credit standard is race and gender neutral, it does not raise constitutional concerns.

22. We decline to adopt an Overcoming Disadvantage Preference (ODP) standard. The ACDDE advocates for such a standard, which it describes as a ''race-and-gender-neutral preference'' focused on the experiences and efforts of an individual person that affords a preference to those who strived, through superior individual efforts, to attempt to overcome major impediments to success. According to the ACDDE, ''success or failure in overcoming obstacles is not pertinent;'' rather, what would matter is ''effort, the steps the person took to persevere.'' We note the concerns raised by NAB that a standard such as ODP will require the Commission to make subjective decisions on the qualifications of candidates proposed to be the incubated entity, which could be time-consuming, complex, and subject to disputes.

23. The Commission has previously assessed ODP and articulated its concern that the agency lacks the resources to conduct the individualized reviews recommended as a central component of implementing ODP. In the broadcast licensing context, the Commission indicated that the type of individualized consideration that would be required under an ODP standard could prove to be ''administratively inefficient, unduly resource intensive, and inconsistent with First Amendment values.'' We do not find the ACDDE's current filing to have assuaged those concerns. In the Part I Competitive Bidding Rules proceeding, the Commission stated that ''it is not clear what proof should be required from those individuals or entities seeking to receive such a preference or how to apply the ODP on a neutral basis. We are also concerned that our review of such a claim would involve a costly and lengthy process.'' While the ACDDE did offer suggestions for the administration of an ODP standard, the standard remains inherently subjective and, we believe, inappropriate for the broadcast licensing context. Consequently, we affirm our earlier decisions regarding the administrative infeasibility of an ODP standard. For all of the reasons stated above, we decline to implement an ODP standard for the incubator program.

24. In addition to advocating for the use of ODP as the eligibility standard, the ACDDE also proposes that ''mission-based entities'' and Native American Nations be automatically presumed to be eligible for incubation. Although the ACDDE's incubator proposal and the benefits that it would provide incubators—namely the award of tax certificates for stations donated to a mission-based entity or Native American Nation—are not the same as the incentives that we adopt today, we share the ACDDE's goal of including diverse participants in our incubator program. We encourage them to apply and establish clearly in their certified supplemental statements how their participation in the incubator program is consistent with the goals of the program. We recognize that, unlike small, aspiring, and struggling broadcasters, many mission-based entities and Native American Nations have broader missions that encompass much more than broadcasting and thus these entities may be less likely to learn of our incubator program absent education and outreach by the Commission. Therefore, the Commission will conduct outreach to help encourage participation in the incubator program by mission-based entities and Native American Nations that meet the program's eligibility requirements. We decline, however, to adopt the proposed automatic presumption of eligibility.

25. *Safeguards Associated with Eligibility Standard.* We recognize that the ACDDE has raised concerns about the potential for abuse of an eligibility standard based on the Commission's new entrant bidding credit. In particular, the ACDDE references the Commission's comparative broadcast hearings, long since discontinued, in which the ACDDE asserts spousal and parent-child relationships were used to ''game the system and defeat minority new entrants.'' The ACDDE acknowledges, however, that the new entrant definition might be useful in promoting minority and female broadcast ownership if the Commission were able to address these ''legacy applicant'' concerns.

26. To address such concerns, we adopt certain safeguards in conjunction with our two-pronged eligibility standard. As part of the application process, which is described in greater detail below, potential incubated entities must demonstrate that they have met both the numeric and revenue limitation for the preceding three years. Thus, an entity must not only comply with the eligibility standard at the time it applies to participate in a qualifying incubation relationship, but also for the three years prior to its application. NAB proposed a one-year certification period, which would require that applicants certify that, for the year prior to applying for participation in the incubator program, they have met the applicable eligibility standards in terms of the number of stations owned. Such a certification would, in NAB's view, help to discourage any potential manipulation of the program by applicants who dispose of financial interests in additional broadcast properties prior to applying for participation in the incubator program. NAB further proposes that program applicants be required to certify compliance with any revenue eligibility standards that are adopted. We concur with NAB that a certification requirement will safeguard our eligibility concerns; however, we find that a longer 3-year period is more likely to deter any fraud or manipulation than a shorter timeframe.

27. In addition, as part of the incubator program application process, we will require a potential incubated entity to include in its application a certified statement attesting that it would be unable to acquire a station, or continue to operate successfully a station proposed for incubation that it already owns, absent the proposed incubation relationship and the funding, support, or training provided thereby. The Commission, in its discretion, may investigate the accuracy of the certification if it is made aware of information that suggests that the potential incubated entity does not, in fact, need the incubation relationship to purchase and operate a broadcast radio station. All applicants will further be required to detail any attributable interests in broadcast stations held by family members pursuant to FCC Forms 301, 314, and 315, thereby revealing any familial or spousal relations as part of

the application process. If at any point the Commission determines that the certified statement contained misrepresentations, both the incubated and incubating entities may suffer negative consequences. Pursuant to the Commission's *Character Policy Statement,* we would examine the qualifications of both parties to hold or retain broadcast licenses.

28. The incubator program is designed to assist those new or small broadcasters who do not have access to the necessary capital or technical expertise absent a qualifying incubation relationship. Thus, an individual who provides evidence of a meager bank account and attests to limited resources might subsequently be disqualified from the program, while also being subject to any penalties associated with making misrepresentations to a federal agency, if it is later determined that this individual also had access to a large personal trust fund designed to assist him or her in business ventures. Likewise, the incubating entity affiliated with this incubation relationship may find its reward waiver withheld or revoked, depending on whether it knew, or should reasonably have known, about the incubated individual's access to such a trust fund or other assets. We expect that the possibility of negative consequences for both the incubated and incubating entities for any misrepresentations regarding the incubated entity's need for the program should serve as a sufficient deterrent against such behavior.

Qualifying Incubation Relationships

29. In this section, we adopt requirements for qualifying incubation relationships. As discussed below, we will require that qualifying incubation relationships provide the incubated entity with the financial and operational support it lacks (including management training), that such relationships include an option for the incubated entity to purchase the incubating entity's equity interest in the incubated station and/or terminate the incubating entity's creditor-debtor relationship with the incubated entity, and that the standard time period for such relationships be three years, with the option to extend for up to another three years. We also adopt certain safeguards to ensure that the incubated entity retains control of the incubated station.

30. The *NPRM* sought comment on the combination of activities that should be required to qualify as incubation and whether there should be any conditions or limitations on the financial and operational aspects of a qualifying incubation relationship. Noting that proponents had previously proposed that an incubator program include management or technical assistance, loan guarantees, direct financial assistance through loans or equity investment, training, and business planning assistance, the *NPRM* asked whether the program should also include other activities, such as donating stations to certain organizations or arrangements whereby a new entrant gains operational experience without first acquiring a station (*e.g.,* pursuant to a Local Marketing Agreement (LMA)). In addition, the *NPRM* asked what additional safeguards the Commission should include in order to ensure that the incubated station licensee retains control of its station. We conclude that qualifying incubation relationships are those in which an experienced AM or FM broadcaster provides an eligible new or small broadcaster with support that it cannot obtain on its own and that is essential to its ability to independently own and operate a full-service AM or FM station. We expect qualifying incubation relationships to provide the incubated entity with financial and operational support (including management training) that it needs and that will ultimately enable the incubated entity to own and operate independently either the incubated full-service AM or FM station or another full-service AM or FM station acquired at the completion of the program. We allow parties the flexibility to tailor each proposed incubation relationship to the specific needs of the incubated entity while adopting certain safeguards to ensure that the incubated entity retains full control of the incubated station.

31. *Financial and Operational Support.* Commenters that support an incubator program agree that the incubating entity should provide the financial and operational support that the incubated entity needs and that the parties should have flexibility to determine the specific combination of elements needed to support the incubated station according to its particular circumstances. Requiring the incubating entity to provide the financial and operational support that the incubated entity needs is consistent with the goal of the incubator program, which is to help address the lack of access to capital and operational expertise faced by potential new entrants and small businesses, as discussed above. The record also indicates, however, that there may be some benefit to requiring an incubated entity to make a financial contribution to the incubation relationship to solidify its own commitment towards the endeavor.

32. Rather than dictate specific minimums for the financial and/or operational support that an incubating entity must provide, we conclude that the better approach is to give parties the flexibility to tailor an incubation plan to the needs of the incubated entity, the realities of the marketplace, and the needs of the community in which the incubated station operates. For example, an incubated entity that already owns and operates an AM or FM station will likely need less financial and operational support than a first-time owner of a broadcast station. Similarly, an incubated entity that has previously programmed a station and sold advertising time will likely need less operational support than a new owner with less experience. Thus, the financial and operational needs of each incubated entity will likely differ depending on how much experience it has in broadcasting and its other assets. It is possible that in some cases, an incubated entity will just need one form of support or the other—*i.e.,* financial or operational. For instance, if a broadcaster donates a station to a mission-based entity, as suggested by the ACDDE, the broadcaster may not necessarily need to provide any additional financing to fund the incubation activities. Nevertheless, a broadcaster that chooses to incubate in this manner would still be required to provide the incubated station with operational support, as discussed herein, to enable the mission-based entity to operate the station independently in the long term.

33. These are just a few examples of how the specific financial and operational needs of an incubated entity may differ depending on the circumstances. We emphasize that qualifying incubation relationships must provide an incubated entity with the level of support needed to enable the incubated entity to own and operate a full-service AM or FM station independently at the conclusion of the qualifying incubation relationship. Depending on the needs of the incubated entity, a qualifying incubation relationship will likely provide or guarantee a substantial share of the financing needed to acquire the incubated full-service AM or FM station and operate it effectively. The incubation relationship must ensure that the incubated entity has sufficient financial resources to hire enough employees to oversee the operation of the station, acquire and produce station programming, acquire and maintain

station equipment and facilities, etc. While the incubating entity may often provide the bulk of the financial resources, we do expect the incubated entity to contribute a substantial amount of funding to support the incubated station. We find that requiring the incubated entity to assume some of the financial risk by making a meaningful financial contribution to the incubation relationship will provide further assurance of the incubated entity's commitment to the success of the relationship. Consequently, as discussed below, we require the incubated entity to hold a minimum equity interest in the incubated station consistent with the control test contained in our existing revenue-based eligible entity definition.

34. For operational support, a qualifying incubation relationship will likely also provide operational assistance and intensive training in the following areas: Engineering/technical operations, office support, sales, programming, and management, including business planning, finances, and administration. These areas of operational support encompass those that commenters have proposed and that proponents have traditionally conceived of as part of a comprehensive incubator program.

35. The specific components of a qualifying incubation relationship may vary based on the amount of industry experience an incubated entity has previously obtained, the incubating entity's existing resources, and the specific needs of the station to be incubated. Parties may be able to demonstrate that an incubated entity already has significant experience in some of the areas listed above and that a qualifying incubation relationship for that entity requires fewer components. Regardless of which of these specific components are included in a particular incubation relationship, the support required by a qualifying incubation relationship must ultimately enable the incubated entity to own and operate independently either the incubated station or another full-service AM or FM station at the conclusion of the incubation relationship. We expect that an incubation relationship where both parties have established a plan for the incubated entity to own and operate independently either the incubated station or a newly acquired full-service AM or FM station at the end of the incubation relationship, with progress indicators identified as part of a contract between the parties, holds the greatest likelihood of success. As discussed below, after the second year of incubation we will not allow any brokering or sharing arrangements involving the incubated station to ensure that the incubated entity demonstrates its ability to operate the incubated station independently prior to the end of the relationship.

36. *Option to Buy Out Incubating Entity or Obtain Assistance in Acquiring a New Station.* We agree with the ACDDE's proposal that qualifying incubation relationships must include an option that provides the incubated entity with the right, but not the obligation, to purchase the incubating entity's equity interest in the incubated station, if it holds one. The price and terms of this buy-out option must be commercially reasonable and must not strongly favor the incubating entity, and the purchase price must not exceed the station's fair market value. The fair market value must be determined through customary valuation methods that rely on audited financial statements prepared by a certified public accountant, real estate appraisals, and other information such as market size, total radio dollars available market-wide, market growth, market competition, and the potential for signal upgrades, to the extent such information is relevant to determining the fair market value of the station. At the end of the qualifying incubation relationship, the incubated entity may decide not to exercise this option and choose instead to retain its existing controlling interest in the incubated station. Alternatively, the incubated entity may choose to sell its interest in the incubated station and use the proceeds from sale to acquire another full-service AM or FM station. In that case, we expect the incubating entity to help the incubated entity identify a full-service AM or FM station to buy and obtain the financing necessary to purchase the station. Absent a showing at the end of the qualifying incubation relationship that the incubated entity holds a controlling interest in the incubated station or a newly acquired full-service AM or FM station, the incubating entity will not be eligible to receive a waiver of the Local Radio Ownership Rule.

37. By requiring an option as described in the preceding paragraph, we ensure that, before the incubating entity is eligible to receive a waiver, the incubated entity has acquired independent ownership of a full-service AM or FM station, consistent with our program goal of introducing new, independent broadcasters to the industry. Because our approach will provide multiple paths for an incubated entity to achieve the goal of independent station ownership, we conclude that our approach will not unduly direct or limit the incubated entity's activities following its participation in the program, thereby preserving options as NAB suggests.

38. *Duration of Qualifying Incubation Relationships.* We agree with the ACDDE that in most cases a three-year incubation period will provide enough time for an incubated entity to develop the skills and expertise needed to be able to own and operate a broadcast station independently. NAB offers a similar recommendation, stating that broadcasters' experience in this arena suggests that the term of an incubation relationship should be no less than three years but that an incubated entity may need additional time to obtain the necessary funds or expertise to be self-sufficient, or that an extension may be needed due to marketplace or financing conditions. While we agree that an incubated entity may need more than three years to develop the requisite operational expertise or secure the financing needed to be self-sufficient, we believe we must adopt a maximum time limit of six years for qualifying incubation relationships so that the incubated entity has an incentive to develop the skills and expertise needed to operate a full-service AM or FM station independently.

39. As the ACDDE notes, there may also be instances in which an incubated entity makes exceptional progress towards becoming an independent owner and operator of the incubated station and seeks to acquire full equity ownership and independent control of the incubated station before the incubation term ends. In such circumstances, we will consider granting requests from parties seeking to conclude their incubation relationship before the end of the term.

40. Accordingly, we will require that the incubation agreement provide that the parties must perform the incubation activities for three years, although the parties may jointly seek to conclude their incubation relationship early or request a one-time extension of an additional three years or less, depending on need, upon a showing of good cause. The three-year time period will begin on the effective date of the incubation contract. Extension requests must be submitted before the initial term expires. We direct the Media Bureau (Bureau) to find good cause to grant an extension where (1) the parties need additional time to incubate the full-service AM or FM station as discussed below, or (2) the parties need more time to identify a full-service AM or FM station for the incubated entity to acquire or additional time for the incubated entity to close on the pending

acquisition of a full-service AM or FM station. The parties to the incubation contract must demonstrate that by the end of the extended term they will have resolved the issues that resulted in the need for more time and that the incubated entity will be able to own a full-service AM or FM station and have demonstrated its ability to operate such a station independently. Unless otherwise specified by the parties and approved by the Commission, the terms of the initial incubation contract will govern the incubation relationship during any Commission-approved extension period.

41. *Independence of Incubated Entity.* The incubator program is designed to provide a ''hands on'' learning process in which the incubated entity learns by ''doing'' with the benefit of a mentor. To ensure that the incubated entity derives the maximum benefit from the training and mentoring provided by the incubating entity, we require that the incubated entity be the licensee of the incubated station and maintain ultimate authority over station personnel, programming, and finances. It is by engaging in station management activities independently that the incubated entity will best develop its skills. As NAB notes, ''this level of independence is essential to promoting the new entrant's business growth and experience.'' Indeed, the goals of the incubator program, including encouraging new and diverse ownership of broadcast stations, require that we adopt safeguards to ensure that the incubated entity retains control of the incubated station and remains independent of the incubating entity and thus develops the skills necessary to own and operate the station independently. While the incubating entity will devote considerable financial, operational, managerial, and technical resources during the incubation relationship, the incubated entity must retain control of the incubated station and remain independent of the incubating entity to ensure it derives the full measure of intended benefits, in the form of ''hands on'' learning, during the entire incubation relationship.

42. Below, we adopt certain safeguards to ensure that the incubated entity has the requisite level of autonomy during the incubation relationship. As a threshold matter, we require the incubated entity to satisfy a control test as discussed below, consistent with our revenue-based eligible entity definition. In addition, we place limits on the use of brokering and sharing arrangements. We agree with the ACDDE that JSAs and shared service agreements (SSAs) may be used only to assist in, and must not be used to substitute for, incubation. Finally, both to promote the incubated entity's autonomy and to guard from potential conflicts of interest, we place limits on the ability of individuals to take on management or oversight positions in both the incubating entity and incubated entity.

43. First, we require the incubated entity to satisfy the following control test consistent with our existing revenue-based eligible entity definition, upon which we are basing the second prong of the eligibility standard for our incubator program as discussed above. Specifically, we require that the incubated entity hold more than 50 percent of the voting power of the licensee of the incubated station, and if the licensee is not a publicly traded company (which will almost assuredly be the case), a minimum of either 15 percent or 30 percent of the equity interests, depending on whether someone else owns or controls more than 25 percent of the equity interests. Both the ACDDE and NAB agree that the incubated entity must hold more than 50 percent of the voting power to control the incubated station. The ACDDE, however, also calls for the incubated entity to hold a minimum equity interest of 20 percent. Veteran broadcaster Skip Finley proposes that the Commission limit the investment of the incubating entity to 25 percent, which he argues would not permit control or, standing alone, create an attributable ownership interest. We conclude that applying the control test in our existing eligible entity rule will best ensure that the incubated entity retains control of the incubated station while still giving the parties some flexibility to establish incubation relationships that suit their specific needs. Also, as noted above, we find that it is important for the incubated entity to have some minimum ''skin in the game'' as a sign of its commitment to the success of the incubation relationship. In this regard, we find that the minimum equity holding requirements of the control test contained in the revenue-based eligible entity definition are appropriate. Using these existing requirements should facilitate both participation in and administration of the incubator program, as the requirements are already familiar to licensees. Hence, as discussed more fully below, all incubation applications must demonstrate that control will rest with the incubated entity and that the incubated entity meets the requisite minimum holding level discussed herein.

44. We remind parties that our rules prohibit unauthorized transfers of control, including de facto transfers of control. Thus, even if the incubated entity has a controlling interest in the incubated station, we will also look to whether the incubated entity maintains control over the station's core operations, including programming, personnel, and finances, when addressing questions relating to control.

45. To ensure that the incubated entity retains autonomy over the incubated station's core operating functions so as to gain the necessary level of operational expertise, and in light of concerns raised by the ACDDE and REC Networks, we place certain restrictions on the use of LMAs, JSAs, and SSAs. Our current attribution standards recognize that same-market radio LMAs and JSAs above a certain percentage of the station's broadcast day may confer on the brokering station the potential to exert a significant degree of influence over core station operating functions (*i.e.,* programming decisions). Specifically, our attribution standards regard as attributable ownership interests same-market radio LMAs and JSAs in which the brokering station brokers more than 15 percent of the broadcast time or sells more than 15 percent of the advertising time per week. Given our rationale for attributing these arrangements and the concerns raised in the record of this proceeding, we adopt the following safeguards.

46. First, to ensure that the incubated entity retains control of the programming aired on the incubated station, we prohibit LMAs involving the incubated station. As defined in our rules, an LMA is any agreement that involves ''the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it,'' regardless of how the agreement is titled. Second, to ensure that the incubated entity is able to gain operational expertise by performing the core operations of the incubated station, we limit any JSAs or SSAs involving the incubated station to the first two years of the initial incubation period. Pursuant to the definitions in our rules, we consider a JSA to be any agreement with the licensee of a brokered station that authorizes a broker to sell advertising time for the brokered station, and we consider an SSA to be any agreement or series of agreements in which (i) a station provides any station-related services to a station that is not directly or indirectly under common de jure

control permitted under the Commission's regulations, or (ii) stations that are not directly or indirectly under common de jure control permitted under the Commission's regulations collaborate to provide or enable the provision of station-related services. While our attribution standards do not regard SSAs as attributable ownership interests, we are concerned that allowing these arrangements to be used for the full duration of an incubation relationship could deprive the incubated entity of its incentive to gain the operational expertise needed to operate the station independently at the end of the relationship. Permitting limited use of JSAs and SSAs appropriately balances broadcasters' representations that these arrangements can make incubation more successful with the need to ensure that each incubated entity learns how to perform essential station functions independently in order to be viable in the long term as an independent broadcaster. We do not believe that prohibiting LMAs and restricting the use of JSAs and SSAs will reduce the utility of our program for incubated entities, as the record and our experience indicate that new owners of radio stations need assistance primarily with financing and technical issues, rather than programming and advertising sales.

47. Moreover, these safeguards will enable the parties to evaluate whether the incubated entity is prepared to operate independently before the incubation period has ended and while the incubating entity remains contractually obligated to provide support. By requiring that the incubated entity actually obtain or produce programming, sell advertising, and perform other core operating functions for the incubated station for at least one full year prior to the expiration of the incubation relationship, these protections will provide for a more informed assessment of the incubated entity's progress and any areas where it needs additional training and support to be viable as an independent owner and operator of the incubated station or another full-service AM or FM station. The incubated entity's experience performing core operating functions may provide a persuasive justification for extending the incubation relationship if the parties determine that more time is needed to incubate the station; thus, we are likely to rely on the parties' assessment that an extension of the incubation relationship is needed. While we are allowing limited use of JSAs and SSAs, we emphasize that these agreements, if used, must be accompanied by proper training in the relevant area(s)—*e.g.,* administrative, technical, sales, etc.—covered by any such arrangement(s) involving the incubated station.

48. Finally, we require that none of the officers, directors, managing partners, or managing members of the incubated entity hold an attributable interest in or be an employee of the incubating entity. We are concerned that allowing an employee or an attributable interest holder of the incubating entity to serve as an officer, director, managing partner, or managing member of the incubated entity may jeopardize the independence of the incubated station given the significant conflicts of interests that could arise for these individuals and the significant authority and potential for influence they would wield over the incubated station. While U.S. antitrust laws prohibit, with certain exceptions, one individual from serving as an officer or director of two competing corporations, we believe that an additional safeguard is needed to address circumstances that may be exempt from or not covered by the antitrust laws, such as where the two companies are not competitors, where either company is not a corporation or does not meet certain financial thresholds, or where an officer or director of one company is an employee but not an officer or director of the other company. We note that NAB and MMTC previously stated that the incubating entity and the incubated entity should not share common officers or directors. As discussed above, we believe that an even stronger safeguard is necessary to ensure the independence of the incubated station.

49. *Limitations on Incubation Relationships Per Market.* We will allow each incubating entity to incubate no more than one station per market, as defined for purposes of determining compliance with the Local Radio Ownership Rule. This will help ensure that the benefits that flow from our incubator program reach multiple markets and that our program is not used to restrict the limited number of local broadcast radio channels to one or a few radio station owners. While an established broadcaster that is already in an approved incubation relationship may not concurrently incubate multiple stations in the same market, the incubating broadcaster may apply to incubate a different station in another market. Consistent with the certifications and other requirements discussed herein, the established broadcaster would need to demonstrate that it will provide the resources necessary to incubate the additional station(s). Moreover, a prospective incubating entity may seek to incubate a station in a market where there is already an ongoing incubation relationship involving a different station if the prospective incubating entity is not a party to or participant in that ongoing relationship.

Benefit To Incubating Entity

50. In this section, we discuss the benefit that an established broadcaster will be eligible to receive for successfully completing a qualifying incubation relationship, namely a waiver of the Local Radio Ownership Rule. We discuss below the terms associated with the waiver and the standard for granting such a waiver.

51. Acknowledging that proponents of a broadcast incubator program have previously suggested that incubating entities receive a waiver of our local broadcast ownership rules in exchange for participating in an incubator program, the *NPRM* sought comment on how to structure the waiver element or other appropriate incentive. In particular, the *NPRM* sought comment on whether the waiver should allow the incubating entity to obtain an otherwise impermissible non-controlling, attributable interest in the incubated station or to acquire a different station in the same market or any similarly sized market. Among other things, the *NPRM* also sought comment on whether a waiver should be tied to the success of the incubation relationship, whether the waiver should continue when the incubator program ends, and whether the waiver should be transferrable if the incubating entity sells a cluster of stations that does not comply with the ownership limits at the time.

52. *Why a Reward Waiver as Opposed to Another Type of Benefit.* We conclude that our incubator program must provide a meaningful economic incentive in order to encourage established broadcasters to commit the substantial financial and other resources needed to incubate a new entrant successfully as discussed below. We recognize that, without active participation by incumbent broadcasters, any incubator program we design will be doomed to fail. Both supporters and opponents of an incubator program agree that a strong incentive is needed to entice prospective incubating entities. Indeed, the ACDDE states that an important goal of the incubator program is to create a sufficient incentive for established broadcasters to incubate new entrants, allowing established broadcasters to

grow their businesses while sharing with others the opportunities they may have enjoyed earlier in their careers.

53. There is, however, a divergence of views over what would be the best incentive. According to the broadcasters, a waiver of the local broadcast ownership rules is the appropriate incentive. The ACDDE, on the other hand, advocates for two forms of tax relief: A tax certificate entitling the incubating entity to defer capital gains taxes on the sale of its interest in the incubated station upon reinvestment in a comparable property, and a tax credit of an amount equal to the appraised fair market value of the station if the incubating entity donates the station to a mission-based entity or a Native American Nation. REC Networks proposes a regulatory fee exemption.

54. We conclude that allowing an incubating entity to seek a waiver of the Local Radio Ownership Rule, including the AM/FM subcap (reward waiver), in exchange for successfully completing a qualifying incubation relationship will provide a meaningful economic incentive to established broadcasters and thereby encourage them to incubate a new entrant. Those broadcasters who have the experience and resources needed to incubate a new or small broadcaster successfully are likely to be longtime station group owners that may be at or near the local ownership limits in one or more markets. Consequently, based on the record in this proceeding, we expect that a waiver of the Local Radio Ownership Rule will be sufficiently attractive to these prospective incubating entities to entice them to participate in the incubator program. While some commenters assert that granting waivers of local ownership rules to incubating entities could harm rather than promote ownership diversity, we find that the record demonstrates a waiver of the Local Radio Ownership Rule is the benefit within our authority that will best provide a sufficient incentive for established broadcasters to participate in our incubator program. In establishing requirements for the use of reward waivers under our incubator program for full-service AM and FM stations, we balance our goal of preserving our local radio ownership limits with the need to provide enough flexibility to foster participation in our program by incubating entities. We conclude that the requirements we adopt herein regarding the use of reward waivers will help ensure that they do not work against our local radio ownership limits and that our incubator program preserves a market structure that facilitates and encourages new entry into the local media market, as discussed below.

55. We decline to rely on regulatory fee exemptions or tax incentives to encourage participation in our incubator program. With regard to a regulatory fee exemption, we agree with the 22 ACDDE Members who filed reply comments that a six-to-twelve-month exemption of this sort would not provide a sufficient incentive for established broadcasters to incubate new entrants. In addition, we note that the Commission has previously found that it does not have the authority to waive or defer fees categorically.

56. As for tax certificates and tax credits, we agree that they can provide an incentive for established broadcasters to enter qualifying incubation relationships and that some believe tax certificates have been successful in the past in bringing new and diverse entrants to the broadcasting industry, but we are unable to use such measures to encourage participation in our incubator program absent authorization from Congress. Since the prior tax certificate program was eliminated in 1995, supporters have from time to time advocated for the return of the program. Indeed, the Commission itself has previously supported the effort to reinstate tax certificates as a means for increasing ownership diversity. To date, however, those efforts have been unavailing. Thus, rather than indefinitely delaying implementation of an incubator program pending Congressional introduction and passage of the necessary tax legislation, we find that it is in the public interest to proceed with the program we implement today, which will provide a meaningful incentive for established broadcasters to incubate new entrants that genuinely need financial and/or operational support to become independent owners. Of course, following our action today, Congress would be able to adopt legislation either authorizing or mandating the use of tax certificates and tax credits in our incubator program, either in addition to or in lieu of reward waivers, should it so choose.

57. *Timing and Duration of Reward Waiver.* The reward waiver will be available to the incubating entity after the successful completion of a qualifying incubation relationship. The process for determining whether an incubation relationship has been successful is described more fully below. While NAB proposes that the reward waiver be available to the incubating entity prior to the end of the incubation relationship, we believe that an incubating entity will have a much stronger incentive to cultivate the incubated entity as an independent broadcaster if the reward waiver is available to the incubating entity only after it successfully completes the qualifying incubation relationship. To use its reward waiver, the incubating entity must seek to acquire a full-service AM or FM station and file the waiver request within three years after the successful conclusion of the qualifying incubation relationship. We believe it is necessary to require that each reward waiver be used in proximity to the associated incubation relationship in order to aid our tracking and recordkeeping, and so the Commission is able to consider the availability of such benefits in the context of ownership rules and competition in radio markets close in time to when the incubation relationship occurs. We also believe that the incubating entity will have every incentive to acquire a full-service AM or FM station using the reward waiver as quickly as possible following the successful conclusion of the qualifying incubation relationship. Therefore, we reject NAB's assertion that an unused reward waiver should not expire.

58. We do, however, recognize that retaining the value of a station cluster that includes a reward waiver is an important part of the benefit afforded to an incubating entity. Consequently, as long as the cluster that is initially formed using the reward waiver is transferred intact, we will permit the waiver to be transferred with the station group. Permitting transfer of the initial cluster preserves any increase in value achieved by the incubating entity for its efforts in bringing a new broadcaster into the market. We do not, however, permit the waiver to move separately from the station cluster, as we also seek to ensure that those who have not advanced diversity via participation in the program do not receive a windfall. Consequently, the waiver will continue in effect as long as the cluster remains intact. Further, a single party may not hold the benefit of more than one waiver in a market granted under our incubation program, meaning that a station cluster that exceeds the applicable ownership rule by virtue of an incubation reward waiver may not be transferred to an entity that already holds such a waiver in the market. In addition, we will permit the incubating entity to use its reward waiver to engage in an in-market station swap, which will not impact ownership diversity in the market or allow a broadcaster to obtain a reward waiver without making a

countervailing contribution to ownership diversity.

59. *Markets Where Reward Waiver May Be Used.* We will allow an incubating entity to use a reward waiver to acquire an otherwise impermissible attributable interest to: (i) Purchase a full-service AM or FM station located in the same market as the incubated station, (ii) purchase a full-service AM or FM station located in a market that is comparable to the market in which the incubation occurred, as defined below, or (iii) if the incubated entity chooses not to exercise its option to purchase the incubating entity's non-controlling interest in the incubated station, to retain an otherwise impermissible attributable interest in the incubated station after the incubation relationship ends (including acquiring a controlling interest in the incubated station if the incubated entity acquires a controlling interest in another full-service AM or FM station). An incubating entity that uses a reward waiver in a comparable market may also choose to retain its non-controlling attributable interest in the incubated station if permitted by our ownership rules. Commenters that support the use of waivers in our incubator program agree that we should allow an incubating entity to use a reward waiver in a market other than the incubation market, and we believe this will expand opportunities for incubation by not limiting participants only to markets where the incubating entity is at or near the applicable local radio ownership limits. To preserve competition in even the smallest markets, however, we will not allow an incubating entity to use a reward waiver in a market where the waiver would result in the incubating entity holding attributable interests in more than 50 percent of the full-service, commercial and noncommercial radio stations in a market. Thus, consistent with our existing Local Radio Ownership Rule, an incubating entity will not be able to hold an attributable interest in more than 50 percent of the full-service, commercial and noncommercial radio stations in a market unless the combination of stations comprises not more than one AM and one FM station. Given our decision to allow a reward waiver to be used only if the incubating entity will not hold an attributable interest in more than 50 percent of the full-service, commercial and noncommercial radio stations in a market, we do not think it is necessary to adopt a cap on the in-market revenue share of station combinations resulting from the use of a reward waiver as one commenter proposes. We believe that a cap on the in-market revenue share of station combinations, which is more likely to change from year to year, would not be as effective as a cap on the share of stations that an incubating entity may own in a reward market.

60. We will consider a market to be ''comparable'' to the market where the incubation relationship occurred if, at the time the incubating entity seeks to use the reward waiver, the chosen market and the incubated market fall within the same market size tier under our Local Radio Ownership Rule and the number of independent owners of full-service, commercial and noncommercial radio stations in the chosen market is no fewer than the number of such owners that were in the incubation market at the time the parties submitted their incubation proposal to the Commission. Restricting an incubating entity that uses a reward waiver to purchase a station in another market to a comparable market will help ensure that the local impact of the reward waiver on the number of independent owners is similar to that of the incubated station in its market. Thus, it balances our desire to limit the impact of any potential consolidation that could result from the use of a reward waiver with our goal of expanding broadcast station ownership opportunities for small businesses and potential new entrants by allowing an incubating entity to incubate in markets other than those in which it is at or near the applicable local radio ownership caps. To the extent NAB seeks even greater flexibility and proposes that we permit an incubating entity to use a reward waiver in any market it wishes, we reject that element of NAB's proposal. For the reasons discussed above, we believe that the better approach is to require that a reward waiver be used either in the same market where the incubation relationship occurred or in a comparable market.

61. A group of commenters contend that our definition of comparable market could result in applying a reward waiver in a much larger market than that in which incubation occurred and propose limiting the definition of a ''comparable market'' to those markets ranked ''5 Up/5 Down'' from the incubation market based on Nielsen's population rankings. We conclude, however that the proposed definition would not necessarily lead to incubation and use of waivers in markets that are truly more ''comparable'' with respect to the number of stations and independent owners than the definition we adopt above. As an initial matter, we note that the Nielsen rankings are based on the population of the relevant market, not on the number of stations in a given market or the number of independent owners. Thus, the markets five up or five down from the incubation market might not have the same number of stations or independent owners as the incubation market—the very factors we find most relevant in assessing the diversity of the market. For example, according to Nielsen data from Fall 2017, Baltimore is ranked as market 21 and St. Louis is ranked as market 23, yet Baltimore has only 35 stations, while St. Louis has 68 stations, resulting in the markets being subject to different ownership caps under our rules. In crafting our standard, we focused primarily on preventing the potential for ownership consolidation in a market with fewer stations and independent owners than the market in which the incubation relationship added a new entrant. In addition, we note that ownership interests and circumstances vary widely among incumbent broadcasters, and it is not self-evident that an incubating entity will seek to use a reward waiver in the market with the largest population possible. Rather, we expect the decision will be driven by where the group owner faces ownership restrictions or wishes to grow a successful cluster. Finally, it is possible that the incubating entity does not own any stations in markets that are within five up or five down from the incubation market, in which case it would have no flexibility to use the reward waiver. In this regard, we agree with NAB that the ''5 Up/5 Down'' proposal is ''unduly restrictive'' and could have the effect of inhibiting participation by potential incubating broadcasters. For all of the foregoing reasons, therefore, we decline to adopt the ''5 Up/5 Down'' proposal.

62. While we believe that incubating entities will have no difficulty using reward waivers under our market comparability standard, we may allow an incubating entity to use a reward waiver in a market that does not meet our comparability standard if, due to changed circumstances following the parties' submission of their incubation proposal, there is no longer a comparable market in which the incubating entity is at the local radio ownership cap or AM/FM subcap and the incubating entity demonstrates why doing so is consistent with the public interest. However, we anticipate that incubating entities will consider our market comparability standard when choosing a candidate to incubate given

our decision to allow an incubating entity to use its reward waiver in a market that meets that standard.

63. We will allow an incubating entity that receives multiple reward waivers under our program (as a result of incubating multiple new entrants) to use no more than one reward waiver per market. This, as well as our decision above to grant an incubating entity a reward waiver only after the incubating entity successfully completes a qualifying incubation relationship and only in the same market as the incubated station or a comparable market, will help ensure that reward waivers do not work against our local radio ownership limits. Indeed, our local radio ownership limits promote competition and viewpoint diversity by ensuring a sufficient number of independent radio voices and by preserving a market structure that facilitates and encourages new entry into the local media market. The safeguards that we adopt today will help ensure that our incubator program preserves such a market structure while further promoting the entry of new and diverse voices in broadcast radio.

64. *Temporary Waiver for Purposes of Qualifying Incubation Relationships.* In some cases, a prospective incubating entity may already hold attributable interests in the maximum number of radio stations permitted by our Local Radio Ownership Rule in the market where it seeks to engage in a qualifying incubation relationship. To ensure that, in such circumstances, a prospective incubating entity may still participate in our program, we will grant such an incubating entity a temporary waiver of the Local Radio Ownership Rule (including the AM/FM subcap) if the incubation relationship would result in the incubating entity holding an otherwise impermissible, non-controlling attributable interest in the incubated station. If such a waiver is necessary, the Bureau will consider and approve such a waiver when reviewing the incubation proposal. This temporary waiver will expire when the incubation relationship ends. At that point, if the incubating entity has met all its obligations under the approved incubation relationship and demonstrates that the relationship was successful as discussed below, the incubating entity will be able to obtain a reward waiver as discussed herein.

65. *Criteria for Granting a Waiver.* We will review requests for both the reward and temporary waiver pursuant to § 1.3 our rules, which requires a showing of ''good cause'' and applies to all Commission rules. With regard to the temporary waiver, the incubating entity and incubated entity must demonstrate, as described in greater detail below, that they are both eligible for, and intend to engage in, a qualifying incubation relationship. To receive a reward waiver, the incubating entity must demonstrate that it has completed a successful qualifying incubation relationship. Specifically, the incubating entity must certify (i) that it complied in good faith with its incubation agreement, as submitted to and approved by the Bureau, and the requirements of our incubator program discussed herein; and (ii) either that the incubated entity holds a controlling interest in the incubated station or a newly acquired full-service AM or FM station, or if the incubated station was a struggling station, that the incubation relationship has resolved the financial and/or operational difficulties that the owner of the previously struggling station faced prior to incubation and sought to remedy through the incubation relationship. If these criteria are met, we will consider the qualifying incubation relationship to be successful even if the incubating entity retains a non-controlling attributable interest in the incubated station when the relationship concludes, provided that the incubating entity's interest in the station complies with the applicable ownership limits or is permissible pursuant to a waiver of the local radio ownership limit (including the AM/FM subcap). After the incubating entity demonstrates that it has completed a successful qualifying incubation relationship as discussed herein, the incubating entity need not engage in any other actions to receive a reward waiver, beyond seeking to use the waiver in a comparable market and otherwise being in compliance with Commission rules and requirements, and there will be a rebuttable presumption that granting the waiver is in the public interest.

66. We find that ''good cause'' exists to grant these temporary and reward waivers because doing so yields benefits to competition and ownership diversity in a local market that outweigh the impact on local competition in the market in which a waiver is granted. By tying grant of the reward waiver directly to station ownership by a new or previously struggling entity and restricting the use of reward waivers as discussed herein, any consolidation resulting from the use of a reward waiver will be limited and accompanied by the establishment of a new, or stronger, broadcaster in the same or a comparable market. Indeed, it is our determination herein that the public interest would not be served by strictly applying the Local Radio Ownership Rule (including the AM/FM subcaps) where an established broadcaster that engages in a qualifying incubation relationship seeks a waiver of the rule as discussed in this Order. While in the context of § 1.3 waiver requests, the Commission has considered showings of undue hardship, the equities of a particular case, or other good cause, in this particular context an applicant is required to make a narrower showing as discussed herein. If the applicant demonstrates that it has engaged in a successful qualifying incubation relationship and that grant of a waiver is consistent with the goals of our incubator program, there will be a rebuttable presumption that granting a waiver in the incubation market or a comparable market is in the public interest.

Procedures for Filing, Reviewing, and Monitoring Compliance of Incubation Relationships

67. Before the parties commence a qualifying incubation relationship, the Bureau must determine that the relationship is designed to help a new entrant, small broadcaster, or struggling broadcaster gain the ability to own and operate a full-service AM or FM station independently and that the relationship otherwise qualifies for the program. This section lays out the process for submission and review of incubation relationship proposals and how compliance will be monitored during the incubation relationship. In addition, this section describes how the Bureau will determine whether a particular incubation relationship has been successful, such that the incubating entity is eligible to seek a reward waiver. We direct the Bureau to implement these procedures.

68. As a threshold matter, we note that all incubation proposals must be based on prospective relationships. Incubating broadcasters will derive a significant benefit by receiving the reward waiver. Consequently, all incubation proposals must demonstrate a strong likelihood of promoting the ultimate program goal of bringing greater ownership diversity to the broadcast sector. This will be done by either enabling the incubated entity to own and operate a newly acquired full-service AM or FM radio station independently, or by improving the incubated entity's ability to retain and operate independently the struggling station it currently owns. To ensure that a proposed incubation relationship comports with the program's goal of broadening ownership diversity, we require prior Bureau review of the

proposal with an eye towards its adherence to the program requirements described in the instant order.

Bureau Review of Incubation Proposals

69. *Process for Submitting Incubation Proposals.* There are several ways in which an incubation proposal might come before the Bureau. We expect that most incubation proposals will accompany an assignment, transfer of control, or construction permit application. We direct the Bureau authority to modify the FCC Forms, including instructions and worksheets, as needed to enable applicants to indicate on the relevant FCC Form that the submission involves an incubation proposal. Such applications seeking to transfer, assign, or obtain an authorization are subject to public notice and petitions to deny and informal objections under the Commission's rules, and in addition to reviewing such applications pursuant to its routine review processes, the Bureau will review accompanying incubation proposals and approve or reject such proposals. As part of this review, the Bureau will also assess whether any request for temporary waiver of the ownership rules in the incubated market should be granted to permit the incubation relationship.

70. For any incubation relationship that does not trigger a FCC Form filing requirement, the proposal must be filed as a Petition for Declaratory Ruling in the Incubator docket, MB Docket No. 17–289, in the Commission's Electronic Comment Filing System (ECFS). Just as in the application context, if a temporary waiver of the ownership rules is needed for the incubation relationship, then the waiver request must accompany the Petition for Declaratory Ruling. The Bureau will act on such petitions and temporary waiver requests pursuant to its standard processes. As described above, any temporary waivers needed for the incubator program, irrespective of whether the proposal comes via an application or a Petition for Declaratory Ruling, will be granted (or denied) pursuant to § 1.3 of the Commission's rules.

71. The key factors guiding review of an incubation proposal will be whether: (1) The potential incubated entity has the wherewithal to obtain the necessary financing and support, absent the proposed incubation relationship; (2) the proposal provides for an incubation relationship addressing the needs that the incubated entity has (*e.g.,* financial, technical, managerial, etc.) to be able to own and operate a full-service AM or FM station independently after the relationship has ended; and (3) the incubated entity retains de jure and de facto control over the station to be incubated. To assess whether the incubation proposal meets these factors, the Bureau will review two forms of documentation: (1) A written incubation contract between the parties; and (2) a certified statement that the incubated and incubating entities must each submit. These submissions will be the Bureau's best indications of whether the proposed incubation relationship is likely to promote the program's goals of increasing diverse station ownership by enabling a qualified incubated entity to own and operate a full-service AM or FM station independently. The Bureau, however, may also require the applicants to submit additional information if needed to determine whether the proposed incubation relationship is likely to promote the goals of our incubator program as discussed herein.

72. *Written Incubation Contract.* The incubation proposal must contain a written contract between the parties memorializing all aspects of the incubation relationship, so as to demonstrate both compliance with program requirements (*e.g.,* that the incubated entity has both de jure and de facto control) and the steps the parties will take to put the incubated entity in a position to own and operate a full-service AM or FM radio station independently.

73. The contract must detail the level of equity interest each party will bring to the relationship. The incubated entity must show that it is providing a minimum equity stake as detailed above. The contract must also detail the parties' plan to unwind the incubation relationship and the steps they will take to enable the incubated entity to own and operate a full-service AM or FM station independently, be it the station that is the subject of incubation or another station to be acquired upon conclusion of the incubation relationship. The contract must provide the incubated entity with the option to buy out the incubating entity's non-controlling interest in the incubated station. As described above, the incubated entity can choose not to pursue this option and maintain the existing relationship along with its controlling interest. Alternatively, the incubated entity may choose to sell its interest in the incubated station and use the proceeds from the sale to acquire another full-service AM or FM station. In that case, we expect the incubating entity to help the incubated entity identify a full-service AM or FM station to buy and obtain the financing necessary to purchase the station. The contract must also provide for this alternative option. We require the contract to contain both options because we recognize that the incubated entity may not be well-positioned at the outset of the relationship to determine which approach best suits its long-term business interests in the broadcast sector. The incubated entity's anticipated growth trajectory may change as a result of the incubating entity's mentorship and introduction to capital sources that may have been previously unavailable. Indeed, we hope this will be the case. Consequently, while still ensuring that the incubated entity ultimately independently owns and operates a radio station, we do not mandate a pre-determined mechanism for how this goal will be achieved. As described below, however, the parties must notify the Bureau no later than six months before the end of the contract term which option they intend to pursue.

74. *Certified Statements.* Along with a written agreement detailing the terms of the incubation relationship and the rights and obligations of each party, the incubating and incubated entities must each file a certified statement describing, among other things, each party's background, qualifications, and resources, and how these will enable the party, via the incubation relationship, to promote the goals of the incubator program—*i.e.,* enabling a new entrant or small business to own and operate a full-service AM or FM station independently or to place a previously struggling station on a firmer footing. As part of the statement, the incubated entity must certify that its annual revenues for the previous three years did not exceed the SBA revenue standard and that during the preceding three years it held attributable interests in no more than three full-service AM and FM stations (listing the stations, community of license, and facility IDs of each), and that it did not hold an attributable interest in any TV stations, consistent with the eligibility standards adopted above. In addition, if the incubation proposal is being filed as a Petition for Declaratory Ruling, the potential incubated entity must make the same certifications and attribution disclosures that it would have had to submit were it filing the FCC Form 301, 314, or 315. We also require a potential incubated entity to include in its application a certified statement laying out why it is unable to acquire a controlling interest in the incubated station, or successfully operate the station, absent the proposed incubation

relationship and the funding, support, or training provided thereby.

75. Likewise, the incubating entity must certify that it has the resources and experience necessary to help the incubated entity become an independent owner and operator of the incubated station or another full-service AM or FM station and that it will devote those resources and experience to achieve that goal. Dedicating executive and management personnel to provide training, strategic advice, and other support to the incubated entity may help demonstrate that an experienced broadcaster is committed and has the resources necessary to incubate a new entrant successfully. Longtime ownership of radio stations that are in the same service as the incubated station and in multiple markets is another indicator of the owner's potential for success as an incubator. Indeed, due to their resources and experience, station group owners may be in a particularly good position to help persons not only become radio licensees but also succeed in radio station ownership. In addition, the incubated and incubating entities must both certify that the incubated entity will maintain operational and management control of the station, including decisions regarding programming, personnel, and finances. These submissions will enable the Bureau to verify that the incubated entity is a bona fide entity, without links to the incubating entity absent the incubation relationship, and truly needs the resources of the incubator program.

76. The goal of this program is to bring new voices to the local radio market and to stabilize those small broadcasters that might otherwise drop out of the market. While recognizing that the waiver the incubating entity will receive at the end of the incubation relationship is the best way to encourage participation in our program by established broadcasters, we do not grant these waivers lightly. The submissions described above provide an additional opportunity to ensure that both the incubating and incubated entities are legitimate participants in the program. If the Commission determines at a later date that either submission contained a misrepresentation this could lead to a withholding or revocation of a waiver, as well as referral to the Enforcement Bureau for further action.

Compliance During Term of Incubation Relationship

77. Once the incubation contract has gone into effect, on the annual anniversary of the effective date of the contract, the incubating and incubated entities must jointly file a certified statement describing the incubation activities during the preceding year and how these comport with the commitments laid out in the incubation contract. The statement must describe the progress being made towards the ultimate goal of station ownership, or greater stability regarding current ownership, by the incubated entity. This annual certified statement must be filed both in the Incubator docket via ECFS and the parties' public inspection files, so as to enable public review. These statements will be the primary mechanism by which the Commission and the public can gauge compliance with the terms of the incubation contract and progress towards the goal of independent station ownership. If, upon review of an annual statement, the Bureau has questions or concerns, staff may follow up with the parties.

78. No later than six months before the contract termination date, the parties must make a submission to the Commission stating which option for station ownership the incubated entity plans to pursue at the conclusion of the relationship—*e.g.,* indicating that the incubated entity intends to buy out the incubating entity's non-controlling interest in the incubated station or that the parties will work together to identify and secure another full-service AM or FM station for the incubated entity to acquire. Accordingly, during the remainder of the contract period, both parties can devote some resources towards effectuating the station ownership goal. For example, both parties may need to commit some resources towards finding a new station or obtaining financing for the incubated entity or both.

Final Bureau Review and Grant of Reward Waiver to Incubator

79. At the end of the three-year contract period, the parties must again file a joint certified statement reporting on the previous year's incubation activities. This submission will, however, also state whether the incubated entity has acquired a new station or will continue to retain its controlling interest in the incubated station, either with or without pursuing its option to buy out the incubating entity's non-controlling interest. If the goal of the incubation relationship was to stabilize a previously struggling station, this third annual filing must describe the current status of the incubated station and whether it is now on a firmer footing. In the event of a shorter incubation relationship due to exceptional progress on the part of the incubated entity in becoming an independent owner and operator of a full-service AM or FM station, the same filing requirement will apply, only the filing may be made before the third year. The Bureau will have 120 days after the filing of this statement to review the submission and ensure that the expectations for the incubation relationship and all program requirements were met. The Bureau may extend the review period if needed. If the incubation relationship required a temporary waiver of the ownership cap and the incubating entity plans to use its reward waiver to retain an otherwise impermissible attributable interest in the incubated station, including buying out the incubated entity's interest in the incubated station, then the incubating entity must file a waiver request along with the final joint statement. The temporary waiver will remain in effect during the Bureau's review period. In the event that the incubation relationship is deemed unsuccessful and the incubating entity cannot receive a reward waiver, the Bureau will extend the temporary waiver for a set time period as necessary to give the parties an opportunity to unwind the relationship.

80. In the absence of any negative determination from the Bureau by the end of the 120-day review period, following submission of a final joint statement, the incubating entity will then have three years in which to submit a request to use the presumptive reward waiver. The request must be submitted with a copy of the Bureau document(s) that approved the qualifying incubation relationship, including any document(s) that approved an extension of the original term as discussed above. If the incubation relationship proposal was submitted and approved as part of a Form 301 construction permit application or a Form 314 or Form 315 assignment or transfer of control application, the waiver request must also include the file number of the approved application. As described above, there is a rebuttable presumption that granting a reward waiver is in the public interest if the incubating entity seeks the waiver for either the incubated market or a comparable market and the incubating entity is otherwise in compliance with the Commission's rules and requirements. If the incubating entity wishes to use its reward waiver to purchase the incubated station, it must file its application seeking an assignment of license or transfer of control application contemporaneously with its final annual

certified statement. It is necessary for the incubating entity to do this to ensure that the ownership limits in the incubated market are not violated when the temporary waiver for the incubation period expires.

81. While incubation contracts are intended to last no longer than three years, parties may extend the incubation relationship for one additional period of up to three years subject to Bureau approval. For example, if the parties believe they need an additional six months beyond the initial three-year period to complete a new station purchase then they must seek an extension for six months. Parties that wish to extend their relationships must file this request no later than 120 days before the end of the initial three-year contract period. The incubating entity, however, may only seek a reward waiver, either for the incubated market or another market, after the successful completion of the incubation relationship, whatever the extended time period is—be it six months or three years. If, as part of the extension, there are any revisions to the initial incubation contract, the proposed revised contract must be filed along with the extension request. The Bureau will have 120 days to review the revised contract and request for extension. Absent Bureau action to the contrary within the 120-day period, the revised contract and request for extension time will be deemed effective, assuming they do not involve an assignment or transfer of control of a station. If there are no changes in the ownership/attribution/control structure of the agreement (*e.g.,* incubator's control over the incubated station has not increased), it is unlikely to raise concerns for the Bureau. As a general matter, the requirements for the standard three-year contract period will apply during this extended period, but there may need to be some modifications depending on the circumstances. For example, an annual filing requirement will not make sense for a three-month extension. The Bureau will notify the parties of any such modifications.

III. Procedural Matters

82. *Paperwork Reduction Act Analysis.* This Order contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Act Analysis.

Final Regulatory Flexibility Analysis

83. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in this proceeding. See 83 FR 774 (Jan. 8, 2018). The Commission sought written public comments on proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

84. The *Report and Order* adopts requirements that will govern the incubator program that the Commission previously decided to adopt to support the entry of new and diverse voices into the broadcasting industry. The incubator program seeks to provide established broadcasters with an inducement in the form of an ownership rule waiver to invest the time, money, and resources needed to facilitate broadcast station ownership by new and diverse entrants. Through the incubator program, established broadcasters (*i.e.,* incubating entities) will provide new entrants or small broadcasters (*i.e.,* incubated entities) with the training, financing, and access to resources that would be otherwise unavailable to these entities. At the end of the incubation relationship, the incubated entity will either own a broadcast station or will retain ownership of a previously struggling station, now set on firmer footing. In return for its support, the incubating entity will receive a waiver of the Commission's Local Radio Ownership Rule that the incubating entity can use either in the incubated market or in a comparable market as discussed in the *Report and Order,* within three years of the successful conclusion of a qualifying incubation relationship.

85. To qualify for participation in the incubator program, the parties must seek prior approval from the Commission that their proposed incubation relationship comports with the program requirements. The key factors guiding review of incubation proposals will be whether the potential incubated entity would have been able to obtain the necessary financing and support absent the proposed incubation relationship; whether the proposal provides the incubated entity with adequate financing, training, and support over the course of the incubation relationship to ensure its success; and whether the incubated entity retains de jure and de facto control over the station to be incubated. The standard term required for a qualifying incubation relationship will be three years, but the relationship may be extended up to an additional three years.

86. Qualifying incubation relationships must provide the incubated entity with an option to purchase the incubating entity's equity interest in the incubated station, if it holds one, for a price that is no more than fair market value and/or terminate the incubating entity's creditor-debtor relationship with the incubated entity at the conclusion of the incubation relationship. At the end of the qualifying incubation relationship, the incubated entity may decide not to exercise this option and choose instead to retain its existing controlling interest in the incubated station. Alternatively, the incubated entity may choose to sell its interest in the incubated station and use the proceeds from the sale to acquire another full-service AM or FM station. In that case, the Commission expects the incubating entity to help the incubated entity identify a full-service AM or FM station to buy and obtain the financing necessary to purchase the station. Absent a showing at the end of the qualifying incubation relationship that the incubated entity holds a controlling interest in the incubated station or a newly acquired full-service AM or FM station, the incubating entity will not be eligible to receive a waiver of the Local Radio Ownership Rule. If the goal of the incubation relationship was to stabilize a previously struggling station, then the joint certified filing must describe the status of the incubated station and whether it is now on a firmer footing. If an incumbent broadcaster successfully incubates a new, small entrant, or a small struggling station owner, as part of the incubator program, it will be eligible to receive a waiver of the Local Radio Ownership Rule following the conclusion of the qualifying incubation relationship. Such a waiver can be used for up to three

years after the successful completion of the qualifying incubation relationship and must be used in either the incubated market or a comparable radio market, as discussed in the *Report and Order.* To receive a reward waiver, the incubating entity must demonstrate that it has completed a successful qualifying incubation relationship. Specifically, the incubating entity must certify (i) that it complied in good faith with its incubation agreement, as submitted to and approved by the Bureau, and the requirements of our incubator program discussed herein; and (ii) either that the incubated entity holds a controlling interest in the incubated station or a newly acquired full-service AM or FM station, or if the incubated station was a struggling station, that the incubation relationship has resolved the financial and/or operational difficulties that the owner of the previously struggling station faced prior to incubation and sought to remedy through the incubation relationship.

87. In addition, to the extent the incubating entity needs a waiver of the Local Radio Ownership Rule to engage in a qualifying incubation relationship (for example, if the incubating entity is already at the applicable local radio ownership limit in the market and its investment in the incubated station would exceed that limit), we will grant the incubating entity a temporary waiver of the Local Radio Ownership Rule (including the AM/FM subcap) to allow the incubating entity to acquire an otherwise impermissible noncontrolling, attributable interest in the incubated station for the duration of the qualifying incubation relationship. With regard to the temporary waiver, the incubating entity and incubated entity must demonstrate that they are both eligible for, and intend to engage in, a qualifying incubation relationship, as discussed in the *Report and Order.*

88. The *Report and Order* implements a long overdue mechanism to address the primary barriers to station ownership by new and diverse entities: lack of access to capital and the need for technical and operational experience. In implementing this incubator program, the Commission's expectation is that each successful incubation relationship will result in the acquisition of a broadcast radio station by a new entrant or small business, or the preservation of an existing, but struggling, small broadcaster. Accordingly, successful implementation of this incubator program will promote ownership diversity by fostering new entry in the broadcasting sector by entrepreneurs and small businesses, including those owned by women and minorities.

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

89. The Commission received no comments in response to the IRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

90. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimates of the Number of Small Entities to Which the Rules Will Apply

91. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

92. The rules proposed herein will directly affect small radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

93. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year. Therefore, based on the SBA's size standard the majority of such entities are small entities.

94. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database on June 22, 2018, about 11,365 (or about 99.9 percent) of 11,371 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of licensed commercial FM radio stations to be 6,738, for a total number of 11,371. We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,128. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

95. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. We further note that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these bases; thus, our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

96. In this section, we identify the reporting, recordkeeping, and other compliance requirements adopted in the *Report and Order* and consider whether small entities are affected disproportionately by any such requirements. The Commission decided to adopt an incubator program with the goal of creating ownership opportunities for new entrants and small businesses, thereby promoting competition and diversity in the broadcast industry. In keeping with that goal, the program

requirements that the Commission adopted in the *Report and Order* will enable the pairing of small aspiring, or struggling, broadcast station owners with established broadcasters. These incubation relationships will provide new entrants and struggling small broadcasters access to the financing, mentoring, and industry connections that are necessary for success in the industry but to date have been unavailable to many. Participation in the incubator program is optional, not mandatory. The Commission's expectation is that each successful incubation relationship will result in the acquisition of a broadcast radio station by a new entrant or small business, or the preservation of an existing, but struggling, small broadcaster. Therefore, the Commission anticipates that the incubator program will benefit small entities that participate in the program, not burden them.

97. *Reporting Requirements.* The Commission expects that most incubation proposals will accompany an assignment, transfer of control, or construction permit application. The Commission directs its Media Bureau (Bureau) authority to modify the relevant FCC Forms, including instructions and worksheets, as needed to enable applicants to indicate on the form that the submission involves an incubation proposal. Such applications seeking to transfer, assign, or obtain an authorization are subject to public notice and petitions to deny and informal objections under the Commission's rules, and in addition to reviewing such applications pursuant to its routine review processes, the Bureau will review accompanying incubation proposals and approve or reject such proposals. For any incubation relationship that does not trigger an FCC form filing requirement, the proposal must be filed as a Petition for Declaratory Ruling in the Incubator docket, MB Docket No. 17–289, in the Commission's Electronic Comment Filing System (ECFS). Just as in the application context, if a temporary waiver of the ownership cap is needed for the incubation relationship, then the waiver request must accompany the Petition for Declaratory Ruling.

98. The incubation proposal must contain a written contract between the parties memorializing all aspects of the incubation relationship, so as to demonstrate both compliance with program requirements (*e.g.,* that the incubated entity has both de jure and de facto control) and the steps the parties will take to put the incubated entity in a position to own and operate a full-service AM or FM radio station independently. The contract must detail the level of equity interest each party will bring to the relationship. The incubated entity must show that it is providing a minimum equity stake as detailed above. The contract must also detail the parties' plan to unwind the incubation relationship and the steps they will take to enable the incubated entity to own and operate a full-service AM or FM station independently, be it the station that is the subject of incubation or another station to be acquired upon conclusion of the incubation relationship. The contract must provide the incubated entity with the option to buy out the incubating entity's non-controlling interest in the incubated station. The incubated entity can choose not to pursue this option and instead maintain its existing controlling interest in the incubated station. Alternatively, the incubated entity may choose to sell its interest in the incubated station and use the proceeds from the sale to acquire another full-service AM or FM station. In that case, we expect the incubating entity to help the incubated entity identify a full-service AM or FM station to buy and obtain the financing necessary to purchase the station. The contract must also provide for this alternative option.

99. Along with an agreement detailing the terms of the incubation relationship and the rights and obligations of each party, the incubating and incubated entities must each file a certified statement describing, among other things, each party's background, qualifications, and resources, and how these will enable the party, via the incubation relationship, to promote the goals of the incubator program—*i.e.,* enabling a new entrant or small business to own and operate a full-service AM or FM station independently or to place a previously struggling station on a firmer footing. As part of the statement, the incubated entity must certify that its annual revenues for the previous three years did not exceed the SBA revenue standard and that during the preceding three years it held attributable interests in no more than three full-service AM and FM stations (listing the stations, community of license, and facility IDs of each), and that it did not hold an attributable interest in any TV stations, consistent with the eligibility standards adopted in the *Report and Order.* In addition, if the incubation proposal is being filed as a Petition for Declaratory Ruling, the potential incubated entity must make the same certifications and attribution disclosures that it would have had to submit were it filing the FCC Form 301, 314, or 315. The *Report and Order* also requires a potential incubated entity to include in its application a certified statement laying out why it is unable to acquire a controlling interest in the incubated station, or successfully operate the station, absent the proposed incubation relationship and the funding, support, or training provided thereby. Likewise, the incubating entity must certify that it has the resources and experience necessary to help the incubated entity become an independent owner and operator of the incubated station or another full-service AM or FM station and that it will devote those resources and experience to achieve that goal.

100. In addition, the incubated and incubating entities must each certify that the incubated entity will maintain operational and management control of the station, including decisions regarding programming, personnel, and finances. These submissions will enable the Bureau to verify that the incubated entity is a bona fide entity, without links to the incubating entity absent the incubation relationship, and truly needs the resources of the incubator program.

Once the incubation contract has gone into effect, on the annual anniversary of the effective date of the contract, the incubating and incubated entities must jointly file a certified statement describing the incubation activities during the preceding year and how these comport with the commitments laid out in the incubation contract. The statement must describe the progress being made towards the ultimate goal of station ownership, or greater stability regarding current ownership, by the incubated entity. This annual certified statement must be filed both in the Incubator docket via ECFS and the parties' public inspection files, so as to enable public review. These statements will be the primary mechanism by which the Commission and the public can gauge compliance with the terms of the incubation contract and progress towards the goal of independent station ownership. If, upon review of an annual statement, the Bureau has questions or concerns, staff may follow up with the parties. No later than six months before the contract termination date, the parties must make a submission to the Commission stating which option for station ownership the incubated entity plans to pursue at the conclusion of the relationship—*e.g.,* indicating that the incubated entity intends to buy out the incubating entity's non-controlling interest in the incubated station or that the parties will work together to identify

and secure another full-service AM or FM station for the incubated entity to acquire.

101. At the end of the three-year contract period, the parties must again file a joint certified statement reporting on the previous year's incubation activities. This submission will, however, also state whether the incubated entity has acquired a new station or will continue to retain its controlling interest in the incubated station, either with or without pursuing its option to buy out the incubating entity's non-controlling interest. If the goal of the incubation relationship was to stabilize a previously struggling station, this third annual filing must describe the current status of the incubated station and whether it is now on a firmer footing. In the event of a shorter incubation relationship due to exceptional progress on the part of the incubated entity in becoming an independent owner and operator of a full-service AM or FM station, the same filing requirement will apply, only the filing may be made before the third year. If the incubation relationship required a temporary waiver of the ownership cap and the incubating entity plans to use its reward waiver to retain an otherwise impermissible attributable interest in the incubated station, including buying out the incubated entity's interest in the incubated station, then the incubating entity must file a waiver request along with the final joint statement.

102. While incubation contracts are intended to last no longer than three years, parties may extend the incubation relationship for one additional period of up to three years subject to Bureau approval. Parties that wish to extend their relationships must file this request no later than 120 days before the end of the initial three-year contract period. The incubating entity, however, may only seek a reward waiver, either for the incubated market or another market, after the successful completion of the qualifying incubation relationship, whatever the extended time period is—be it six months or three years. If, as part of the extension, there are any revisions to the initial incubation contract, the proposed revised contract must be filed along with the extension request.

103. In the absence of any negative determination from the Bureau by the end of the 120-day review period, following submission of a final joint certified statement, the incubating entity will then have three years in which to submit a request to use the presumptive reward waiver. The request must be submitted with a copy of the Bureau document(s) that approved the qualifying incubation relationship, including any document(s) that approved an extension of the original term as discussed in the *Report and Order.* If the incubation relationship proposal was submitted and approved as part of a Form 301 construction permit application or a Form 314 or Form 315 assignment or transfer of control application, the waiver request must also include the file number of the approved application. If the incubating entity wishes to use its reward waiver to purchase the incubated station, it must file its application seeking an assignment of license or transfer of control contemporaneously with its final annual certified statement. It is necessary for the incubating entity to do this to ensure that the ownership limits in the incubated market are not violated when the temporary waiver for the incubation period expires.

104. *Recordkeeping Requirements.* Under the Commission's existing public file rules, licensees and permittees of commercial and noncommercial AM and FM stations are already required to retain in their public inspection file a copy of any application tendered for filing with the Commission and related materials as discussed in the rules. Thus, in addition to filing with the Bureau, parties to incubation contracts must retain a copy of all application materials, including the proposed incubation contract, in their public inspection files. Similarly, a copy of each annual certified statement discussed above must be filed both in the Incubator docket via ECFS and the parties' public inspection files. Consistent with the Commission's existing public file rules, items in the public file that are required to be filed with the Commission will be automatically imported into the entity's online public file, and entities will only be responsible for uploading to the online file items that are not also filed in the Consolidated Database System (CDBS) or Licensing and Management System (LMS) or otherwise maintained by the Commission on its own website.

105. *Other Compliance Requirements.* In addition to the other compliance requirements discussed above, the *Report and Order* also adopts the following:

To ensure that the incubated entity derives the maximum benefit from the training and mentoring provided by the incubated entity, the *Report and Order* requires that the incubated entity be the licensee of the incubated station and maintain ultimate authority over station personnel, programming, and finances. The *Report and Order* adopts certain safeguards to ensure that the incubated entity has the requisite level of autonomy during the incubation period.

106. First, the *Report and Order* requires the incubated entity to satisfy the following control test consistent with the Commission's existing revenue-based eligible entity definition, upon which the *Report and Order* bases the second prong of the eligibility standard for the incubator program. Specifically, the *Report and Order* requires that the incubated entity hold more than 50 percent of the voting power of the licensee, and if the licensee is not a publicly traded company (which will almost assuredly be the case), a minimum of either 15 percent or 30 percent of the equity interests, depending on whether someone else owns or controls more than 25 percent of the equity interests. The *Report and Order* concludes that applying the control test from the Commission's existing eligible entity rule will best ensure that the incubated entity retains control of the incubated station while still giving the parties some flexibility to establish incubation relationships that suit their specific needs. Moreover, using the existing standard should facilitate both participation in and administration of the program, as the standard is already familiar to licensees.

107. To ensure that the incubated entity retains autonomy over the incubated station's core operating functions so as to gain the necessary level of operational expertise, and in light of concerns raised by some commenters, the *Report and Order* places certain restrictions on the use of local marketing agreements (LMAs), joint sales agreements (JSAs), and shared service agreements (SSAs). The Commission's current attribution standards recognize that same-market radio LMAs and JSAs above a certain percentage of the station's broadcast day may confer on the brokering station the potential to exert a significant degree of influence over core station operating functions (*i.e.,* programming decisions). Specifically, the Commission's attribution standards regard as attributable ownership interests same-market radio LMAs and JSAs in which the brokering station brokers more than 15 percent of the broadcast time or sells more than 15 percent of the advertising time per week. Given the Commission's rationale for attributing these arrangements and the concerns raised in the record of this proceeding, the *Report and Order* adopts the following safeguards.

108. First, to ensure that the incubated entity retains control of the programming aired on the incubated

station, the *Report and Order* prohibits LMAs involving the incubated station. As defined in the Commission's rules, an LMA is any agreement that involves ''the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it,'' regardless of how the agreement is titled. Second, to ensure that the incubated entity is able to gain operational expertise by performing the core operations of the incubated station, the *Report and Order* limits any JSAs or SSAs involving the incubated station to the first two years of the initial incubation period. Pursuant to the definitions in the Commission's rules, a JSA is any agreement with the licensee of a brokered station that authorizes a broker to sell advertising time for the brokered station, and an SSA is any agreement or series of agreements in which (i) a station provides any station-related services to a station that is not directly or indirectly under common de jure control permitted under the Commission's regulations, or (ii) stations that are not directly or indirectly under common de jure control permitted under the Commission's regulations collaborate to provide or enable the provision of station-related services. While the Commission's attribution standards do not regard SSAs as attributable ownership interests, the Commission is concerned that allowing these arrangements to be used for the full duration of an incubation relationship could deprive the incubated entity of its incentive to gain the operational expertise needed to operate the station independently at the end of the relationship. Permitting limited use of JSAs and SSAs appropriately balances broadcasters' representations that these arrangements can make incubation more successful with the need to ensure that each incubated entity learns how to perform essential station functions independently in order to be viable in the long term as an independent broadcaster. The Commission does not believe that prohibiting LMAs and restricting the use of JSAs and SSAs will reduce the utility of the incubator program for incubated entities, as the record and the Commission's experience indicate that new owners of radio stations need assistance primarily with financing and technical issues, rather than programming and advertising sales.

109. Moreover, these safeguards will enable the parties to evaluate whether the incubated entity is prepared to operate independently before the incubation period is complete and while the incubating entity remains contractually obligated to provide support. By requiring that the incubated entity actually obtain or produce programming, sell advertising, and perform other core operating functions for the incubated station for at least one full year prior to the expiration of the incubation relationship, these protections will provide for a more informed assessment of the incubated entity's progress and any areas where it needs additional training and support to be viable as an independent owner and operator of the incubated station or another full-service AM or FM station. The incubated entity's experience performing core operating functions may provide a persuasive justification for extending the incubation relationship if the parties determine that more time is needed to incubate the station. While the *Report and Order* allows limited use of JSAs and SSAs, the *Report and Order* also emphasizes that these agreements, if used, must be accompanied by proper training in the relevant area(s)—*e.g.,* administrative, technical, sales, etc.—covered by any such arrangement(s) involving the incubated station.

110. Finally, the *Report and Order* requires that none of the officers, directors, managing partners, or managing members of the incubated entity hold an attributable interest in or be an employee of the incubating entity. The Commission is concerned that allowing an employee or an attributable interest holder in the incubating entity to serve as an officer, director, managing partner, or managing member of the incubated entity may jeopardize the independence of the incubated station given the significant conflicts of interests that could arise for these individuals and the significant authority and potential for influence they would wield over the incubated station. While U.S. antitrust laws prohibit, with certain exceptions, one individual from serving as an officer or director of two competing corporations, the Commission believes that an additional safeguard is needed to address circumstances that may be exempt from or not covered by the antitrust laws, such as where the two companies are not competitors, where either company is not a corporation or does not meet certain financial thresholds, or where an officer or director of one company is an employee but not an officer or director of the other company.

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

111. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

112. As discussed above, the Commission decided to adopt an incubator program with the goal of creating ownership opportunities for new entrants and small businesses, thereby promoting competition and diversity in the broadcast industry. In adopting the requirements that will govern the incubator program, the Commission considered various options and alternatives that were proposed in the *NPRM* and public comments, and based on the record, the Commission concluded that structuring the incubator program as discussed in the *Report and Order* will provide small new entrants and struggling small broadcasters access to the financing, mentoring, and industry connections that are necessary for success in the broadcasting industry. The Commission's expectation is that each successful incubation relationship will result in the acquisition of a broadcast radio station by a new entrant or small business, or the preservation of an existing, but struggling, small broadcaster. Participation in the incubator program is optional, not mandatory, and the Commission anticipates that the incubator program will benefit small entities that participate in the program, not burden them.

Report to Congress

113. *Congressional Review Act.* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(A).

IV. Ordering Clauses

114. Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 1, 2(a), 4(i), 257, 303, 307–310,

and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, 307–310, and 403, this Report and Order *is adopted.*

115. *It is further ordered* that this Report and Order *shall be effective* thirty (30) days after publication of the text or a summary thereof in the **Federal Register**, except for those requirements involving Paperwork Reduction Act burdens, which shall become effective on the date announced in the **Federal Register** document announcing OMB approval.

116. *It is further ordered* that the Media Bureau is hereby directed to make all necessary changes to Form 301, Form 314, Form 315, and the Commission's electronic database system to implement the changes adopted in this *Report and Order.*

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

118. *It is further ordered* that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of the Report and Order to Congress and to the Government Accountability Office.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–18289 Filed 8–27–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648–XG408

Implementation of Import Restrictions; Certification of Admissibility for Certain Fish Products From Mexico

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

ACTION: Notification.

SUMMARY: The Secretary of Commerce, in cooperation with the Secretaries of Treasury and Homeland Security, is, under the authority of the Marine Mammal Protection Act (MMPA), giving notice of import restrictions on fish and fish products from Mexico caught with gillnets deployed in the range of the vaquita, an endangered porpoise. Importation into the United States from Mexico of fish and fish products harvested by gillnets in the upper Gulf of California (UGC) within the vaquita's geographic range is now prohibited. These import restrictions are being implemented as required by a court order. These trade restrictions remain in effect until further court action amends the preliminary injunction. Harmonized Tariff Schedule (HTS) codes associated with the prohibited fish and fish products are identified below. NMFS is also requiring that all other fish and fish products not within the scope of the import restrictions but imported under the same published HTS codes be accompanied by a Certification of Admissibility.

DATES: Compliance with the import restrictions and Certification of Admissibility described in this document is required beginning August 24, 2018, and will remain in effect until further notice is published in the **Federal Register** indicating otherwise.

FOR FURTHER INFORMATION CONTACT: Nina Young, NMFS F/IASI at email: *Nina.Young@noaa.gov* or phone: 301–427–8383.

SUPPLEMENTARY INFORMATION: In August 2016, NMFS published a final rule (81 FR 54390 (August 15, 2016); 50 CFR 216.24) implementing the fish and fish product import provisions (section 101(a)(2)) of the Marine Mammal Protection Act (MMPA). This final rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in its fisheries producing fish and fish products exported to the United States.

Under the final rule, fish or fish products cannot be imported into the United States from commercial fishing operations that result in the incidental mortality or serious injury of marine mammals in excess of U.S. standards (16 U.S.C. 1371(a)(2)). NMFS published a List of Foreign Fisheries (LOFF) on March 16, 2018 (83 FR 11703) to classify fisheries subject to the import requirements. Effective January 1, 2022, fish and fish products from fisheries identified by the Assistant Administrator for Fisheries in the LOFF can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS. The rule established the procedures that a harvesting nation must follow and the conditions it must meet to receive a comparability finding for a fishery on the LOFF. The final rule established a five-year exemption period, ending January 1, 2022, under 50 CFR 216.24(h)(2)(ii) before imports would be subject to any trade restrictions.

Vaquita are a species of porpoise endemic to northern Gulf of California waters in Mexico and are listed as an endangered species under the U.S. Endangered Species Act. In November 2016, the International Committee for the Recovery of the Vaquita (CIRVA)—a group of international scientists supported by Mexico and led by Mexican scientists—reported that less than 30 individuals are likely to remain. Gillnets deployed in an illegal fishery for totoaba (an endangered fish sought for its swim bladder due to black market demand within China) are the primary source of vaquita mortality. NMFS has identified products coming from fisheries interacting with vaquita as a potential focus for import restrictions under the MMPA.

On May 18, 2017, the Natural Resources Defense Council (NRDC), Center for Biological Diversity (CBD), and the Animal Welfare Institute (AWI) petitioned the Secretaries of Homeland Security, the Treasury, and Commerce to ''ban the importation of commercial fish or products from fish'' sourced using fishing activities that ''result in the incidental mortality or incidental serious injury'' of vaquita ''in excess of United States standards.'' The petitioners requested that the Secretaries immediately ban imports of all fish and fish products from Mexico that do not satisfy the MMPA import provision requirements, claiming that emergency action banning such imports is necessary to avoid immediate, ongoing, and ''unacceptable risks'' to vaquita. NMFS published a notification of the petition's receipt on August 22, 2017 (82 FR 39732), and opened a 60-day comment period. No final decision has been taken on the petition.

On March 21, 2018, the petitioners filed suit before the Court of International Trade seeking an injunction requiring the U.S. Government to ban the import of fish or fish products from any Mexican commercial fishery that uses gillnets within the vaquita's range. On April 16, 2018, petitioners filed a motion for a preliminary injunction with oral arguments held July 10, 2018. The Court of International Trade granted the motion for preliminary injunction and denied the U.S. Government's motion to dismiss the lawsuit. The court has required the U.S. Government to ban the importation of all fish and fish products from Mexican commercial fisheries that

use gillnets within the vaquita's range, pending final adjudication of the merits.

The Government of Mexico's existing Regulatory Agreement, published on June 30, 2017 (*http://dof.gob.rax/nota_detalle.php?codigo=5488673&fecha=30/06/2017*), provides that ''gillnets, including driftnets, operated passively or in a dormant state by small vessels for fishing activities in the marine restricted area, are banned permanently.'' This ban encompasses shrimp, sharks, and finfish (including chano). Fisheries for curvina and sierra, using actively deployed gear are exempt from this ban. Currently, only the gulf curvina fishery is authorized under fishing permits for small fishing vessels of the cooperative groups and permit holders of the Gulf of Santa Clara, Sonora. The fishing organizations of the Cucapah (an indigenous community) may also use gillnets actively deployed to capture curvina in a delimited zone, away from the Vaquita Refuge Area as authorized under the Manifestation of Environmental Impact (MIA) and the corresponding exemption granted by the Secretariat of Environment and Natural Resources (SEMARNAT). No gear is currently authorized for curvina fishermen operating from San Felipe or for sierra fisheries operating in the UGC. Under Mexican law, only trawl gear is authorized for use in the shrimp fishery.

Pursuant to court orders issued July 26, 2018 and August 14, 2018, the Court of International Trade (Slip-Op 18–92) required the U.S. Government to immediately ban the importation from Mexico of all shrimp, curvina, sierra, and chano fish and their products, imported under the HTS codes in Table 1, caught with gillnets inside the vaquita's range under section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2). On August 14, 2018, in response to these orders, U.S. Customs and Border Protection (CBP), in cooperation with the NMFS, imposed immediate import restrictions on fish and fish products from Mexico caught with gillnets deployed in the range of the vaquita. CBP's action prohibits the importation into the United States from Mexico of all shrimp, curvina, sierra, and chano fish and fish products harvested by gillnets in the upper Gulf of California (UGC) within the vaquita's geographic range (Cargo Systems Messaging Service (CSMS) (#18–000482). The court-ordered preliminary injunction is effective immediately regardless of the five-year exemption under 50 CFR 216.24(h)(2)(ii).

Curvina, sierra, and chano are not imported into the United States under HTS codes that are specific to the type of fish. Instead these fish are imported under non-specific fish and marine fish codes. Consequently, the list in Table 1 includes those non-specific HTS codes necessary to encompass the range of probable codes used for products subject to the trade restriction. In addition, to effectuate the Court's ruling while allowing imports of seafood outside the scope of the court order, and to minimize disruptions to trade, fish and fish products of the same or similar fish or fish products imported to the United States under the HTS codes listed in Table 1 from Mexico that are not subject to these import prohibition must be accompanied by a Certification of Admissibility. The Certification of Admissibility and accompanying instructions are available at *https://www.fisheries.noaa.gov/topic/international-affairs.*

As of the compliance date, imports of the fish and fish products from Mexico and filed under the HTS codes listed in Table 1 are required to be accompanied by a Certification of Admissibility in order to obtain release of the inbound shipment. See **DATES** section for the compliance date of the requirement for Certification of Admissibility. The Certification of Admissibility is an information collection subject to the requirements of the Paperwork Reduction Act and has been approved by the Office of Management and Budget under control number 0648–0651.

TABLE 1—HTS CODES REQUIRING A CERTIFICATION OF ADMISSIBILITY

Harmonized tariff schedule 2018 codes	Product description
0302.44.0000	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Mackerel (Scomber scombrus, Scomber australasicus, Scomber japonicus) Fresh chilled whole Atlantic and Blue/Japanese Mackerel.
0302.45.1100	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Jack and horse mackerel (Trachurus spp): Scaled (whether or not heads, viscera and/or fins have been removed, but not otherwise processed), in immediate containers weighing with their contents 6.8 kg or less.
0302.45.5000	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Jack and horse mackerel (Trachurus spp): Other.
0302.49.0000	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Herrings (Clupea harengus, Clupea pallasii), anchovies (Engraulis spp.), sardines (Sardina pilchardus, Sardinops spp.), sardinella (Sardinella spp.), brisling or sprats (Sprattus sprattus), mackerel (Scomber scombrus, Scomber australasicus, Scomber japonicus), Indian mackerels (Rastrelliger spp.), seerfishes (Scomberomorus spp.), jack and horse mackerel (Trachurus spp.), jacks, crevalles (Caranx spp.), cobia (Rachycentron canadum), silver pomfrets (Pampus spp.), Pacific saury (Cololabis saira), scads (Decapterus spp.), capelin (Mallotus villosus), swordfish (Xiphias gladius), Kawakawa (Euthynnus affinis), bonitos (Sarda spp.), marlins, sailfishes, spearfish (Istiophoridae), excluding edible fish offal of subheadings 0302.91 to 0302.99: Other Fish.
0302.59.1100	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Fish of the families Bregmacerotidae, Euclichthyidae Gadidae, Macrouridae, Melanonidae, Merlucciidae, Moridae and Muraenolepididae, excluding edible fish offal of subheadings 0302.91 to 0302.99: Other Fish: Scaled (whether or not heads, viscera and/or fins have been removed, but not otherwise processed), in immediate containers weighing with their contents 6.8 kg or less.
0302.59.5090	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Fish of the families Bregmacerotidae, Euclichthyidae Gadidae, Macrouridae, Melanonidae, Merlucciidae, Moridae and Muraenolepididae, excluding edible fish offal of subheadings 0302.91 to 0302.99: Other Fish: Other: Other fish.
0302.89.1140	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Other fish, excluding edible fish offal of subheadings 0302.91 to 0302.99: Other: Scaled (whether or not heads, viscera and/or fins have been processed), in immediate containers weighing with their contents 6.8 kg or less: Other Fish.
0303.54.0000	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Mackerel (Scomber scombrus, Scomber australasicus, Scomber japonicus).
0303.55.0000	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Jack and horse mackerel (Trachurus spp.).

TABLE 1—HTS CODES REQUIRING A CERTIFICATION OF ADMISSIBILITY—Continued

Harmonized tariff schedule 2018 codes	Product description
0303.59.0000	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Other Fish.
0304.49.0190	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen: Fresh or chilled fillets of other fish: Other: Other Fish.
0304.59.0091	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen: Fresh or chilled fillets of other fish: Other Fish Chilled: Other.
0304.89.1090	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Frozen fillets of other fish: Other: Skinned, whether or not divided into pieces, and frozen into blocks each weighing over 4.5 kg, imported to be minced, ground or cut into pieces of uniform weights and dimensions: Other Fish.
0304.89.5090	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Frozen fillets of other fish: Other: Other Fish.
0304.99.1104	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Other, frozen: Other: In bulk or in immediate containers weighing with their contents over 6.8 kg each: Minced: Surimi.
0304.99.1109	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Other, frozen: Other: In bulk or in immediate containers weighing with their contents over 6.8 kg each: Minced: Other.
0304.99.1194	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Other, frozen: Other: In bulk or in immediate containers weighing with their contents over 6.8 kg each: Other: Other Fish.
0304.99.9190	Fish, frozen, excluding fish fillets and other fish meat of heading 0304: Other, frozen: Other: Other: Ocean Fish.
0305.10.2000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Flours, meals and pellets of fish, fit for human consumption: In bulk or in immediate containers weighing with their contents over 6.8 kg each.
0305.10.4000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Flours, meals and pellets of fish, fit for human consumption: Other.
0305.39.4000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Fish fillets, dried, salted or in brine, but not smoked: Mackerel, in immediate containers weighing with their contents 6.8 kg or less each.
0305.39.6180	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Fish fillets, dried, salted or in brine, but not smoked: Other: Other Fish.
0305.49.2000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Smoked fish, including fillets, other than edible fish offal: Other: Mackerel.
0305.49.4045	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Smoked fish, including fillets, other than edible fish offal: Other: Other Fish.
0305.54.0000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Dried fish, other than edible fish offal, whether or not salted but not smoked: Herrings (Clupea harengus, Clupea pallasii), anchovies (Engraulis spp.), sardines (Sardina pilchardus, Sardinops spp.), sardinella (Sardinella spp.), brisling or sprats (Sprattus sprattus), mackerel (Scomber scombrus, Scomber australasicus, Scomber japonicus), Indian mackerels (Rastrelliger spp.), seerfishes (Scomberomorus spp.), jack and horse mackerel (Trachurus spp.), jacks, crevalles (Caranx spp.), cobia (Rachycentron canadum), silver pomfrets (Pampus spp.), Pacific saury (Cololabis saira), scads (Decapterus spp.), capelin (Mallotus villosus), swordfish (Xiphias gladius), Kawakawa (Euthynnus affinis), bonitos (Sarda spp.), marlins, sailfishes, spearfish (Istiophoridae).
0305.59.0001	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Dried fish, other than edible fish offal, whether or not salted but not smoked: Other Fish.
0305.69.2000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Fish, salted but not dried or smoked and fish in brine, other than edible fish offal: Mackerel: In immediate containers weighing with their contents 6.8 kg or less each.
0305.69.3000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Fish, salted but not dried or smoked and fish in brine, other than edible fish offal: Mackerel: Other.
0305.69.5001	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Fish, salted but not dried or smoked and fish in brine, other than edible fish offal: Other Fish: In immediate containers weighing with their contents 6.8 kg or less each.
0305.69.6001	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Fish, salted but not dried or smoked and fish in brine, other than edible fish offal: Other Fish: Other.
0305.79.0000	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption: Fish fins, heads, tails, maws and other edible fish offal: Other Fish.
0306.17.0003	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) less than 33 per kg (15s).
0306.17.0006	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) 33–45 per kg (15–20s).
0306.17.0009	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) 46–55 per kg (21–25s).
0306.17.0012	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) 56–66 per kg (26–30s).
0306.17.0015	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) 67–88 per kg (31–40s).
0306.17.0018	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) 89–110 per kg (41–50s).

TABLE 1—HTS CODES REQUIRING A CERTIFICATION OF ADMISSIBILITY—Continued

Harmonized tariff schedule 2018 codes	Product description
0306.17.0021	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) 111–132 per kg (51–60s).
0306.17.0024	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) 133–154 per kg (61–70s).
0306.17.0027	Other shrimps and prawns: Shell-on, imported in accordance with Statistical Note 1 to this chapter: Count size (headless weight) more than 154 per kg (70s).
0306.17.0040	Other shrimps and prawns: Peeled, imported in accordance with Statistical Note 1 to this chapter.
0306.36.0020	Other shrimps and prawns: Shell-on.
0306.36.0040	Other shrimps and prawns: Peeled.
0306.95.0020	Other: Shrimps and prawns: Shell-on.
0306.95.0040	Other: Shrimps and prawns: Peeled.
0511.99.3060	Products chiefly used as food for animals or as ingredients in such food: Other.
1604.15.0000	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Mackerel.
1604.19.4100	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Other (including yellowtail): Other: Fish sticks and similar products of any size or shape, fillets or other portions of fish, if breaded, coated with batter or similarly prepared: Neither cooked nor in oil.
1604.19.5100	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Other (including yellowtail): Other: Fish sticks and similar products of any size or shape, fillets or other portions of fish, if breaded, coated with batter or similarly prepared: Other.
1604.19.6100	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Other (including yellowtail): Other: In oil and in bulk or in immediate containers weighing with their contents over 7 kg each.
1604.19.8200	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Other (including yellowtail): Other: Other.
1604.20.0510	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Other prepared or preserved fish: Products containing meat of crustaceans, molluscs or other aquatic invertebrates; prepared meals: Prepared meals.
1604.20.0590	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Other prepared or preserved fish: Products containing meat of crustaceans, molluscs or other aquatic invertebrates; prepared meals: Other.
1604.20.1000	Prepared or preserved fish; Other prepared or preserved fish: Other: Pastes.
1604.20.1500	Prepared or preserved fish; Other prepared or preserved fish: Other: Balls, cakes and puddings: In oil.
1604.20.2000	Prepared or preserved fish; Other prepared or preserved fish: Other: Balls, cakes and puddings: Not in oil: In immediate containers weighing with their contents not over 6.8 kg each: In airtight containers.
1604.20.2500	Prepared or preserved fish; Other prepared or preserved fish: Other: Balls, cakes and puddings: Not in oil: In immediate containers weighing with their contents not over 6.8 kg each: Other.
1604.20.3000	Prepared or preserved fish; Other prepared or preserved fish: Other: Balls, cakes and puddings: Not in oil: Other.
1604.20.4000	Prepared or preserved fish; Other prepared or preserved fish: Fish sticks and similar products of any size or shape, if breaded, coated with batter or similarly prepared: Neither cooked nor in oil.
1604.20.5000	Prepared or preserved fish; Other prepared or preserved fish: Fish sticks and similar products of any size or shape, if breaded, coated with batter or similarly prepared: Other.
1604.20.5010	Prepared or preserved fish; Other prepared or preserved fish: Fish sticks and similar products of any size or shape, if breaded, coated with batter or similarly prepared: Other: Pre-cooked and frozen.
1604.20.5090	Prepared or preserved fish; Other prepared or preserved fish: Fish sticks and similar products of any size or shape, if breaded, coated with batter or similarly prepared: Other: Other.
1604.20.6010	Prepared or preserved fish; Other prepared or preserved fish: Pre-cooked and frozen.
1604.20.6090	Prepared or preserved fish; Other prepared or preserved fish: Other.
1605.21.0500	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Not in airtight containers: Products containing fish meat; prepared meals.
1605.21.1020	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Not in airtight containers: Other: Frozen, imported in accordance with Statistical Note 1 to this chapter: Breaded.
1605.21.1030	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Not in airtight containers: Other: Frozen, imported in accordance with Statistical Note 1 to this chapter: Other.
1605.21.1050	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Not in airtight containers: Other: Other, imported in accordance with Statistical Note 1 to this chapter.
1605.29.0500	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Other: Products containing fish meat; prepared meals.
1605.29.1010	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Other: Frozen, imported in accordance with Statistical Note 1 to this chapter.
1605.29.1040	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Other: Other: Other, imported in accordance with Statistical Note 1 to this chapter.
2309.10.0010	Preparations of a kind used in animal feeding: Dog or cat food, put up for retail sale: In airtight containers.
2309.10.0090	Preparations of a kind used in animal feeding: Dog or cat food, put up for retail sale: Other.
2309.90.1015	Preparations of a kind used in animal feeding: Other: Mixed feeds or mixed feed ingredients: Other pet food, put up for retail sale.
2309.90.1050	Preparations of a kind used in animal feeding: Other: Mixed feeds or mixed feed ingredients: Other.

The HTS codes applicable to the products subject to the requirements of the preliminary injunction may be revised from time to time due to updates to the HTS by the International Trade Commission. Any such changes will be notified to the trade community in accordance with CBP's notification procedures. In addition, NMFS and CBP will actively monitor the border operations of the trade restriction and the certification requirement in the initial weeks of implementation to determine if the list of affected HTS codes can be adjusted to further minimize disruption to trade while maintaining compliance with the court order.

Importers are advised to determine if other NMFS program requirements (*e.g.,* Tuna Tracking and Verification Program, Seafood Import Monitoring Program) or other agency requirements (*e.g.,* Fish and Wildlife Service, State Department, Food and Drug Administration) have Automated Commercial Environment (ACE) data reporting requirements applicable to the HTS codes identified in Table 1 as subject to certification under the MMPA import provisions. In such cases, the other reporting requirements still pertain in addition to the Certification of Admissibility requirements imposed to effectuate the court order.

Until such time as the Court of International Trade (or other court of competent appellate jurisdiction) lifts the preliminary injunction, trade restrictions on these products harvested by gillnets in the UGC of Mexico within the vaquita's range will continue and Certification of Admissibility will be required for the HTS codes listed in this notice.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: August 23, 2018.

Samuel D. Rauch III,

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

[FR Doc. 2018–18628 Filed 8–24–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249–2492–02]

RIN 0648–XG440

Snapper-Grouper Fishery of the South Atlantic; 2018 Recreational Accountability Measure and Closure for South Atlantic Golden Tilefish

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the golden tilefish recreational sector in the exclusive economic zone (EEZ) of the South Atlantic for the 2018 fishing year through this temporary rule. NMFS estimates recreational landings of golden tilefish in 2018 has reached the recreational annual catch limit (ACL). Therefore, NMFS closes the golden tilefish recreational sector in the South Atlantic EEZ on August 28, 2018. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, August 28, 2018, until 12:01 a.m., local time, January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On January 2, 2018, as a result of golden tilefish being determined to be undergoing overfishing, NMFS published a final temporary rule in the **Federal Register** (83 FR 65) to reduce the combined ACL for golden tilefish in the South Atlantic to reduce overfishing of the stock. The final temporary rule was subsequently extended through January 3, 2019 (83 FR 28387; June 19, 2018). The recreational ACL in place during the effectiveness of the interim measures is 2,187 fish, during this current 2018 fishing year. As described in the final temporary rule, the 2,187 fish is equivalent to 9,960 lb (4,395 kg), gutted weight. In accordance with regulations at 50 CFR 622.193(a)(2)(i) for the recreational sector, if recreational landings of golden tilefish reach the recreational ACL, the Assistant Administrator for NOAA Fisheries (AA) will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. Landings data from the NMFS Southeast Fisheries Science Center indicate that the golden tilefish recreational ACL of 2,187 fish has been reached. Therefore, this temporary rule implements an AM to close the golden tilefish recreational sector of the snapper-grouper fishery for the remainder of the 2018 fishing year. As a result, the recreational sector for golden tilefish in the South Atlantic EEZ will be closed effective 12:01 a.m., local time August 28, 2018.

As the commercial sector, including both longline and hook-and-line components, are also closed, during the recreational closure, the bag and possession limits for golden tilefish in or from the South Atlantic EEZ are zero, and all harvest and possession of golden tilefish is prohibited. The recreational sector for golden tilefish will reopen on January 1, 2019, the beginning of the 2019 fishing year and the recreational fishing season.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(a)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The AA finds that the need to immediately implement this action to close the recreational sector for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations at 50 CFR 622.193(a)(2)(i) have already been subject to notice and comment,

and all that remains is to notify the public of the recreational closure for golden tilefish for the remainder of the 2018 fishing year. Prior notice and opportunity for comment are contrary to the public interest because of the need to immediately implement this action to protect the golden tilefish resource. Time required for notice and public comment would allow for continued recreational harvest and further exceedance of the recreational ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: August 23, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–18621 Filed 8–23–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG394

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 50 feet length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the annual allowance of the 2018 Pacific cod total allowable catch apportioned to catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2018, through 2400 hours, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The annual allowance of the 2018 Pacific cod total allowable catch (TAC) apportioned to catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 404 metric tons (mt), as established by the final 2018 and 2019 harvest specifications for groundfish of the GOA (83 FR 8768, March 1, 2018).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the annual allowance of the 2018 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 344 mt and is setting aside the remaining 60 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 23, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–18622 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG429

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2018 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2018, through 2400 hours, A.l.t., December 31, 2018. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 12, 2018.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2017–0108, by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0108,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on January 23, 2018 (83 FR 3626, January 26, 2018).

NMFS has determined that as of August 22, 2018, approximately 742 metric tons of Pacific cod remain in the 2018 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2018 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 12, 2018.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: August 23, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–18624 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 167
Tuesday, August 28, 2018

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–18–0048; SC18–927–1 PR]

Pears Grown in Oregon and Washington; Increased Assessment Rate for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Fresh Pear Committee (Committee) to increase the assessment rate established for the 2018–2019 and subsequent fiscal periods. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 27, 2018.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927, (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Oregon and Washington pear handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable pears for the 2018–2019 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate from $0.449 to $0.463 per 44-pound standard box or equivalent of fresh ''summer/fall'' and ''winter'' pears handled for the 2018–2019 and subsequent fiscal periods. The proposed higher rate is necessary to fully cover the Committee's 2018–2019 fiscal period budgeted expenditures. The Committee has had to draw from its monetary reserve to partially fund program activities during the last two fiscal periods. Drawing from reserves to fund operations on an on-going basis is not a sustainable strategy. Therefore, increasing the continuing assessment rate would allow the Committee to fully fund budgeted expenses and replenish its financial reserve.

The Committee met on May 31, 2018, and unanimously recommended 2018–

2019 fiscal period expenditures of $9,213,133 and an assessment rate of $0.463 per standard box or equivalent of fresh ''summer/fall'' and ''winter'' pears handled. In comparison, last year's budgeted expenditures were $9,282,059. The proposed assessment rate of $0.463 is $0.014 higher than the $0.449 rate currently in effect. The Committee recommended the assessment rate increase because expenditures have exceeded assessment revenue in the previous two fiscal periods.

The major expenditures recommended by the Committee for the 2018–2019 fiscal period include $550,790 for contracted administration by Pear Bureau Northwest, $190,700 for administrative expenses, $771,643 for production research and market development, and $7,700,000 for promotion and paid advertising for both ''summer/fall'' and ''winter'' varieties of fresh pears. In comparison, major expenses for the 2017–2018 fiscal period included $512,928 for contracted administration, $232,200 for administrative expenses, $836,931 for production research and market development, and $7,700,000 for promotion and paid advertising.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments, and the amount of funds available in the authorized reserve. Income derived from handler assessments of $9,260,000 (20 million standard boxes or equivalent at $0.463 per box) would be adequate to cover budgeted expenses of $9,213,133, with any excess funds used to replenish the Committee's monetary reserve. Funds in the reserve (currently $1,096,332) would be kept within the maximum permitted by § 927.42(a) and would not exceed the expenses of approximately one fiscal period.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 827 growers of fresh pears in the production area and approximately 38 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to data from USDA Market News, the industry, and the Committee, for the 2016–17 season, the weighted average f.o.b. price for Oregon-Washington fresh pears was approximately $26.99 per standard 44-pound box. Total shipments for that period were 17,878,219 standard boxes or equivalent. Using the number of handlers, and assuming a normal distribution, the majority of handlers would have average annual receipts of more than $7,500,000 ($26.99 per box times 17,878,219 equals $482,533,130 divided by 38 handlers equals $12,698,240 per handler).

In addition, based on National Agricultural Statistics Service data, the industry produced 441,950 tons of fresh pears in the production area during the 2016–2017 season, with an average grower price of $797 per ton. Based on the average grower price, production, and the total number of Oregon-Washington fresh pear growers, and assuming a normal distribution, the average annual grower revenue is below $750,000 ($797 per ton times 441,950 tons equals $352,234,150 divided by 827 growers equals $425,918 per grower). Thus, the majority of Oregon and Washington fresh pear handlers may be classified as large entities, while the majority of growers may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2018–2019 and subsequent fiscal periods from $0.449 to $0.463 per standard box or equivalent of Oregon and Washington fresh ''summer/fall'' and ''winter'' pears handled. The Committee unanimously recommended 2018–2019 fiscal period expenditures of $9,213,133 and the $0.463 per standard box or equivalent assessment rate. The proposed assessment rate of $0.463 is $0.014 higher than the rate for the 2017–2018 fiscal period. The quantity of assessable fresh ''summer/fall'' and ''winter'' pears for the 2018–2019 fiscal period is estimated at 20 million standard boxes or equivalent. Thus, the $0.463 rate should provide $9,260,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses, with any excess funds used to replenish the Committee's monetary reserve.

The major expenditures recommended by the Committee for the 2018–2019 fiscal period include $550,790 for contracted administration by Pear Bureau Northwest, $190,700 for administrative expenses, $771,643 for production research and market development, and $7,700,000 for promotion and paid advertising for both ''summer/fall'' pears and ''winter'' pears. Budgeted expenses for these items in the 2017–2018 fiscal period were $512,928, $232,200, $836,931, and $7,700,000, respectively.

The proposed higher rate is necessary to fully cover the Committee's 2018–2019 fiscal period budgeted expenditures. The Committee has had to draw from its monetary reserve to partially fund program activities during the 2016–2017 and 2017–2018 fiscal periods. Drawing from its financial reserve to fund operations on an on-going basis is not a sustainable strategy. Increasing the continuing assessment rate would allow the Committee to fully fund budgeted expenses and replenish its financial reserve.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of $0.449 per standard box or equivalent. However, leaving the assessment unchanged would not generate sufficient revenue to meet the Committee's 2018–2019 fiscal period budgeted expenses of $9,213,133, and would have required the Committee to continue to deplete its financial reserve. Based on estimated shipments, the

recommended assessment rate of $0.463 per standard box or equivalent should provide $9,260,000 in assessment income. The Committee determined assessment revenue would be adequate to fully cover budgeted expenditures for the 2018–2019 fiscal period, with any excess funds used to replenish the Committee's monetary reserve. Reserve funds would be kept within the amount authorized in the Order.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2018–2019 season should be approximately $800 per ton of fresh pears. Therefore, the estimated assessment revenue for the 2018–2019 fiscal period as a percentage of total grower revenue would be about 2.6 percent.

This proposed action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the Order. In addition, the Committee's meetings were widely publicized throughout the Oregon and Washington fresh pear industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 31, 2018, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0189 Fruit Crops. No changes in those requirements would be necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Oregon and Washington fresh pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 927.236 paragraphs (a) and (b) are revised to read as follows:

§ 927.236 Fresh pear assessment rate.

On and after July 1, 2018, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

(a) $0.463 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as ''summer/fall'';

(b) $0.463 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as ''winter''; and

* * * * *

Dated: August 22, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–18552 Filed 8–27–18; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA72

Golden Parachute and Indemnification Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend its rule on golden parachute payments to better align the rule with areas of FHFA's supervisory concern and reduce administrative and compliance burdens. The current rule requires FHFA review and consent before a regulated entity or the Office of Finance (OF) enters into an agreement to make, or makes, a payment that is contingent on the termination of an affiliated party, if the regulated entity or OF is in a troubled condition, in conservatorship or receivership, or insolvent. FHFA's experience implementing the rule indicates that the rule requires review of some agreements and payments where there is little risk of excess or abuse, and thus that it is too broad.

If amended as proposed, the rule would focus on the types of agreements and payments that are of greater supervisory concern to FHFA. In general, these are payments to and agreements with executive officers, broad-based plans covering large numbers of employees (such as severance plans), and payments made to non-executive-officer employees who may have engaged in certain types of wrongdoing. The proposed amendments would also revise and clarify definitions, exemptions, and procedures to implement FHFA's supervisory approach. Where possible, FHFA would also align procedures and outcomes of review under the Golden Parachute Payment Rule with requirements of FHFA's rule on executive compensation. FHFA expects implementation of these changes would result in reduced administrative and compliance burdens.

DATES: Comments must be received by October 12, 2018.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA72, by any one of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA72.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/

RIN 2590–AA72, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA72, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Alfred Pollard, General Counsel, (202) 649–3050, *Alfred.Pollard@fhfa.gov;* Lindsay Simmons, Assistant General Counsel, (202) 649–3066, *Lindsay.Simmons@fhfa.gov;* or Mary Pat Fox, Manager for Compensation, Division of Enterprise Regulation, (202) 649–3215, *MaryPat.Fox@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

II. Background

FHFA has broad discretionary authority to prohibit or limit any ''golden parachute payment,'' generally defined as any payment, or any agreement to make a payment, in the nature of compensation by a regulated entity for the benefit of an ''affiliated party'' that is contingent on the party's termination, when the regulated entity is in troubled condition, in conservatorship or receivership, or insolvent (a ''troubled institution'').[1] This provision, at 12 U.S.C. 4518(e) (''Section 4518(e)''), was added to the Federal Housing Enterprises Financial Safety and Soundness Act (the Safety and Soundness Act) in 2008. Legislative history suggests it is intended to permit FHFA to prevent payments to departing employees and other affiliated parties that are excessive or abusive, could threaten (or further threaten) the financial condition of the troubled institution, or are inappropriate based on wrongdoing by the recipient.[2]

Section 4518(e) requires the Director to promulgate rules defining ''troubled condition'' and prescribing factors to be considered when prohibiting or limiting any ''golden parachute payment,'' and suggests some factors the Director may consider.[3] FHFA first adopted a Golden Parachute Payments rule in 2008 as an Interim Final Rule with Request for Comments, which became final in 2009.[4] In response to comments received on the Interim Final Rule, FHFA proposed amendments to the rule in 2009 and 2013.[5] In response to comments received on those proposals, FHFA promulgated the current rule in 2014.[6]

To ensure that FHFA has an opportunity to review and, if necessary, prohibit or limit golden parachute payments and agreements before they are made, the current rule prohibits all golden parachute payments and agreements that are not exempt from or permitted by the rule. Prohibited agreements or payments may be permitted by the Director after review. The rule defines terms, addresses payments that are exempt from the ''golden parachute payment'' definition or are permitted by the rule, establishes a process for FHFA to determine the permissibility of any other golden parachute payment or agreement, and sets forth review factors used by the Director in that process.

Because the rule applies equally to golden parachute payments and agreements, it requires FHFA to determine the permissibility of prohibited agreements before they are entered into and of prohibited payments before they are made. In most cases, this means that a troubled institution must request FHFA's prior review and consent to a payment that would be made in accordance with an agreement to which FHFA has already consented. This ''double approval'' requirement was recognized by FHFA and commenters when the rule was proposed in 2013 and finalized in 2014.[7] FHFA noted then that it was an appropriate supervisory approach where conditions could change after the agreement was approved (for example, the condition of a troubled institution could further deteriorate, or an intended recipient could be found to have contributed to the deterioration or engaged in wrongdoing with a material adverse effect on the regulated entity).[8] In practice, that approach has resulted in FHFA's receiving numerous requests for review of golden parachute payments and agreements.

Narrowly drafted exemptions from the rule have also given rise to numerous requests for review. For example, because severance pay plans of the regulated entities do not meet an exemption for ''nondiscriminatory'' plans, troubled institutions are not permitted to make severance payments to any employees—even small payments to low level employees—without FHFA review and consent. Likewise, an exemption for payments pursuant to a ''bona fide deferred compensation plan or arrangement'' does not apply or is lost if the plan is established or amended in the one-year period prior to the time the regulated entity became a troubled institution, meaning such plans and any plan payments must be reviewed by FHFA.

Based on FHFA's review experience, FHFA has now determined that the scope of the current rule is too broad, insofar as it requires a troubled institution to request, and FHFA to review, agreements and payments where there is very little concern about an abusive or excessive payment or threat to the financial condition of the paying regulated entity, and little likelihood

[1] The ''regulated entities'' are the Federal National Mortgage Association (Fannie Mae) and any affiliate, the Federal Home Loan Mortgage Corporation (Freddie Mac) and any affiliate, (collectively, the Enterprises), and the Federal Home Loan Banks (the Banks). 12 U.S.C. 4502(20). The Office of Finance (OF) is a joint office of the Banks, to which FHFA extends the Golden Parachute Payments rule through its general regulatory authority. *See id.* sec. 4511(b)(2); *see also* 78 FR 28452, 28456 (May 14, 2013) and 79 FR 4394 (Jan. 28, 2014). In this notice, the terms ''regulated entity'' and ''troubled institution'' include the Enterprises, Banks, and OF, unless OF is otherwise expressly addressed.

[2] Section 4518(e) was based on a similar provision added to the Federal Deposit Insurance Act (FDI Act) in 1990, at 12 U.S.C. 1828(k). FHFA considers the legislative history of Section 1828(k) as a resource for interpreting Section 4518(e). *See generally,* 36 Cong. Rec. H783 (daily ed. March 14, 1990) and 136 Cong. Rec. H5882 (daily ed. July 30, 1990).

[3] *Id.* sec. 4518(e)(1) and (2).

[4] 73 FR 53356 (Sept. 16, 2008); *see also* 74 FR 5101 (Jan. 29, 2009).

[5] *See id.* at 30975 (June 29, 2009); *see also* 78 FR 28452 (May 14, 2013).

[6] *See* 79 FR 4400 (Jan. 28, 2014).

[7] 78 FR at 28454; *see also* 79 FR at 4396.

[8] *Id.*

that the employee or other affiliated party receiving payment could have engaged in the type of wrongdoing that FHFA would consider as the basis for prohibiting or limiting an agreement or payment.

Separately, FHFA has also determined that the current Golden Parachute Payments rule could be harmonized with other requirements related to the compensation of executive officers of the regulated entities, including termination payments.[9] These requirements are implemented through a separate FHFA rule on executive compensation, at 12 CFR part 1230 (the Executive Compensation rule).[10] FHFA's experience in applying both rules to such termination payments has suggested areas where processes and outcomes can be aligned, avoiding the need to request or engage in separate reviews.

Having considered FHFA's statutory authority and its experience implementing the Golden Parachute Payments and Executive Compensation rules, FHFA is proposing to amend the Golden Parachute Payments rule to better balance FHFA's supervisory concerns for golden parachute payments with the rule's administration and compliance burdens. FHFA invites comments on all aspects of the proposed amendments and will take all comments into consideration.

III. Summary of Proposed Amendments

A. Overview

In general, FHFA has higher supervisory concern for golden parachute payments to and agreements with executive officers than lower ranking employees, because executive officers hold positions of greater responsibility and influence within a company. FHFA also has a higher supervisory concern for agreements, and in particular for broad-based agreements or plans such as severance plans, than for a subsequent payment in accordance with a plan or agreement. A broad-based agreement or plan typically covers numerous employees, bases the amount to be paid on criteria such as job level or length of employment, and provides for payments based on the occurrence of stated events. When reviewing the plan, FHFA can assess whether proposed payments to employees as members of a defined class or group would be excessive for that class or group (for example, whether a severance payment determined by job level and length of service is excessive for that level and service term). In addition, FHFA can assess the cumulative impact on the regulated entity if the same event were to occur for many employees at the same time or over a short time span, resulting in a high aggregate payout (for example, a severance plan that provides payments on involuntary termination not for cause may result in a high aggregate payment for a significant reduction in force). Finally, FHFA has a higher supervisory interest in payments to employees where there is a concern that the employee may have engaged in wrongdoing that had a material effect on the financial condition of the regulated entity or in certain financial crimes, or may be substantially responsible for the regulated entity's becoming a troubled institution. Review in such cases can inform FHFA of the employee's possible conduct and whether additional supervisory action may be appropriate.

To better reflect these supervisory policies, FHFA proposes to amend the rule to distinguish agreements from payments, executive officers from other affiliated parties, and affiliated parties for whom there is a concern about wrongdoing from those for whom there is not. Generally, the amended rule would require a troubled institution to obtain prior review of and consent for (1) most agreements with and payments to executive officers; (2) most agreements with employees who are below the executive officer level (including plans covering such employees); and (3) most payments to employees who are below the executive officer level, where the regulated entity has concerns that the employee may have engaged in certain types of wrongdoing.

FHFA has also reviewed the current rule for clarity and has determined that several changes could make it easier to understand and apply. These include relocating exempt payments and agreements, which do not require FHFA review or consent, from the rule's definitions section to its substantive provisions and changing rule terminology that could be confusing. FHFA also considered consistency with the treatment of compensation agreements with and payments to executive officers under the Executive Compensation rule, because the Executive Compensation and Golden Parachute Payment rules can overlap in some cases. FHFA expressly desires to align procedures and outcomes where possible, thereby further reducing administrative and compliance burdens.

B. Golden Parachute Agreements and Payments Subject To Review

FHFA proposes to retain the rule's current approach and require FHFA review of golden parachute agreements and payments unless they are expressly permitted by the rule. This framework serves to notify a troubled institution that, if an agreement or payment is not exempt from the definition of ''golden parachute payment'' or permitted by the terms of the rule, then the troubled institution must obtain FHFA's consent prior to entering into the agreement or making a payment.

Fundamentally, the current approach requires an understanding of the scope of the ''golden parachute payment'' definition—whether an agreement or payment is subject to review under the rule first turns on whether it is covered. In that regard, FHFA is clarifying its interpretation of ''golden parachute payment'' and proposing some amendments to the rule definition.

First, the statutory definition addresses payments (including agreements) ''in the nature'' of compensation.[11] FHFA interprets this phrase to expand upon the meaning of ''compensation'' and to include payments that are not traditionally understood as wages earned or money paid for services performed by an employee in connection with employment. As one example, FHFA interprets ''golden parachute payment'' to include individually negotiated settlement agreements and associated payments. There the amount paid may involve potential damages from claims arising out of the employment relationship and so may relate to compensation, though it may also include valuation of litigation risk, reputation risk, and other costs and fees.

The current rule definition addresses any ''golden parachute payment'' that is ''contingent on the termination of [a party's] affiliation with the regulated entity'' (as the statute provides) as well

[9] Specifically, FHFA is required to prohibit any regulated entity from providing compensation to an executive officer that is not ''reasonable and comparable with compensation for employment in other similar businesses . . . involving similar duties and functions.'' 12 U.S.C. 4518(a). ''Compensation'' is broadly defined by statute, and includes termination payments. *Id.* sec. 4502(6); *see also* 74 FR 26989, 26990 (June 5, 2009); 78 FR 28442, 28443 (May 14, 2013); and 79 FR 4389 (Jan. 28, 2014). In addition, the Enterprises may not enter into an agreement to provide any termination payment to an executive officer unless FHFA has approved the agreement in advance, after determining that it meets a comparability standard. 12 U.S.C. 1452(h)(2) and 1723a(d)(3)(B).

[10] Among other things, that rule requires the regulated entities to provide notice to FHFA prior to entering into any compensation arrangement with, or paying compensation to, any ''executive officer,'' including compensation in connection with an executive officer's termination. The regulated entity may provide the compensation if FHFA affirmatively provides a non-objection or approval, or does not prohibit it, within a stated review period. 12 CFR 1230.3 and 1230.4.

[11] 12 U.S.C. 4518(e)(4)(A).

as any such payment that is ''by its terms payable on or after'' termination.[12] The latter phrase was added when the rule was first adopted to address the possibility of a regulated entity's evading a ''golden parachute payment'' by simply making a payment to a party after, but not contingent on, termination.

However, some payments received after termination, such as payments that would have been provided to the employee during the employment period had an intervening event (termination) not occurred, do not become ''golden parachute payments'' merely because of the timing of payment. Two examples of such payments are the last payment of earned salary and cashed out accrued but unused vacation benefits. FHFA has provided these interpretations to troubled institutions in the past, but has not previously published them. To avoid suggesting that the timing of a payment alone—on or after termination—causes the payment to be a ''golden parachute payment,'' and to ensure an appropriate nexus between the occurrence of termination and the golden parachute payment, FHFA proposes to replace the phrase ''by its terms is payable on or after termination'' with the phrase ''is contingent on or provided in connection with'' termination. FHFA requests comment on this proposed amendment.

FHFA is also proposing other amendments to the rule definition. As noted above, the statutory ''golden parachute payment'' definition covers both payments and agreements to make payments, clearly permitting FHFA to prohibit or limit both an agreement to make a payment and, separately, the payment itself. FHFA now proposes to amend the rule to establish outcomes or treatments that depend on whether a troubled institution is entering into an *agreement* to make a golden parachute payment or is making a *payment.* In contrast, the current rule definition of ''golden parachute payment'' follows the form of the statutory definition, which includes within ''golden parachute payment'' *both* payments and agreements and thus makes it difficult to address one in a manner distinct from the other. FHFA now proposes to remove reference to ''any agreement'' from the rule's ''golden parachute payment'' definition and use the terms ''golden parachute payment agreement'' or ''agreement to make a golden parachute payment'' when specifically referring to such agreements. This amendment is not intended to change the scope of the rule, which will continue to cover both golden parachute agreements and payments. FHFA is also proposing a definition of an ''agreement'' to make a golden parachute payment, which is intended to be broad and clarify that the term includes broad-based plans such as severance plans, as well as agreements that are individually negotiated with an affiliated party.

FHFA also proposes to remove the phrase ''pursuant to an obligation of the regulated entity or the Office of Finance'' from the rule's ''golden parachute payment'' definition. The statutory definition addresses payments that are ''pursuant to an obligation'' of the regulated entity, made by the regulated entity when it is a troubled institution.[13] FHFA's current rule definition reflects the statute and includes reference to an ''obligation''—but where Section 4518(e) clarifies that FHFA's authority to prohibit or limit payments *includes* those made pursuant to an obligation, using the phrase ''pursuant to an obligation'' within the rule could be construed as limiting its application to payments that a troubled institution is contractually obligated to make. This is not FHFA's intention.

FHFA's experience implementing the current rule has been that the overwhelming majority of golden parachute payments are the subject of an ''obligation.'' However, FHFA does not interpret Section 4518(e) or its current rule as impeding FHFA's ability to prohibit or limit improper payments that are not pursuant to an ''obligation.'' As safety and soundness supervisor for the regulated entities, FHFA could always prohibit (or limit) improper gifts or contributions to an affiliated party,[14] and it is inconsistent with the policy of Section 4518(e) to interpret it or FHFA's implementing rule as permitting excessive or abusive payments that are made gratuitously, not pursuant to an obligation. Indeed, FHFA has interpreted the current rule as covering gifts, and troubled institutions have requested FHFA's review of and consent to proposed retirement gifts. Nonetheless, FHFA requests comment on its proposal to remove the phrase ''pursuant to an obligation of the regulated entity or the Office of Finance'' from the rule definition of ''golden parachute payment.''

FHFA also notes that the statutory and rule definitions include any payment that would be a ''golden parachute payment'' but for the fact it was made before the paying regulated entity became a troubled institution, if the payment was made ''in contemplation of'' becoming a troubled institution.[15] FHFA is proposing to amend the rule to include a rebuttable presumption that any payment that would otherwise be a ''golden parachute payment,'' made within the 90-day period prior to a regulated entity's becoming a troubled institution, is made ''in contemplation of'' and thus will be treated as a ''golden parachute payment.'' FHFA proposes the timeframe of 90 days prior because the events that would cause a regulated entity to become a troubled institution—becoming in troubled condition (which the rule defines with reference to examination ratings of 4 or 5 or initiation of certain enforcement actions), appointment of FHFA as conservator or receiver, or becoming insolvent—usually are not events that occur suddenly, without any prior awareness by the regulated entity of its deteriorating condition and FHFA's increasing supervisory concern. FHFA also finds support for a 90-day timeframe in the federal bankruptcy code, where a somewhat analogous provision would permit the avoidance of certain transfers made within 90 days prior to the filing of a bankruptcy petition.[16]

Since the presumption is rebuttable, a regulated entity need not request review of any agreements or payments made within the 90-day period where there is a reasonable basis for concluding that such agreements or payments were not made ''in contemplation of'' becoming a troubled institution. On the other hand, FHFA also expects that if a regulated entity took a more conservative approach and sought FHFA review of agreements and payments made during the 90-day period, the actual number of review requests would not increase materially. Pursuant to its obligations for oversight of executive compensation, FHFA must review agreements with and payments to executive officers regardless of their timing relative to the regulated entity's becoming a troubled institution. There may be a slight increase in the number of requests for review of plans or agreements with other employees, but FHFA review and consent in those cases could be stabilizing to the regulated entity as it works to improve its condition (because employees may be reassured that any promised payments on termination would be permissible even if the

[12] *Compare id.* sec. 4518(e)(4)(A)(i) and 12 CFR 1231.2.

[13] 12 U.S.C. 4518(e)(4)(A).

[14] *See generally,* 12 U.S.C. 4511(b)(2), 4513(a)(1), 4513b, and 4526.

[15] *Id.* sec. 4518(e)(4)(B); *see also* 12 CFR 1231.2.

[16] *See generally,* 11 U.S.C. 547.

condition of the regulated entity continued to deteriorate).

FHFA is proposing one change to the ''golden parachute payment'' definition to improve its readability. Currently, the statute defines ''golden parachute payment'' with reference to a regulated entity that has experienced a triggering event: The regulated entity is in troubled condition (as defined by FHFA by regulation); FHFA has been appointed conservator or receiver for the regulated entity; or the regulated entity has become insolvent.[17] Following the form of the statute, the rule incorporates the listed triggering events, including ''troubled condition,'' into its definition of ''golden parachute payment.'' Separately, the rule defines ''troubled condition.''

This rule construct has the effect of dividing the triggering events between two definitions and also makes it difficult to refer to a regulated entity that has experienced a triggering event. FHFA proposes to amend the ''golden parachute payment'' definition to cover payments made by a regulated entity that is, or is in contemplation of becoming, a ''troubled institution,'' and proposes to add ''troubled institution'' as a newly defined term that will list all of the triggering events, including those that previously defined ''troubled condition.'' The current rule's definition of ''troubled condition'' would be removed. FHFA believes that this approach would continue to meet the statutory requirement that FHFA define ''troubled condition'' by regulation, but would result in a rule that is easier to understand.

FHFA requests comment on the preceding proposed amendments to the ''golden parachute payment'' definition.

C. Exempt Agreements and Payments

Agreements and payments that are exempt from the ''golden parachute payment'' definition are not subject to the Golden Parachute Payment rule.[18] Because statutory exemptions are presented as exemptions from the ''golden parachute payment'' definition and because that definition covers both agreements and payments, FHFA interprets statutory exemptions expressed in terms of *payments* as extending to both the payment and any agreement to make it. As noted above, however, FHFA is now proposing to remove reference to any ''agreement'' from the ''golden parachute payment'' definition, which could imply that an exemption for a specific type of payment is operative only as to the *payment,* and that an agreement to make an exempt payment is not, itself, exempt. FHFA is clarifying here that an exemption for a payment extends to any plan or agreement to make that payment. The proposed rule text supports this interpretation, as it would prohibit an agreement to make a ''golden parachute payment'' and, conversely, would not prohibit any agreement to make a payment that is not a ''golden parachute payment,'' *i.e.,* a payment that is exempted from the ''golden parachute payment'' definition.

FHFA is also clarifying that it interprets the statutory ''golden parachute payment'' definition as not covering indemnification payments. Thus, rule provisions on golden parachute payments and agreements do not apply to indemnification payments.

Generally, it may be possible to construe indemnification payments as ''golden parachute payments,'' through interpretation of the phrase ''in the nature of compensation'' (where an indemnification payment arises from the party's affiliation with a regulated entity and would reimburse the affiliated party for expenses he would otherwise bear) and application of the current rule definition to payments made after an affiliated party's affiliation is terminated (where a termination agreement could include the troubled institution's promise of indemnification in future actions arising from the party's affiliation). FHFA also notes, however, that payment of indemnification is contingent on a legal action and, similar to a last salary payment after termination, is an expense that could have been incurred and paid during the period of affiliation. Thus, FHFA does not view either indemnification agreements covering payments to be made, or actual indemnification payments that are made, after termination as ''contingent on termination.''

FHFA also observes that Section 4518(e) addresses ''indemnification payments'' separately from ''golden parachute payments'' but does not exempt such payments from the statutory ''golden parachute payment'' definition. FHFA interprets this construct as demonstrating the assumption that it was not necessary to exempt indemnification payments because those types of payments were never viewed as within the ''golden parachute payment'' definition. Thus, instead of reading Section 4518(e) as carving out from the ''golden parachute payment'' definition only the subset of ''indemnification payments'' that Section 4518(e) expressly addresses, FHFA believes it is more plausible that Section 4518(e) applies separately to golden parachute payments and indemnification payments, such that ''golden parachute payment'' should not be construed to cover indemnification payments in general. Indemnification in actions brought by the agency are covered by the indemnification rule[19]; other indemnification is covered by the agency's corporate governance rule and the applicable corporate law to which that rule points.

FHFA is addressing this interpretation in the preamble rather than the rule to avoid suggesting that indemnification payments are ''golden parachute payments.'' Specifically, FHFA believes that amending the rule to exempt or permit indemnification payments and agreements would imply such payments are ''golden parachute payments,'' which is not what FHFA intends. FHFA requests comment on this interpretation, and on the decision to address it in the preamble as an interpretation, instead of through a rule amendment.

Beyond that interpretation, FHFA proposes to amend exemptions currently set forth in the rule. FHFA proposes amendments to exemptions for any ''bona fide deferred compensation plan or arrangement,'' certain tax qualified retirement or pension plans, and ''benefit plans.'' FHFA also proposes to remove an exemption for nondiscriminatory severance pay plans or arrangements and to make a minor change to a separate exemption for other severance or similar payments. Finally, FHFA proposes to retain without change an exemption for payments made because of the affiliated party's death, or termination caused by disability.

''*Bona fide deferred compensation plans or arrangements.*'' Section 4518(e) exempts ''any payment made pursuant to a bona fide deferred compensation plan or arrangement'' that the Director determines, by regulation or order, to be ''permissible.''[20] The current rule implements this provision with an exemption for deferred compensation plans or arrangements that meet certain conditions.[21] One condition—that the

[17] 12 U.S.C. 4518(e)(4)(A)(ii).

[18] These payments may be subject to other rules, however. For example, the Executive Compensation rule generally requires the regulated entities to provide notice to FHFA prior to providing compensation to an executive officer, and requires FHFA to prohibit compensation that does not meet a statutory ''reasonable and comparable'' standard. Payments (or agreements to make payments) that are exempt from the ''golden parachute payment'' definition could be—and likely would be—''compensation'' for purposes of the Executive Compensation rule.

[19] *See generally,* 81 FR 64357 (Sept. 20, 2016) (FHFA Notice of Proposed Rulemaking on indemnification payments).

[20] 12 U.S.C. 4518(e)(4)(C)(ii).

[21] 12 CFR 1231.2.

plan or arrangement was in effect for at least one year prior to the regulated entity's becoming a troubled institution—was intended to avoid exempting instances where a regulated entity acted to enrich its executives officers or other high ranking employees when it was in deteriorating condition (thereby potentially rewarding those who were best positioned to have avoided the financial problems, or draining resources that could be used to improve condition or be made available to creditors if necessary).[22]

In practice, failure to meet this condition has had the effect of eliminating the exemption for any otherwise ''bona fide'' deferred compensation plan that is established or amended by the regulated entity within the year prior to its becoming, or at any time when it is, a troubled institution, even if the plan or any amendment would not be objectionable to FHFA. Eliminating the exemption means that FHFA must review the revised plan and, even if FHFA determines the plan to be permissible, must also review all subsequent payments pursuant to it.[23] This imposes administrative and compliance burdens on FHFA and a regulated entity that could be avoided by amending the exemption so that it would cover any plan that meets all of the exemption's conditions other than the timing requirement, and that FHFA has reviewed and determined to be permissible. FHFA is now proposing that amendment, and requests comments on it.

FHFA also notes that it has a separate statutory obligation to prohibit a regulated entity from providing compensation to an executive officer, including compensation in connection with termination of employment that is not reasonable and comparable with compensation for employment in other similar businesses involving similar duties and responsibilities.[24] FHFA implements this obligation through its Executive Compensation rule, which requires a regulated entity to provide advance notice to FHFA prior to entering into certain deferred compensation agreements with, or making certain deferred compensation payments to, executive officers.[25] Because FHFA is statutorily required to prohibit a regulated entity from providing compensation to an executive officer if it is not reasonable and comparable, FHFA review and approval of (or non-objection to) a deferred compensation plan covering executive officers is an effective pre-condition to application of the Golden Parachute Payments rule exemption. In other words, for executive officers, only those plans or other agreements that FHFA determines are reasonable and comparable *could* be exempt from the Golden Parachute Payments rule; plans or agreements that FHFA determines are not reasonable and comparable *must* be prohibited, without regard to any exemption from the Golden Parachute Payments rule.

Certain tax qualified retirement or pension plans. Section 4518(e) includes a statutory exemption for ''any payment made pursuant to a retirement plan which is qualified (or intended to be qualified) under [section 401 of the Internal Revenue Code (IRC)].'' [26] The rule includes this exemption and expands on it, to include any payment made ''pursuant to a pension or other retirement plan that is governed by the laws of any foreign country.'' [27] FHFA is not aware of any pension or retirement plan of any regulated entity that is or would be governed by the laws of any foreign country. Further, were FHFA to determine that a pension or retirement plan of any of its regulated entities is ''governed by the laws of any foreign country,'' FHFA would like to better understand the requirements of the governing law when considering the application of the Golden Parachute Payment rule to such a plan (understanding that, in the event a foreign law applied and required a payment, it may not be feasible to prohibit a troubled institution from making it). For these reasons, FHFA proposes to remove the rule's exemption for such payments. FHFA requests comments on the impact, if any, to the regulated entities of removing this exemption.

Benefit plans. Section 4518(e)'s exemption related to qualified retirement plans continues, stating that it also applies to payments made pursuant to ''other nondiscriminatory benefit plan[s].'' On its face, this provision is a statutory exemption for ''nondiscriminatory benefit plans'' *other than* the tax qualified plans already expressly exempted. Beyond that, however, Section 4518(e) does not address the types of benefit plans intended to be outside the scope of a ''golden parachute payment.''

FHFA's current rule exempts any ''benefit plan'' and, separately, any ''severance pay plan'' that meets certain conditions and is ''nondiscriminatory.'' [28] To inform its understanding of the statutory exemption, FHFA has researched relevant legislative history and statutory provisions, including provisions of the IRC on the specified tax qualified plans. While that review did not reveal any generally accepted definitions of ''nondiscriminatory'' and ''benefit plan,'' it did suggest an interpretive approach that would look, in part, to whether a plan or program is a ''nondiscriminatory employee plan or program'' for purposes of IRC provisions on excess parachute payments.

Specifically, FHFA is proposing to exempt from the ''golden parachute payment'' definition any employee plan or program that is a ''nondiscriminatory employee plan or program'' in accordance with Internal Revenue Service (IRS) rules and published guidance interpreting 26 U.S.C. 280G.[29] Similar to Section 4518(e), IRC section 280G addresses parachute (termination) payments: It generally prohibits corporations from deducting as compensation that portion of a parachute payment due to change in control that is ''excess,'' and establishes rules for determining any such ''excess'' portion. Those rules permit a corporation to exclude from the ''parachute payment'' calculation any amounts that the corporation establishes by clear and convincing evidence are (1) ''reasonable'' compensation for services that were rendered on or after the date of the change in control and (2) compensation that was not contingent on the change in control. IRS regulations interpreting Section 280G state that the fact that payments were received pursuant to a ''nondiscriminatory employee plan or program'' is clear and convincing

[22] *Id.*

[23] On an ad hoc basis, under the current rule FHFA has consented to subsequent payments at the same time as it consented to a plan or agreement.

[24] *See* 12 U.S.C. 1452(h)(2), 1723a(d)(3)(B), and 4518(a). Indeed, for the Enterprises, an agreement to make a payment or provide benefits to an executive officer in connection with termination of employment is statutorily prohibited unless FHFA approves it in advance, after making a determination that the payments and benefits are comparable to those for officers of other public and private entities involved in financial services and housing interests with comparable duties and responsibilities. *Id.* sec. 1452(h)(2) and 1723a(d)(3)(B).

[25] *See generally,* 12 CFR part 1230.

[26] 12 U.S.C. 4518(e)(4)(C).

[27] 12 CFR 1231.2.

[28] *Id.*

[29] *See* 26 U.S.C. 280G; *see also* 26 CFR 1.280G–1. Legislative history of the FDI Act provision on which Section 4518(e) was modeled indicates that the FDI Act definition of ''golden parachute payment'' was informed by an IRC provision on ''excess parachute payments'' at 26 U.S.C. 280G, where a ''parachute payment'' is defined in part as ''any payment in the nature of compensation . . . if such payment is contingent on'' a change in the ownership or effective control of the corporation. *See* H.R. 4268 (unenacted) 101 Cong. (2nd Sess. 1990) and 136 Cong. Rec. H783 (daily ed. March 14, 1990).

evidence that the compensation was reasonable and not contingent on change in control, and list those employee plans and programs that are ''nondiscriminatory.'' [30] FHFA now proposes to exempt any employee plan or program that is ''nondiscriminatory'' for purposes of IRC Section 280G from the definition of ''golden parachute payment.'' FHFA believes that this proposal will clarify those plans and programs that are exempt because they are ''nondiscriminatory'' and is consistent with the intention of Section 4518(e).

In conjunction with this amendment, FHFA is proposing to remove an exemption for ''usual and customary [benefit] plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans'' and to add whether a benefit plan is ''usual and customary'' to the factors for the Director's consideration when reviewing requests for consent to a plan. Thus, a regulated entity would be required to seek FHFA's consent for a benefit plan that is not otherwise exempt from the rule, and FHFA could determine the plan to be permissible after considering, among other factors, whether the plan is ''usual and customary.'' FHFA believes this change will not materially affect the operation of the rule regarding such plans for two reasons. First, because the rule's current exemption relies on the characterization of a plan as ''usual and customary,'' troubled institutions have sought FHFA's concurrence that specific plans are considered ''usual and customary,'' which has resulted in a *de facto* review and consent process.[31] Similarly, under the proposal, a regulated entity could request FHFA's review of and consent to a plan that is ''usual and customary.'' Second, most of the plans listed in the current rule as examples of ''usual and customary plans'' are included within the list of ''nondiscriminatory employee plans and programs'' for purposes of IRC Section 280G. If a benefit plan that would previously have been exempt as a ''usual and customary'' plan meets the IRC standard for ''nondiscriminatory,'' then that plan would now be exempt on the basis that it is ''nondiscriminatory.''

Distinguishing between exempt ''nondiscriminatory employee plans and programs'' and plans that FHFA may permit as a matter of discretion because they are usual and customary (among other considerations) appears to align more closely with the language of Section 4518(e). Under this approach, a ''nondiscriminatory employee plan or program'' will be exempt even if it is not ''usual and customary.''

FHFA also recognizes that there may be benefit plans that are nondiscriminatory, but are not included within the IRS list of ''nondiscriminatory employee plans and programs.'' Because Section 4518(e) exempts all ''nondiscriminatory benefit plans'' from the ''golden parachute payment'' definition, FHFA is proposing to amend its process for requests for review to expressly address a request for an exemption for any other ''benefit plan'' that the regulated entity believes is ''nondiscriminatory.'' In that case, the regulated entity would be permitted to submit a single request that includes a request for exemption, in which the regulated entity must address the basis for its assertion that the plan is ''nondiscriminatory,'' and a request for consent. Based on the information in that submission, FHFA would determine if the plan is ''nondiscriminatory;'' if so, it would be exempt, and if not, FHFA would then determine whether it should nonetheless be a permissible golden parachute agreement. FHFA proposes this approach to better implement Section 4518(e)'s express exemption for ''other nondiscriminatory benefit plans'' and to reduce burdens on the regulated entity.

A regulated entity could request an exemption for any benefit plan it believes is ''nondiscriminatory.'' FHFA is proposing to remove the rule's current definition of ''nondiscriminatory'' and is not proposing to establish a new definition. The current definition is applicable only to ''severance pay plans'' as defined in the rule, and it is not clear that any single ''nondiscriminatory'' definition would be appropriate for all types of plans. Having one definition for all plans may mistakenly result in some plans being treated as if they are subject to the rule, where in fact they should be exempt because they are ''nondiscriminatory.'' FHFA also believes that considering whether a particular plan is nondiscriminatory in conjunction with the plan's design and purpose would aid FHFA in carrying out the purposes of Section 4518(e).

Nonetheless, FHFA believes that the rule's current definition of ''nondiscriminatory'' identifies appropriate criteria for assessing discrimination, such as length of service, salary, total compensation, job grade, or classification. These criteria are similar to some used for IRS ''nondiscriminatory employee plans and programs.'' [32] When a regulated entity requests an exemption for a ''nondiscriminatory'' benefit plan, it will be required to demonstrate how the plan operates to achieve a nondiscriminatory outcome, where the discrimination of concern is between groups or classes of employees, and higher level or more highly compensated employees are disproportionately advantaged over lower level or less highly compensated employees. In particular, a plan that provides disproportionately greater benefits to some employees based solely or primarily on level or position within a regulated entity (or any proxy for level or position such as total salary or total compensation, job grade, or classification) would not likely be determined ''nondiscriminatory'' by FHFA. Differences in the level of benefits provided based on other objective criteria such as length of service, or on level or position in combination with such other criteria, may be nondiscriminatory.

Finally, the current rule's definition of ''benefit plan'' includes (and thus exempts from the ''golden parachute payments'' definition) those ''employee welfare benefit plans'' as defined by section 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA), at 29 U.S.C. 1002(1). FHFA is not proposing to amend this exemption, though it would be relocated.

FHFA understands that some ERISA employee welfare benefit plans must meet statutory nondiscrimination tests, and thus are exempt from the ''golden parachute payment'' definition by the express terms of Section 4518(e). FHFA also believes that many such plans are simply not covered by the statutory ''golden parachute payment'' definition. Specifically, though the benefit provided to the employee—the opportunity to participate in such a plan—is ''in the nature of compensation,'' FHFA believes it is unlikely that benefit is ''contingent on

[30] 26 CFR 1.280G–1, Q/A26(c).

[31] In that regard, if FHFA has previously reviewed a specific plan and determined it to be ''usual and customary'' under the current rule, then that plan is exempt under the current rule and that exemption will be grandfathered under the rule if amended, unless the plan is materially amended. If a plan is materially amended, it will be viewed as if the regulated entity is discontinuing the exempt plan and establishing a new one, which would then be subject to the requirements and procedures of the rule as amended.

[32] *See, e.g.,* 26 U.S.C. 79(d), where the nondiscrimination test considers, among other factors, provision of the benefit to ''key'' employees, defined with reference to title and level of compensation; and sec. 129, where the test considers the relative compensation of eligible participants (highly compensated employees and non-highly compensated employees) and average level of benefits provided to highly compensated employees relative to non-highly compensated employees.

the [employee's] termination of . . . affiliation with the regulated entity.'' Instead, FHFA believes it is more likely that such benefits are provided based on the condition of employment (affiliation) but may continue after termination, either through the terms of the actual employee welfare benefit plan, or through the terms of a severance agreement. In the latter instance, FHFA would construe the benefit as contingent on termination. Because severance pay plans or agreements are not exempt from the golden parachute payment definition, however, FHFA would have the opportunity to review those agreements or plans, including any extended employee welfare benefits they provide.

FHFA requests comment on all aspects of its proposed amendments to the rule's current treatment of ''benefit plans''; the proposed process for requesting either an exemption, for a plan believed to be ''nondiscriminatory,'' or consent, if FHFA determines that a plan is not ''nondiscriminatory''; removal of the rule's current definition of ''nondiscriminatory''; and its treatment of employee welfare benefit plans.

Nondiscriminatory severance pay plans or arrangements. FHFA is also proposing to remove from the rule an exemption for severance pay plans that meet the rule definition of ''nondiscriminatory'' and other conditions. Implementing the current rule resulted in FHFA's reviewing the severance pay plans of troubled institutions and, based on that experience, FHFA has determined as a matter of supervisory policy that severance pay plans should be subject to review.

FHFA review of troubled institution severance pay plans was required because these plans did not meet the current rule's ''nondiscriminatory'' definition and thus were not exempt. Instead, troubled institutions requested FHFA's consent to such plans, and FHFA made decisions applying the rule's consideration factors. FHFA has determined this review is very useful for assessing the potential or intended impact of the plan on the troubled institution, given its specific circumstances. Where the plan covers a described event, *e.g.,* involuntary termination not for cause, that entitles employees to severance pay and that could occur for many employees at the same time or close in time, the troubled institution may be subject to making a higher, aggregated payout. That same event—numerous involuntary terminations not for cause, happening close in time—may be appropriate to address a financial weakness, however. Likewise, an appropriately structured severance pay plan could have a retentive effect on employees that could be stabilizing as a troubled institution works to improve its financial condition. Because the circumstances and strategies of each troubled institution would likely be different, severance pay plans with different terms and structures could be appropriate.

For these reasons, FHFA believes that these plans should be reviewed, as a result of which they may be permitted—or even deemed exempt, if determined to be nondiscriminatory based on a request for exemption by the troubled institution. FHFA notes that severance pay plans are not currently included in the IRS list of ''nondiscriminatory employee plans and programs,'' but also that it is possible for the list to evolve to include them through amendments to the IRC or IRS interpretation. In that case, severance pay plans that meet specifically applicable IRC or IRS ''nondiscrimination'' requirements would be exempt from the FHFA rule without the need for an exemption request. This treatment is consistent with FHFA's proposed approach to applying Section 4518(e)'s statutory exemption for ''other nondiscriminatory benefit plans.''

FHFA requests comment on the proposed removal of the current rule's exemption for severance pay plans that are ''nondiscriminatory'' and meet other conditions.

Other severance or similar payments required by state or foreign law. The current rule also includes an exemption for certain severance or similar payments that are required to be made by state statute or foreign law.[33] As with the rule's exemption for payments made pursuant to pension or other retirement plans ''governed by the laws of any foreign country,'' described above, FHFA is not aware of any severance or similar payments that any regulated entity would be required to make by foreign law. Were FHFA to determine a severance or similar payment was required by a foreign law, FHFA would like to better understand the requirements of that law when considering the application of the Golden Parachute Payments rule to such a payment (again, understanding that if a foreign law applied and required a payment, that it may not be feasible to prohibit a troubled institution from making it). For these reasons, FHFA proposes to remove the rule's exemption for such payments, and requests comments on the impact to the regulated entities of removing it.

D. ''Executive Officers'' and Other ''Affiliated Parties''

Under the current rule, agreements and payments that are within the definition of ''golden parachute payment'' may be permitted, either by operation of the rule or after review and consent by FHFA.[34] Although that approach would continue if the rule is amended as proposed, whether an agreement or payment is permitted by operation of the rule (meaning, without review and consent by FHFA) could now turn on whether it is provided to an ''executive officer'' or another type of ''affiliated party.'' Proposals related to those definitions are addressed below. As a technical matter, however, FHFA is first proposing a change to the rule's terminology, specifically, to change the term ''entity-affiliated party'' to ''affiliated party.''

Section 4518(e) defines a ''golden parachute payment'' in part as a payment, including an agreement to make a payment, to an ''affiliated party.'' ''Affiliated party'' is not defined by statute, though a similar statutory term, ''entity-affiliated party,'' used primarily in the context of FHFA's enforcement authority, is defined.[35] FHFA considered the statutory definition of ''entity-affiliated party'' when interpreting ''affiliated party'' and uses the term ''entity-affiliated party'' in the current rule, although the rule definition of ''entity-affiliated party'' is different from the statutory definition.[36] ''Entity-affiliated party'' is also used and defined in FHFA's rules of practice and procedure, at 12 CFR part 1209. To avoid confusion and because Section 4518(e) uses the term ''affiliated party,'' FHFA is proposing to change the term ''entity-affiliated party'' to ''affiliated party'' throughout part 1231.

FHFA is also proposing substantive changes to the definition of ''affiliated party'' for purposes of rule provisions related to ''golden parachute payments.'' [37] For the most part, the current rule does not establish different treatments or outcomes based on the

[33] 12 CFR 1231.2.

[34] *Id.* § 1231.3(b).

[35] 12 U.S.C. 4518(e)(4); *see also id.* sec. 4502(11).

[36] *Compare* 12 U.S.C. 4502(11) and 12 CFR 1231.2.

[37] Section 4518(e) and 12 CFR part 1231 also address ''indemnification payments,'' the statutory definition of which also uses the term ''affiliated party.'' *See* 12 U.S.C. 4518(e)(5)(A); *see also* 81 FR 64357 (Sept. 20, 2016). If part 1231 is amended as proposed, the term ''affiliated party'' would be used throughout the rule, but it would be defined differently depending on whether the payment is an indemnification payment or a golden parachute payment.

party to whom a golden parachute payment could be made, but applies in kind to each defined ''entity-affiliated party.'' One provision—an exemption for payments made pursuant to nondiscriminatory severance pay plans (which FHFA has proposed to remove for other reasons, set forth above)—does not apply to any ''executive officer'' whose annual base salary exceeds a stated amount. Within that provision, ''executive officer'' is defined by reference to FHFA's Executive Compensation Rule. Because FHFA now proposes to amend the rule to more broadly distinguish the treatment of executive officers from the treatment of other ''entity-affiliated parties,'' FHFA is also proposing to more generally incorporate in this rule the definition of ''executive officer'' from FHFA's Executive Compensation rule.

FHFA has also identified other issues with the rule definition of ''entity-affiliated party'' that it proposes to address. Specifically, for the regulated entities, the current rule includes parties to whom it is unlikely that excessive or abusive termination payments would be made. For OF, the current rule defines ''entity-affiliated party'' more narrowly than for FHFA's regulated entities.

If amended as proposed, the definition of ''affiliated party'' for purposes of golden parachute payments would cover all employees, officers, and directors of a regulated entity or OF, and any other party the Director, by regulation or on a case-by-case basis, determines to be participating in the conduct of the affairs of a regulated entity or OF. For the regulated entities, as applied to golden parachute payments, the ''affiliated party'' definition would be narrower on its face but its potential scope would not change, as it would retain the ''catch-all'' that permits FHFA to deem parties other than directors, officers and employees to be ''affiliated parties.'' For OF, the amended definition would be broader. Each of these proposed changes is described below.

''*Affiliated parties*'' *of the regulated entities.* The statutory definition of ''entity-affiliated party''—any controlling stockholder for, or agent of, any regulated entity; any shareholder, affiliate, consultant, or joint venture partner of a regulated entity; any independent contractor (including an attorney, appraiser or accountant) who meets certain conditions; and any not-for-profit corporation that receives its principal funding from a regulated entity—is largely incorporated into the current rule definition of ''entity-affiliated party.'' While it could be appropriate in some instances to treat any listed party as an ''affiliated party,'' FHFA does not believe it is likely that these parties would receive payments that are contingent on their termination or that are abusive or excessive, and thus does not believe it is necessary to treat each of them as an ''affiliated party'' as a matter of course. This is particularly true since the rule, like the statute, includes a ''catch-all'' provision for ''any other person that the Director determines, by regulation or on a case-by-case basis, to be participating in the conduct of the affairs of the regulated entity.'' [38] That provision is a more flexible and targeted tool for ensuring that FHFA appropriately reviews payments by a troubled regulated entity that are contingent on the termination of the affiliation of a party who is not a director, an officer, or an employee.

For these reasons, FHFA proposes to remove listed parties other than directors, officers, and employees from the rule's definition. The ''catch-all'' provision would be retained, though it would be slightly amended to incorporate a provision of the current rule that states a member of a Bank shall not be deemed an ''affiliated party'' solely because it is a shareholder of, or obtains advances from, a Bank.

''*Affiliated parties*'' *of OF.* The Safety and Soundness Act definition of ''entity-affiliated party'' includes the Office of Finance.[39] For purposes of the Golden Parachute Payments rule, however, FHFA determined that OF should be treated as if it were a ''regulated entity'' (meaning, as if it were the paying party, instead of the party receiving payment).[40] This decision required FHFA to develop a rule definition of OF's ''entity-affiliated parties,'' which currently covers any director, officer or manager of OF. It does not cover other OF employees or include the ''catch-all'' for parties participating in the conduct of OF's affairs.

FHFA continues to believe that OF should be treated as a ''regulated entity'' for purposes of golden parachute payments and agreements. FHFA does not believe OF employees should be outside the rule's scope, however. There is no supervisory policy that supports excluding any OF employees and, further, no supervisory policy that supports a different definition of ''affiliated party'' for OF than for the regulated entities. Thus, to ensure that OF is treated similarly to any ''regulated entity'' for purposes of the rule, FHFA proposes to remove the rule's separate definition of ''entity-affiliated party'' for OF and to apply the same ''affiliated party'' definition, amended as described above, to any regulated entity and OF. This change expands the scope of the rule with regard to OF, as it would now cover OF employees and any other person the Director determines, by regulation or on a case-by-case basis, to be participating in the conduct of the affairs of OF. FHFA requests comment on these proposed changes.

Definition of ''*executive officer.*'' To implement FHFA's decision to distinguish some agreements or payments that are provided to an ''executive officer'' from those that are provided to other ''affiliated parties,'' it is necessary to define ''executive officer.'' FHFA proposes to incorporate the definition of ''executive officer'' for purposes of its Executive Compensation rule, because the regulated entities and OF are familiar with that definition and FHFA intends that ''executive officer'' be defined consistently for the two rules.[41]

For the Enterprises and the Banks, the Executive Compensation rule's definition of ''executive officer'' includes ''any individual who performs functions similar to such positions, whether or not the individual has an official title'' and, for any regulated entity and the OF, ''any other officer as identified by the Director.'' [42] Any individual or other officer who is considered an ''executive officer'' for purposes of the Executive Compensation rule would also be treated as an ''executive officer'' for the Golden Parachute Payments rule.

FHFA further notes that the Executive Compensation rule establishes different ''executive officer'' definitions for the Enterprises, the Banks, and OF.[43] For the Enterprises, the rule definition is based on a Safety and Soundness Act definition that applies only to the Enterprises and includes two Enterprise directors: The chairman and vice

[38] 12 CFR 1231.2.

[39] 12 U.S.C. 4502(11).

[40] *See* 74 FR at 30976 and 78 FR at 28456.

[41] *See* 12 CFR 1230.2.

[42] *Id.*

[43] *Id.* Enterprise executive officers are the chairman and vice chairman of the board of directors, the chief executive officer, chief financial officer, chief operating officer, president, any executive vice president, any senior vice president, any individual in charge of a principal business unit, division, or function, and any individual who performs functions similar to such positions whether or not the individual has an official title. Bank executive officers are the president, the chief financial officer, and the three other most highly compensated officers. OF executive officers are the chief executive officer, chief financial officer, and chief operating officer. In all cases, ''executive officer'' includes any other officer identified by the Director.

chairman of the board of directors.[44] Because these Enterprise directors are treated as ''executive officers'' for purposes of the Safety and Soundness Act and the Executive Compensation rule, FHFA also proposes to treat them as ''executive officers'' for this rule. Other Enterprise directors, all directors of any Bank, and all directors of the OF would be treated as other affiliated parties, unless FHFA determines any such other director should also be treated as an ''executive officer.'' In practice, this means that, under the proposal, more agreements with and payments to directors (other than the Enterprises' chairmen and vice chairmen) would be permitted by operation of the rule and thus could be made without FHFA prior review and consent (assuming certain conditions, which are discussed below, are met).

FHFA also believes that it could be appropriate for any affiliated party to be treated as an ''executive officer'' for purposes of the Golden Parachute Payments rule, based on the affiliated party's degree of influence or level of responsibility. For that reason, the proposal would allow the Director to designate any affiliated party as an ''executive officer'' for purposes of the Golden Parachute Payments rule. FHFA anticipates basing such decisions on consideration of whether the affiliated party's participation in the conduct of the affairs of the regulated entity is of such influence or responsibility that the party could materially affect decisions about termination payments or the financial condition of the regulated entity, or could engage in certain types of financial crimes (identified in the rule).

FHFA expects to address whether a party who becomes an ''affiliated party'' as a result of the ''catch-all'' provision should be treated as an ''executive officer'' at the same time it determines to apply the ''catch-all.'' However, FHFA reserves the right to make a determination that an affiliated party should be treated as an ''executive officer'' for purposes of the rule at any time (in that case, the determination would not be applied retroactively, such that agreements or payments previously entered into or made could be in violation of the rule. Instead, FHFA would review future payments, including any agreement pursuant to which payment is made, as payments arise).

FHFA requests comments on all aspects of its proposed definition of ''executive officer.''

[44] 12 U.S.C. 4502(12).

E. Permitted Agreements

As previously noted, the approach of the current rule—that agreements and payments not exempted from the definition of ''golden parachute payment'' are prohibited unless they are permitted, either by operation of the rule or after review and consent by FHFA–would continue in the rule as proposed to be amended. To implement FHFA's intention to distinguish the treatment of agreements from the treatment of payments in some cases, the rule would be amended to address agreements and payments separately.

In addition, FHFA proposes to add three types of agreements that would be permitted by operation of the rule—(1) compensation arrangements (including plans or agreements) that are directed by FHFA exercising authority conferred by 12 U.S.C. 4617, which covers FHFA's conservatorship and receivership authorities and authorities with regard to any limited life regulated entity (''LLRE'')), (2) individually negotiated settlement agreements with affiliated parties who are not executive officers, where certain conditions are met, and (3) agreements to make payments to affiliated parties other than executive officers, where the amount of the payment is *de minimis.* FHFA also proposes to remove the current rule's provisions for permissible agreements with persons hired to prevent a regulated entity from imminently becoming a troubled institution or materially improve the financial condition of a troubled institution and change in control agreements, which FHFA now proposes to address in conjunction with other severance agreements. These proposed amendments are addressed below.

Plans directed by the Director. A regulated entity becomes a troubled institution for purposes of the Golden Parachute Payments rule if FHFA is appointed as its conservator or receiver (among other reasons). That appointment confers additional powers on FHFA: By operation of law, as conservator or receiver FHFA succeeds to the powers of the regulated entity's board of directors and may operate the regulated entity, including establishing or directing the regulated entity to establish compensation plans and arrangements and to make provisions for payments on termination of employees.[45]

Appointment as receiver also authorizes or requires FHFA to organize an LLRE for the regulated entity in receivership.[46] Although an LLRE is not in conservatorship or receivership, the Director has statutory discretion to use the agency's conservatorship and receivership authority with respect to the LLRE to establish or direct the establishment of employee compensation plans and provide for termination payments.[47]

Where FHFA, exercising authority conferred by 12 U.S.C. 4617, acts to direct the establishment of a compensation arrangement by a regulated entity, including an LLRE, the Director's consent to that arrangement is conveyed by the direction to establish it. For that reason, FHFA proposes to amend the Golden Parachute Payments rule to permit troubled institutions to make compensation plans or agreements that provide for termination payments to affiliated parties of a regulated entity without FHFA review, when such arrangements are established or directed by FHFA pursuant to authority conferred by 12 U.S.C. 4617. FHFA requests comments on this amendment.

Individually negotiated settlement agreements. FHFA proposes to amend the rule to permit troubled institutions to enter into individually negotiated settlement agreements with affiliated parties other than executive officers without FHFA prior review and consent, where (1) the agreement resolves a claim by the affiliated party or avoids a claim that the troubled institution has a reasonable belief would be brought by the party, and involves payment to the affiliated party and the party's termination; and (2) at the time the agreement is entered into, the regulated entity is reasonably assured, following due diligence appropriate to the level and responsibilities of the affiliated party, that the party has not engaged in certain types of wrongdoing. Individually negotiated settlement agreements with executive officers and other types of individually negotiated agreements with any affiliated party (such as, for example, an agreement with an employee to accelerate a retention award) would continue to require FHFA's prior review and consent.

This proposed amendment reflects FHFA's interpretation, addressed above, that the ''golden parachute payment'' definition covers a settlement agreement involving payment to and termination of an employee of a troubled institution, as an agreement to make a payment ''in the nature'' of compensation. It also recognizes that such agreements with

[45] *Id.* sec. 4617(b)(2)(A) through (D).

[46] *Id.* sec. 4617(i).

[47] *Id.* sec. 4617(i)(2)(C), providing that FHFA, in its discretion, may treat a limited-life regulated entity as a regulated entity in default at such times and for such purposes as FHFA determines.

lower ranking employees are not likely to involve payments that are excessive or abusive. Specifically, where a claim has been brought or a troubled institution reasonably believes one may be brought, the employee and the regulated entity have interests that are opposed. That opposition and the negotiation involved in reaching the settlement agreement provide some assurance that the agreement's terms, including any negotiated payment, are not excessive or abusive but instead reflect a cost to the troubled institution that it reasonably believes is lower than would likely be incurred if the claim were litigated.

Conversely, there is a somewhat higher supervisory concern that executive officers, who are better positioned to influence negotiations and decision-making and who could have built relationships with those in charge of negotiating or approving settlements, could receive payments through individually negotiated settlement agreements that do not fairly reflect an assessment of risk, potential damages, and associated costs, and thus that are excessive or abusive. On that basis, individually negotiated settlement agreements with executive officers would continue to be subject to review by FHFA.

Limiting application of the amendment to ''individually negotiated settlement agreements'' requires defining that term. Consistent with the foregoing discussion, FHFA is proposing a definition that seeks to capture only those individually negotiated agreements that (1) settle a claim that an affiliated party has brought or avoid a claim the regulated entity reasonably believes the affiliated party would bring and (2) involve a settlement payment to the affiliated party, a release of claims by the party (and possibly the regulated entity), and the termination of the party's affiliation with the regulated entity. As payment and termination are already included in the ''golden parachute payment'' definition, FHFA is not repeating them in its proposed definition of an ''individually negotiated settlement agreement.'' FHFA intends the definition to cover those agreements where obtaining a settlement and release of claims significantly motivates negotiation between the regulated entity and the affiliated party, as distinguished from other individual agreements where a release of claims is an important but more incidental feature. FHFA requests comment on the proposed definition of ''individually negotiated settlement agreement.''

In order for an individually negotiated settlement agreement to be permissible without FHFA prior review and consent, the regulated entity must be reasonably assured, at the time the agreement is entered into, that the affiliated party has not engaged in certain types of wrongdoing. The types of wrongdoing that a regulated entity must consider are set forth in the current rule and are not changing.[48] To implement this condition, FHFA proposes to amend a certification requirement in the current rule that would otherwise apply. FHFA has identified issues with that requirement which it now proposes to address.

Specifically, under the current rule a regulated entity submitting a request for FHFA review of a proposed golden parachute payment or agreement must ''demonstrate that it does not possess and is not aware of any information, evidence, documents, or other materials that would indicate that there is a reasonable basis to believe'' that the person to whom payment would be made has engaged in any of the types of wrongdoing listed. This standard could imply that the regulated entity must have a high degree of certainty about the person's actions, gained through considerable investigation, which may not be reasonable or, in some cases, even possible. For example, the current rule requires the regulated entity to provide certification when requesting review of an agreement, even where the parties to whom payment could ultimately be made are not known and would be expected to change over time (*i.e.,* employees covered by a broad-based severance pay plan). In addition, because the current rule states that each request must include a certification that a regulated entity is not aware of information that would reasonably indicate the party has engaged in wrongdoing, it could imply that a regulated entity that is not able to make the certification may not request FHFA's review and thus may not enter into the agreement or make the payment. This outcome was not intended, as the preamble that accompanied the current rule made clear.[49] Indeed, a regulated entity may have concerns about wrongdoing that it desires to address through an individually negotiated settlement agreement to avoid litigation, and the rule is not intended to prevent this.

To address these issues, FHFA proposes to amend the current rule's certification requirement. First, FHFA is clarifying the standard that a requesting regulated entity must meet: It must be reasonably assured that the affiliated party has not engaged in wrongdoing listed in the rule, following appropriate due diligence. FHFA expects that the nature of the due diligence performed by a regulated entity will vary based on the opportunity of the affiliated party to engage in the types of wrongdoing listed, when considering the party's affiliation, duties, functions, and privileges. It is possible that some affiliated parties would have no opportunity to engage in any listed wrongdoing, and in that case, simply noting an assessment of ''no opportunity'' could be sufficient. A regulated entity may make an affirmation or similar statement by the terminating affiliated party a component of its due diligence process. When an appropriate due diligence process does not give cause for concern that the affiliated party may have engaged in the rule's listed types of wrongdoing, the ''reasonably assured'' standard is met. The standard does not require a regulated entity to demonstrate or prove that the affiliated party has not engaged in wrongdoing.

If the regulated entity determines that the ''reasonably assured'' standard is met, it may enter into an individually negotiated settlement agreement with an affiliated party other than an executive officer without FHFA's review and consent. The regulated entity should retain records necessary to support its application of the standard in accordance with 12 CFR part 1235. If the regulated entity cannot meet the ''reasonably assured'' standard, it must obtain FHFA's consent to enter into the agreement. FHFA is also proposing to require any regulated entity that concludes, after appropriate due diligence, that it is not ''reasonably assured'' the affiliated party has not engaged in the listed types of wrongdoing to provide notice of its concerns to FHFA, even if the regulated entity does not enter into the individually negotiated settlement agreement. This requirement is intended to balance FHFA's supervisory concern about the occurrence of wrongdoing listed in the rule with the desire of the regulated entity to resolve claims (or potential claims) by affiliated parties.

FHFA requests comments on all aspects of its proposed amendments related to individually negotiated settlement agreements with affiliated parties who are not executive officers.

Agreements to make de minimis golden parachute payments. FHFA is also proposing to amend the rule to permit a troubled institution to enter into an agreement to make a *de minimis*

[48] 12 CFR 1231.3(b)(1)(iv)(A) through (D).

[49] 79 FR at 4397.

golden parachute payment to an affiliated party other than an executive officer without FHFA review and consent, and without conducting due diligence that the rule would otherwise require. The current rule does not distinguish agreements (or payments) based on amount, which has required troubled institutions to request FHFA review and consent even for agreements to make small golden parachute payments. Based on that experience, FHFA has determined that the burden of administration and compliance is not warranted, where the agreement would provide for a payment that is small and subject to a regulatory cap (thereby avoiding excessive or abusive payments or payments that would threaten the financial condition of the regulated entity) and is to be made to an affiliated party who is not an executive officer. In combination, FHFA believes these conditions support a reasonable presumption that the affiliated party either (1) was not in position to materially affect the financial condition of the regulated entity or engage in certain types of wrongdoing listed in the rule or (2) if the affiliated party was in such a position, that the payment does not settle a claim involving such wrongdoing.

This amendment would apply to individually negotiated agreements as well as plans that cover multiple employees, including broad-based plans, if the agreement or plan provides for payment that does not exceed the *de minimis* amount. FHFA intends this treatment to control even where the agreement is of a type that is specifically addressed in the rule. For example, a troubled institution would be permitted to enter into an individually negotiated settlement agreement to make a *de minimis* settlement payment to an affiliated party who is not an executive officer without FHFA's prior review and consent and without conducting due diligence related wrongdoing that is otherwise required by the rule. As the actual amount that a particular employee could receive may not be known until a payment obligation arises, agreements or plans that could result in an affiliated party receiving more than the *de minimis* amount would require FHFA's prior review and consent.

FHFA proposes $2,500 as the cap for a golden parachute payment that a troubled institution could agree to make without FHFA review and consent. While it is possible that a higher or lower amount could be supported, FHFA's past experience indicates there is a significant likelihood that payments of $2,500 or less would permitted after review.

The *de minimis* cap applies to all golden parachute payments in the aggregate to the same affiliated party. Therefore, if an individual affiliated party will or could receive more than one golden parachute payment and, in the aggregate, those payments could exceed the *de minimis* amount, then each of the payments would require FHFA review. For example, if a departing employee is to receive severance of $2,000, and the regulated entity also chooses to waive repayment of a small debt in the amount of $1,500, the troubled institution would be required to submit both agreements to FHFA for review. On the other hand, if a departing employee is receiving a severance payment of $1,500 and waiver of a debt repayment of $750, neither payment would require FHFA review because the total amount of $2,225 falls under the *de minimis* cap of $2,500.

To ensure the specific *de minimis* amount remains appropriate over time, considering changes in the economy, FHFA is also proposing that the amount be increased for inflation in accordance with the formula and methodology used for the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.[50] For consistency with that Act, FHFA proposes to base the annual adjustment on the increase in the percentage, if any, by which the Consumer Price Index for all urban consumers (CPI–U) as published by the Department of Labor for the month of December exceeds the CPI–U for the month prior to the month of the final rule's publication in the **Federal Register**, which would then be rounded to the nearest whole dollar.[51] Thus, if the rule were published in June 2018, the CPI–U for the month prior to publication, May 2018, would be 251.588.[52] If a troubled institution were applying the rule's $2,500 *de minimis* amount in June 2020, it would look to the monthly CPI–U published for December 2019. If the CPI–U index had risen to 257.119 in December 2019,[53] the troubled institution would divide 257.119 by 251.588 for a result of 1.021984355. This means there has been a percentage increase of 2.1984355 percent.[54] The troubled institution would then increase the $2,500 *de minimis* amount by 2.1984355 percent (which is to multiply 2,500 by 1.021984355) for a result of $2,554.96. This amount rounded to the nearest dollar would be $2,555. The *de minimis* amount in the entire calendar year of 2020 would be $2,555.

To facilitate use of the adjustment by troubled institutions, FHFA also proposes to permit troubled institutions to calculate it themselves and apply it accordingly. Thus, no action by FHFA would be required in order for a troubled institution to use an inflation-adjusted dollar value.

FHFA requests comment on all aspects of its proposed treatment of agreements to make *de minimis* golden parachute payments, including the aggregation of payments for purposes of calculating the *de minimis* amount and the proposed inflation adjustment.

Employment agreements with turnaround specialists. FHFA identified issues with the scope and application of rule provisions on employment agreements with persons hired to help a regulated entity address its problems (''turnaround specialists''). Currently, the rule provides that an agreement made in order to hire a person to become an affiliated party either at a time when the regulated entity is, or in order to prevent it imminently from becoming, a troubled institution, is permissible provided that the Director consents to the terms and amount of the golden parachute payment.

In addition, the current rule is not clear as to whether the Director's consent to the terms and amount of payment is required when the agreement is entered into or could be provided later, at the time the payment is made. The reason for treating these employment agreements differently from other types of agreements is to facilitate the hiring of a turnaround specialist to address the regulated entity's problems, when the regulated entity's condition could be a disincentive to joining the company. In that light, FHFA believes review and consent at the time of agreement would provide greater assurance to the

[50] 28 U.S.C. 2461 note. This Act requires FHFA, among other agencies, annually to adjust the civil monetary penalties it may impose for inflation, in accordance with the Act's requirements.

[51] Consumer Price Index, Economic News Release, Bureau of Labor Statistics, United States Department of Labor, *https://www.bls.gov/news.release/cpi.toc.htm* (last visited August 20, 2018). The index levels can also be found in monthly press releases. *See, e.g.,* Consumer Price Index Summary, United States Department of Labor, Bureau of Labor and Statistics, *https://www.bls.gov/news.release/cpi.nr0.htm.*

[52] *See,* Consumer Price Index Summary, United States Department of Labor, Bureau of Labor and Statistics (June 12, 2018), *https://www.bls.gov/news.release/archives/cpi_06122018.htm.*

[53] This number was created for purposes of the example.

[54] For the avoidance of doubt, the calculations used for the example are as follows: (1) 257.119/251.588 = 1.021984355. (2) 2500 * 1.02198355 = 2554.960888. (3) Rounding of 2554.960888 to the nearest dollar produces $2,555.

regulated entity and the prospective hire that payments in connection with termination provided for in the agreement will be permitted. Review at the time of agreement also aligns with FHFA's higher supervisory concern for agreements, relative to subsequent payments made pursuant to an agreement to which FHFA has consented. FHFA also observes that such agreements often anticipate the departure of the turnaround specialist when particular tasks are completed or benchmarks are met, and in that case, for a turnaround specialist hired as an executive officer, review of the agreement is consistent with statutory obligations that require FHFA to prohibit a regulated entity from providing compensation to an executive officer that is not reasonable and comparable and the Enterprises to obtain FHFA approval prior to entering into agreements that provide for payment in connection with the termination of an executive officer.

Finally, the current rule does not make it clear how consent obtained at the time an agreement is entered into operates to trigger provisions of the rule if the regulated entity is not then a troubled institution. By statute, an agreement or payment is a ''golden parachute payment'' if it is made by a regulated entity when it is, or is in contemplation of becoming, a troubled institution. However, as noted above, the current rule does not address FHFA's interpretation of ''in contemplation of.''

Several proposed revisions to the rule will address these issues. To clarify that FHFA intends to review any employment agreement with a turnaround specialist, FHFA is removing the rule's current provision that permit such agreements. Within the rule's general construct, agreements that are not permitted by operation of the rule cannot be entered into without FHFA's review and consent; by removing the rule provision that makes such agreements permissible, FHFA is thus making them subject to its prior review.

That change will operate in conjunction with other amendments related to payments that are described below. If those proposed amendments are adopted, a troubled institution will be required to obtain FHFA's consent to the employment agreement, but could be permitted to make payment to a turnaround specialist without further review or consent, provided (1) the payment is in accordance with the agreement, (2) the Director provided consent to the subsequent payment when providing consent to the agreement, and (3) the troubled institution meets any other condition that the Director imposed when providing consent. This proposed treatment of payments could apply to any employee who is hired as a turnaround specialist, including an executive officer.[55]

In FHFA's view, a regulated entity that hires a turnaround specialist to prevent it from imminently becoming a troubled institution could meet the ''in contemplation of'' criteria and, if so, would become subject to all of the rule's provisions. It is also plausible that a regulated entity experiencing problems would seek FHFA's consent to a proposed employment agreement as though it were a troubled institution, to reassure a prospective employee that the agreement would not be prohibited should the regulated entity's condition deteriorate further. Nothing in the rule prevents this; where the rule requires a troubled institution to request FHFA's consent to an agreement, it does not preclude a regulated entity that is not a troubled institution from doing so. FHFA notes, however, that consent to an agreement is contextual, and it may not be feasible to consent to an agreement as though it were a golden parachute agreement, if there appears little likelihood that the regulated entity would become a troubled institution in the reasonably near term. FHFA requests comment on this proposed approach, and on all aspects of its proposed treatment of employment agreement with turnaround specialists.

Change in control agreements. FHFA is also proposing to remove from the rule a provision that addresses change in control agreements. Under the current rule, a troubled institution may enter into a change in control agreement that provides for a reasonable severance payment capped at the amount of the base salary paid to the employee in the previous 12 months without FHFA's prior review and consent. A change in control agreement that provides for payment on termination in excess of the cap requires FHFA's prior approval. Further, any change in control agreement that results from a regulated entity being placed into conservatorship or receivership also requires FHFA's prior review and consent.

The approach of the current rule, permitting some change in control agreements to be entered into without FHFA review, is not consistent with FHFA's supervisory concern for agreements to make golden parachute payments, especially agreements to make payments to executive officers, or with FHFA's interest in reviewing agreements that provide severance pay. For those reasons, FHFA proposes to treat a change in control agreement as it would any other agreement under the rule as proposed to be amended. Thus, for example, any individually negotiated change in control agreement (whether with an executive officer or another affiliated party) would require FHFA's prior review and consent, as would any plan that included executive officers and provided for severance pay on a change in control. If a change in control agreement or plan provided for only a *de minimis* payment to an affiliated party other than an executive officer, then FHFA's prior review and consent to the agreement would not be required.

FHFA recognizes that a regulated entity may enter into agreements or establish severance pay plans that provide for payments on a change in control prior to the regulated entity becoming a troubled institution. A regulated entity does not violate the rule simply because FHFA has not provided consent to an agreement or plan that is in place at the time the entity becomes a troubled institution. FHFA anticipates that it would review such agreements or plans either at the time a regulated entity becomes a troubled institution or at the time a payment is proposed to be made. Since FHFA could then determine that the agreement or plan to make a golden parachute payment is not permissible, however, the regulated entities should address that contingency—possible future application of the rule—in their plans and agreements to avoid later contractual disputes.

FHFA requests comments on its proposed amendment to remove the rule's provision on change in control agreements and thereby require FHFA's prior review and consent to change in control agreements and plans providing for golden parachute payments (other than a *de minimis* payment).

F. Permitted Payments

As is the case with golden parachute agreements, under the current rule a troubled institution may not make a golden parachute *payment* unless it is permitted by the rule or because the Director has consented to the payment after review. FHFA does not propose to change this general approach, but has identified some instances where it would be appropriate to permit payments to be made by operation of the

[55] FHFA also notes that termination payments to executive officers would be deemed ''compensation'' for purposes of the Executive Compensation rule. FHFA intends to coordinate its review of agreements to make such payments as required under each rule.

rule. These instances reflect the supervisory policies previously stated, that FHFA has a higher supervisory concern for agreements than for a subsequent payment made pursuant to a permitted agreement, and a higher concern for payments to executive officers than it does for similar types of payments when provided to lower ranking employees.

To implement these policies, FHFA is proposing to permit a troubled institution to make a payment pursuant to a permitted individually negotiated settlement agreement to any affiliated party, including an executive officer, without further review and consent. This proposal acknowledges that the payment could be construed as essential consideration for the agreement, such that consent to the payment would be incorporated in the determination to permit an individually negotiated settlement agreement.

FHFA is also proposing to clarify the Director's authority to consent to any future payment to any affiliated party that would otherwise be subject to prior review, at the same time or after the Director consents to the plan or agreement pursuant to which the payment would be made, provided the payment is made in accordance with a permitted agreement (whether by operation of the rule or after FHFA review and consent) and meets any other conditions that the Director may establish. This authority has been implicit in the rule, and would now be explicit.

FHFA is proposing to permit a troubled institution to make two other types of payments to affiliated parties who are not executive officers without FHFA review and consent. These are (1) *de minimis* payments and (2) payments above the *de minimis* amount that are made in accordance with a permitted agreement, where the troubled institution is reasonably assured, following appropriate due diligence, that the affiliated party has not engaged in wrongdoing of the types listed in the rule.

Finally, FHFA is proposing to permit a troubled institution to provide small value gifts to executive officers to recognize significant, nonrecurring, life events (such as retirement) without FHFA's review and consent.

All golden parachute payments other than those permitted by operation of the rule would be subject to FHFA review and consent.[56] As a result of the proposed amendments, which are discussed in more detail below, FHFA believes most payments to employees who are not executive officers would not require FHFA review and consent, while many payments to employees who are executive officers would. FHFA review and consent would be required for any payment to any affiliated party where there is a basis for concern that the party has engaged in wrongdoing of a type listed in the rule.

Payments pursuant to permitted individually negotiated settlement agreements. FHFA proposes to permit any payment pursuant to a permitted individually negotiated settlement agreement, to be made without further FHFA review. FHFA has previously described permitted individually negotiated settlement agreements, whether by operation of the rule (in the case of an agreement with an affiliated party other than an executive officer, where the troubled institution is reasonably assured, after appropriate due diligence, that the party has not engaged in certain types of wrongdoing) or after FHFA review and consent (in the case of an agreement with any executive officer, or with an affiliated party where the troubled institution is not reasonably assured that the party had not engaged in certain types of wrongdoing). FHFA understands that the settlement payment could be essential consideration for the agreement, and that the agreement could be viewed as nonbinding if there were a question as to whether the payment would be allowed or could be prohibited.

FHFA also recognizes that some timing issues could present interpretive questions. For example, an individually negotiated settlement agreement entered into before the regulated entity becomes a troubled institution, and when the regulated entity is not ''in contemplation of'' becoming troubled, could provide for future payments that may ultimately be made after the regulated entity becomes a troubled institution. In that case, FHFA would view the agreement as permitted for purposes of the rule, because at the time it was entered into, the rule did not apply to the agreement and thus it could not be ''impermissible'' in the rule's context. Because the agreement would be deemed permitted, payments pursuant to it would also be permitted.

Payments where consent was provided with consent to an agreement. With this provision, FHFA is making explicit authority that has been implied in the rule, that the Director can permit any golden parachute payment and thus can, as circumstances warrant, undertake the review process for a payment, or a set of payments, at the same time as review of an agreement. FHFA believes that there are instances where such consent could be appropriate as a matter of administrative efficiency and to reduce burden. For example, the Director may consent to a golden parachute payment when consenting to the agreement where the actual payment is expected to be made in a short timeframe. A regulated entity may request FHFA to consent to future payments, and FHFA may also determine that such consent is appropriate on its own initiative.

Because other proposed amendments would permit a troubled institution to make most payments to affiliated parties other than executive officers without FHFA review, FHFA expects this provision would most often be used with regard to payments to executive officers. FHFA also expects that consent in such instances would impose the condition that the troubled institution make the payment only if, after appropriate due diligence, it is reasonably assured that the executive officer has not engaged in wrongdoing of the types listed in the rule. Other conditions could also be imposed, such as the condition that payment be made within a certain time period. A troubled institution should establish an appropriate compliance process to ensure any conditions imposed on making the payment are met. If the troubled institution is not able to meet the conditions, it may submit the

[56] A recent case rejected a claim that a taking for purposes of the Tucker Act, 28 U.S.C. 1491, can occur when FHFA prohibits a golden parachute payment, including one made pursuant to an agreement entered into before the enactment of Section 4518(e) in 2008. In *Piszel* v. *U.S.*, 833 F.3d 1366 (Fed. Cir. 2016), the Court of Appeals for the Federal Circuit held that FHFA's prohibition did not result in a taking because the affiliated party retained the ability to pursue a claim for damages from the regulated entity for breach of contract.

FHFA agrees with the ruling that there was no taking, but observes that awarding damages in an action for breach of contract by an affiliated party against a regulated entity, where FHFA prohibits the regulated entity from making a golden parachute payment in accordance with its rule, would clearly defeat the purpose of Section 4518(e), which is to prevent the affiliated party from receiving such a payment.

In contrast, the Court of Federal Claims had held in that case that no taking occurred (see *Piszel* v. *U.S.*, 121 Fed. Cl. 793 (2015)) based on the lack of a sufficiently cognizable property interest in the context of the regulatory scheme (''a heavily regulated environment'') and the regulator's express statutory authority (the Safety and Soundness Act in effect at the time of contract formation authorized FHFA's predecessor agency to prohibit compensation it deemed to be unreasonable at any time, and nothing in the Act ''guaranteed that the government could not later change its mind'' after approving the compensation). That conclusion would, of course, be even stronger with respect to a payment made subject to an agreement entered into after Section 4518(e)'s enactment, a proposition with which the Federal Circuit may have agreed, *see* 833 F.3d at 1374.

proposed payment to FHFA for review and consent.

FHFA requests comment on its proposal addressing concurrent review of and consent to any agreement to make a golden parachute payment to an affiliated party and any subsequent payment and conditions that must be met for a troubled institution to make such a payment without further FHFA review and consent.

De minimis payments to affiliated parties other than executive officers. Consistent with the foregoing proposal on permitted agreements, FHFA is proposing to permit a troubled institution to make a *de minimis* golden parachute payment to any affiliated party other than an executive officer, without FHFA review and consent and without the due diligence otherwise required by the rule. If the *de minimis* payment is pursuant to a permitted agreement, this provision confirms that making the payment does not trigger any required action on the part of the troubled institution or FHFA. If a *de minimis* payment is made without any agreement between the parties—which FHFA views as unlikely—then this provision also serves to clarify that an agreement is not required in order to make it; rather, it is the *de minimis* amount of the payment that establishes its permissibility.

FHFA's proposal related to *de minimis* payments does not apply to payments to executive officers. Considering the purposes of Section 4518(e), FHFA believes that the majority of golden parachute payments to executive officers, even payments of relatively low amounts, should be subject to review. On the other hand, a proposed provision for small value gifts discussed below would apply to executive officers. As a result, a troubled institution would be permitted to provide a retirement gift to an executive officer without FHFA review, provided its value does not exceed the proposed small value cap.

FHFA also notes that, while the rule would not require any due diligence prior to making a *de minimis* payment, other governing documents may condition payment on employee behavior. For example, a plan that provides for a modest termination payment to employees whose length of service does not qualify them for severance pay may establish the condition that the employee not be terminated for cause. FHFA's proposal to relieve *de minimis* golden parachute payments from due diligence otherwise required by the rule does not impact conditions that are imposed by the terms of a plan or agreement.

FHFA requests comment on its proposal to permit troubled institutions to make *de minimis* golden parachute payments to affiliated parties other than executive officers, without conducting due diligence otherwise required by the rule and without FHFA review.

Payments pursuant to other permitted agreements, to affiliated parties other than executive officers. FHFA is proposing that payments made pursuant to permitted agreements other than individually negotiated settlement agreements, to an affiliated party other than an executive officer, and that exceed the *de minimis* amount, be permitted without further FHFA review provided the troubled institution is reasonably assured, following appropriate due diligence, that the affiliated party has not engaged in the types of wrongdoing listed in the rule. A payment in excess of the *de minimis* amount that is not pursuant to a permitted agreement, or where the troubled institution is not able to meet the ''reasonably assured'' standard, would require FHFA's review and consent.

Permitted agreements, the standard of ''reasonably assured,'' and the standard of appropriate due diligence have been addressed above. Thus, the nature of due diligence performed will vary (based on the opportunity of the affiliated party to engage in the types of wrongdoing listed, considering the party's affiliation, duties, functions, and privileges), and a regulated entity may make an affirmation or a similar statement by the affiliated party part of its due diligence process. When an appropriate due diligence process does not indicate a concern that the affiliated party may have engaged in the rule's listed types of wrongdoing, the ''reasonably assured'' standard is met, and the payment would be in accordance with a permitted agreement, then the troubled institution may make a golden parachute payment without FHFA review. The regulated entity should retain records necessary to support its decision in accordance with 12 CFR part 1235. If the troubled institution cannot meet the ''reasonably assured'' standard, it must obtain FHFA's consent to make the golden parachute payment. If the troubled institution concludes that the ''reasonably assured'' standard is not met and elects not to make the payment, it would be required to provide notice of its concerns to FHFA.

FHFA requests comment on all aspects of its proposed treatment of permitted payments to affiliated parties other than executive officers.

Small value gifts to executive officers. With some limited exceptions, the current rule operates to require FHFA review of all golden parachute payments to executive officers. The proposed rule would generally take a similar approach, as it would establish only three instances where a golden parachute payment to an executive officer would not require FHFA review and consent: Payments pursuant to an individually negotiated settlement agreement, payments to which the Director consented when consenting to the agreement that provides for the payment (both discussed above), and small value gifts on the occurrence of a significant life event such as retirement.

Specifically, FHFA is proposing to permit a troubled institution to provide a small value gift to an executive officer without FHFA review, where the gift is provided in recognition of a nonrecurring life event such as retirement. This proposal reflects FHFA's balancing of the administrative and compliance burdens of reviewing such payments, and its determination that reviewing such payments, even when made to an executive officer, exceeds FHFA's level of supervisory concern where the payment is in an amount that does not suggest an evasion of the rule. For that reason, FHFA proposes to cap permissible gifts at $500 or less. A gift exceeding $500 would be subject to review.

To ensure that the small value gift provision remains at a relevant dollar amount FHFA is proposing an annual inflation adjustment in the same manner as proposed for *de minimis* payments. Thus, continuing the example previously set forth, if a troubled institution were applying the rule's $500 small gift provision in June 2020, the $500 amount would be increased by 2.1984355 percent for a result of $510.99 (which rounded to the nearest dollar would be $511) and the small gift cap for the entire calendar year of 2020 would be $511.

FHFA requests comments on all aspects of the proposed treatment of small value gifts, including whether the provision should expressly cover any types of gifts, and if so, what types. FHFA also requests comment on the proposed inflation adjustment formula.

G. Procedure for Requesting Consent

The rule currently sets forth instructions for filing requests for consent, including the contents of a filing and to whom requests should be sent. In general, FHFA proposes to retain without change filing requirements related to the reason the troubled institution seeks to enter into

the agreement or payment; a requirement that the troubled institution provide a copy of any agreement regarding the subject matter of the request; the cost to the troubled institution of the proposed payment or payments and their impact on capital and earnings; and the reasons why FHFA should provide consent. FHFA is proposing a minor change to the content requirement related to the identity of the affiliated party to whom payment would be made, to clarify that a description of the class or group eligible for payment is required where the actual affiliated parties are not known or may change (as may be the case with a broad-based severance plan, for example). More substantive changes to the content of filing requirements, addressed below, generally align with other substantive proposed changes to the rule.

For example, to align with proposed changes related to ''nondiscriminatory benefit plans,'' FHFA proposes to add a requirement related to any benefit plan that the regulated entity believes is ''nondiscriminatory'' even though it is not listed among the IRS ''nondiscriminatory employee plans and programs'' explicitly exempted from the ''golden parachute payment'' definition. The regulated entity should support its assertion that the benefit plan is nondiscriminatory with a description of how it operates (or will operate) with regard to eligible participants at different levels of employment. If FHFA agrees that the plan is nondiscriminatory, then it will be exempt as a matter of law.

It is possible that FHFA would disagree with the regulated entity's suggested characterization of an agreement (*i.e.,* that the agreement is a bona fide deferred compensation plan or arrangement, or is nondiscriminatory). In those instances, FHFA expects that it would then consider the request as if it had been submitted for FHFA's general review and would notify the regulated entity both that FHFA disagreed with the proposed characterization and whether the proposed agreement was permitted, nonetheless. The regulated entity could then determine either to implement the plan as originally submitted to FHFA (subject to meeting other rule requirements related to payments) or to revise the plan to address issues with the regulated entity's intended characterization (*e.g.,* that the plan is ''nondiscriminatory'') and re-submit it to FHFA.

FHFA is also proposing changes to a filing requirement related to a troubled institution's certification and documentation of factors related to wrongdoing. Under the current rule, a troubled institution is required to ''demonstrate that it does not possess and it not aware of any information, evidence, documents or other materials that would indicate that there is a reasonable basis to believe'' that the party to receive payment has engaged in four listed types of wrongdoing.

Because the rule does not distinguish golden parachute payments from agreements, certification is required for any request to FHFA, including a request for FHFA review of a broad-based plan covering a large and fluid number of employees. FHFA believes that approach as applied to plans and agreements is unnecessarily burdensome (and may be infeasible) if it requires the troubled institution to make a certification with regard to a class of affiliated parties, particularly considering that a similar analysis and certification is required prior to actually providing the golden parachute payment. For that reason, FHFA is proposing to require troubled institutions to undertake the rule's due diligence review only when entering into a golden parachute payment agreement with an individual affiliated party and when making any payment. In those cases, the affiliated party to whom payment would be made can be readily identified, making the review more meaningful and manageable.

FHFA has previously addressed amendments to clarify the applicable standard and the expected level of due diligence review by a troubled institution. For purposes of making a request for FHFA consent to an individual agreement or any payment, however, a troubled institution would now be required to state either that it is reasonably assured that any affiliated party identified in the request has not engaged in the listed types of wrongdoing or, if it is not reasonably assured, the results of its due diligence and, in light of those results, why the troubled institution believes FHFA should nonetheless provide consent. These changes are intended to clarify that a troubled institution may request FHFA's review and consent even if the ''reasonably assured'' standard is not met.

FHFA is also proposing minor changes to update the rule. For example, the rule currently refers to requests as ''letter applications.'' FHFA now proposes to require simply that the request be in writing. FHFA also proposes to state expressly that it may waive or modify any form or content requirement. Thus, it could be appropriate for a troubled institution to make an oral request. Though the current rule does not prevent this, an express waiver provision would clarify that FHFA intends to be flexible where warranted by the circumstances of an agreement or payment.

Finally, nothing prevents a troubled institution from providing any other information it believes is relevant to its request, including information relevant to factors for FHFA's consideration that are set forth in the rule (and discussed further below). For example, a troubled institution may wish to note, and provide support for, its conclusion that a benefit plan is ''usual and customary.''

H. FHFA Review of Requests

Review Factors. Section 4518(e) requires FHFA to set forth by regulation factors to be considered when acting to prohibit or limit a golden parachute payment or agreement, and suggests some factors that FHFA may consider.[57] In that context, the rule's prohibition of golden parachute payments is a procedural construct to ensure that agreements and payments that are not permitted by operation of the rule are subject to FHFA review and consent. In its review, FHFA applies the factors as appropriate to the facts and circumstances of a particular request, to determine whether an agreement or payment should be permitted or prohibited.

Review factors suggested by statute include whether there is a reasonable basis to believe that the affiliated party (1) has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse, or has violated any provision of federal or state law, that has had a material effect on the troubled institution's financial condition, or (2) is substantially responsible for the troubled condition or insolvency of, or the appointment of a conservator or receiver for, the troubled institution. The current rule requires the regulated entities to consider these factors and an additional factor related to committing or conspiring to commit certain federal crimes, prior to submitting a request for consent. The rule also sets forth additional factors for the Director's consideration when reviewing requests (including two factors suggested by Section 4518(e) that address the affiliated party's position and length of affiliation with the regulated entity) and states that FHFA may consider any other factor that is relevant to the facts and circumstances, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order or written agreement, and the level of willful misconduct, breach of fiduciary

[57] 12 U.S.C. 4518(e)(2).

duty, and malfeasance by the affiliated party.

FHFA is not proposing any changes to the rule factors that a troubled institution would be required to consider prior to submitting a request for FHFA's consent. FHFA is proposing to add three new factors for the Director's consideration, to reflect FHFA's understanding of the purpose of Section 4518(e) and other proposed changes to the rule.

As noted above, the legislative history and language of Section 4518(e) indicate it was intended to permit FHFA to prohibit or limit golden parachute payments that are excessive or abusive, or that would materially adversely affect the financial condition of the regulated entity. FHFA has always been guided by the purposes of Section 4518(e) in administering the rule, but proposes to add these factors now for transparency.

FHFA is also proposing to add as a review factor whether an agreement (including a plan) is usual and customary. FHFA believes this can be an important factor given that the regulated entities hire employees with special expertise and must compete in the market for such talent. While the fact that the requesting regulated entity considers a benefit to be usual and customary would not, alone, determine permissibility, it is a factor that would inform FHFA's review.

Also for transparency, FHFA is proposing to add a review factor for any other information submitted by a regulated entity. This factor has been implicit in the current rule, as FHFA routinely considers all information submitted with a request for consent, but it would now be explicit.

FHFA Review Process. Though FHFA is proposing relatively few changes to the rule's review factors, other proposed rule changes will affect when and how review occurs. Specifically, if the rule is amended as proposed, it should result in a greater number of golden parachute payments being permitted by operation of the rule. As FHFA will not be reviewing these payments, it will not be applying the review factors to them. However, FHFA expects most payments that are permitted by operation of the rule to be those that are made in accordance with an agreement that is permitted, when the troubled institution is reasonably assured that the affiliated party to whom payment would be made has not engaged in the rule's listed types of wrongdoing. Under the rule as amended, most agreements would require FHFA's review to determine their permissibility (as they do now) and, when determining whether to permit the agreement, FHFA will consider the review factors as appropriate.

If amended as proposed, the rule would permit a troubled institution to enter into two types of agreements to make golden parachute payments without FHFA review: Individually negotiated settlement agreements and agreements to make *de minimis* golden parachute payments, limited in each case to affiliated parties who are not executive officers. FHFA has considered whether application of the review factors would result in a determination that these agreements should be prohibited, and has determined it is unlikely.

For individually negotiated settlement agreements, FHFA believes the risk that the rule as proposed to be amended would permit an agreement that would be prohibited if subject to FHFA review is small because of the type of agreement, and because, to be permitted, the agreement must be with an affiliated party who is not an executive officer, where the troubled institution is reasonably assured that the affiliated party has not engaged in listed types of wrongdoing. FHFA's experience generally is that individually negotiated settlement agreements reflect the unique facts and circumstances that gave rise to the dispute, as considered and weighed by parties with opposing interests in achieving the agreed-upon settlement. This may include consideration of factors similar to those set forth in the rule (such as type of wrongdoing suspected and position, duties, or responsibilities of the affiliated party) in addition to factors that are not generally applicable, such as the anticipated cost of litigating a dispute and the potential benefit of avoiding future, similar, actions by other affiliated parties. Where the affiliated party is not in a position to influence an unduly favorable settlement offer—as an executive officer may be, based on prior relationships with higher ranking employees authorized to negotiate or approve settlement offers—the fact that the parties are opposed also supports the conclusion that the agreed-to settlement payment is not abusive or excessive. If, in addition, the troubled institution is reasonably assured that the affiliated party has not engaged in the listed types of wrongdoing, then there is relatively little risk that it is settling a claim as to which FHFA would have such a significant supervisory interest as to prohibit the agreement.

For agreements to make *de minimis* golden parachute payments (and subsequent payments), the risk that the amended rule would permit an agreement that would be prohibited if subject to FHFA review is significantly minimized by limiting permissible agreements to affiliated parties who are not executive officers and capping the amount of the permissible payment. On past experience, FHFA has not had reason to prohibit such small payments on the basis that they were excessive or abusive, or that they would or could detrimentally impact the financial condition of the troubled institution. In contrast, FHFA has permitted small golden parachute payments to avoid imposing an excessive hardship on terminating employees, such as small payments to employees terminated involuntarily but not for cause whose performance was excellent but whose length of service did not qualify them for participation in a severance pay plan, or forgiveness of a small indebtedness to the troubled institution of an employee who terminated voluntarily to care for a family member with a disability.

FHFA has also considered the likelihood that the rule as proposed to be amended would operate to permit payments that FHFA would prohibit, if subject to FHFA review. Where FHFA has determined to permit an agreement and the rule as amended would permit the troubled institution to make payments in accordance with that agreement *only* after it is reasonably assured that the affiliated party has not engaged in certain types of wrongdoing, then FHFA believes additional review at the time of payment is not warranted because, if review were required, FHFA would most likely allow the payment. Under the current rule, which does require review at the time of payment, FHFA has consistently permitted proposed payments to employees who are not executive officers, where the payment is in accordance with an agreement to which FHFA has consented and as to which the requesting regulated entity has submitted the rule's required certification about employee wrongdoing. FHFA has done so based on, among other things, the possible negative consequences of prohibiting such payments on the condition of the requesting regulated entity—in particular, its ability to retain a stable workforce, replace employees based on more usual attrition rates, and recruit employees without paying a wage premium. FHFA's experience is reflected in the rule amendments now proposed.[58]

[58] The current rule's process of review of agreements and subsequent payments has been

Continued

If amended as proposed, the rule would permit payments to be made without review of employee conduct related to the rule's listed types of wrongdoing at the time of payment, by either FHFA or the regulated entity, in three instances: Settlement payments pursuant to permissible individually negotiated settlement agreements to any affiliated party, small value gifts to an executive officer, and *de minimis* payments to an affiliated party who is not an executive officer. For settlement payments, review of employee conduct would be required at the time the agreement is entered into and thus would occur in conjunction with FHFA's determining whether to permit the agreement. For small value gifts and *de minimis* payments, FHFA has determined that review should not be required based on the small size of the gift for executive officers and, though larger, the size of the *de minimis* payment in combination with the limitation of this provision to non-executive-officer affiliated parties, and the facts that such payments are usually infrequent and made to avoid undue hardship.

In sum, FHFA believes the rule as proposed to be amended appropriately identifies those golden parachute payments and agreements where FHFA review should occur, balancing FHFA's supervisory concerns with the burdens of administration and compliance. FHFA also recognizes the possibility that, in some few cases, the amended rule could operate to permit an agreement or payment that FHFA may have prohibited if it had been reviewed, however. Apart from prohibiting golden parachute payments and agreements through the rule, FHFA has other supervisory, remedial and enforcement authority that it may use to address improper payments or agreements and prevent them in the future. For example, if FHFA determined that a regulated entity did not have an appropriate process for entering into and administering agreements to make golden parachute payments to affiliated parties, FHFA could require the regulated entity to take corrective action, or FHFA could initiate an enforcement action. If an affiliated party obtained a golden parachute payment on the basis of a false representation about their actions while affiliated with the regulated entity, the regulated entity or FHFA could bring an action seeking restitution or reimbursement, or another legal remedy.

IV. Section-by-Section Analysis

A. § 1231.1—Purpose

FHFA is proposing conforming changes to this section.

B. § 1231.2—Definitions

Affiliated party. FHFA is proposing to change the defined term ''entity-affiliated party'' to ''affiliated party'' throughout the rule, to avoid confusion with other, different, statutory and regulatory uses of the term ''entity-affiliated party.'' FHFA is also proposing to amend the definition for purposes of golden parachute payments and agreements. For all regulated entities and OF, ''affiliated party'' would include all officers, directors, and employees, and any other person who the Director determined, by regulation or order, was participating in the conduct of the affairs of the regulated entity or OF.

For the Enterprises and the Banks, fewer parties would be covered by type of affiliation (*e.g.,* shareholders). FHFA believes it is unlikely that some of the named ''affiliated parties'' would receive payments contingent on termination, and the ''catch-all'' for any person determined to be participating in the conduct of the affairs of the regulated entity makes including parties by type unnecessary.

For OF, the scope of the amended ''affiliated party'' definition would be broader than the current definition, which covers OF managers and officers but does not cover other OF employees, and which does not have a ''catch-all'' for OF. FHFA has determined that, with regard to OF, the ''affiliated party'' definition is unnecessarily narrow and should be aligned with the definition applied to the Enterprises and the Banks.

FHFA is not amending the substance of the existing ''entity-affiliated party'' definition for purposes of provisions of part 1231 that address indemnification payments. For that reason, FHFA is adding language to distinguish which portion of the ''affiliated party'' definition applies to which type of payment (golden parachute payments and indemnification payments).

Agreement. FHFA is proposing to add a new definition of the term ''agreement,'' to implement its intention to distinguish the rule as applied to *agreements* to make golden parachute payments from its application to golden parachute *payments.* The statutory ''golden parachute payment'' definition covers both agreements and payments, and FHFA's rule covered, and will continue to cover, both agreements and payments.

Benefit plan. FHFA is proposing to remove the definition of ''benefit plan.'' The purpose of this definition was to list two types of plans that were exempt from the definition of ''golden parachute payment:'' ''employee welfare benefit plans'' as defined in section 3(1) of ERISA, and other ''usual and customary plans.'' The exemption for ERISA ''employee welfare benefit plans'' is being retained and relocated. FHFA proposes to remove the exemption for ''usual and customary plans'' because the exemption was not self-executing in practice (*i.e.,* regulated entities submitted plans that they thought were ''usual and customary'' and thus exempt to FHFA for review and concurrence) and FHFA believes most ''usual and customary plans'' will now be covered by other proposed exemptions. If a plan that a regulated entity considers to be ''usual and customary'' is not covered by another exemption, the regulated entity could request FHFA's consent to the plan in accordance with the rule.

Bona fide deferred compensation plan or arrangement. FHFA is proposing to amend the definition of ''bona fide deferred compensation plan or arrangement'' to remove duplicative material and relocate a timing requirement that, if met, makes the plan or arrangement exempt from the ''golden parachute payment'' definition. The timing requirement would now appear with rule provisions related to exemptions.

Entity-affiliated party. As addressed above, FHFA is proposing to replace the term ''entity-affiliated party'' with ''affiliated party'' throughout the rule, to avoid confusion with other, different, statutory and regulatory uses of the term ''entity-affiliated party''.

Executive officer. FHFA is proposing to add a definition of ''executive officer,'' to implement an approach to golden parachute payments and agreements that, in some cases, distinguishes the treatment of an agreement with or payment to an executive officer from those to another affiliated party, particularly lower-ranking employees. For purposes of the rule, ''executive officer'' would be defined as it is in FHFA's separate rule on executive compensation, at 12 CFR part 1230. Any person who is an

called a ''double approval'' process. When commenters previously objected to it, FHFA noted that it was appropriate because the condition of a regulated entity could change between the time an agreement was consented to and a payment is made. *See, e.g.,* 79 FR 4394, 4396 (Jan. 28, 2014). This is still the case. However, FHFA's experience administering the rule suggests that ''double approval'' should not be required as a matter of course for all payments because the burden imposed on the regulated entity and FHFA outweighs the supervisory benefit to FHFA of reviewing some types of payments or some payments in some circumstances.

''executive officer'' for purposes of that rule, including any person deemed to be an ''executive officer'' by the Director, would be treated as an ''executive officer'' for the Golden Parachute Payments rule. In addition, when applying the ''catch-all'' in the ''affiliated party'' definition, the Director could determine that a person participates to such a degree in the conduct of the affairs of the regulated entity as to warrant treating the person as an ''executive officer'' for purposes of the Golden Parachute Payments rule.

Golden parachute payment. FHFA is proposing to remove reference to an ''agreement'' from the rule's definition of ''golden parachute payment,'' to implement FHFA's intention to distinguish, in some cases, the treatment of an *agreement* to make a golden parachute payment from the treatment of the *payment.* FHFA is also proposing to remove the phrase ''pursuant to an obligation of such regulated entity or the Office of Finance,'' to clarify FHFA's authority to prohibit (or limit) gifts or contributions that a regulated entity or OF is not obligated to make, but are nonetheless ''in the nature of compensation.'' Further, FHFA proposes to remove a list of triggering events, the occurrence of which would cause payments by a regulated entity to a terminating affiliated party to be ''golden parachute payments,'' from the ''golden parachute payment'' definition. The listed events would be replaced with the reference term ''troubled institution'' (which would be defined in the rule). This change is intended to improve the readability of the rule and is not substantive.

Finally, FHFA is proposing to change the placement, within the rule, of exemptions from the ''golden parachute payment'' definition. Following the structure of Section 4518(e), exemptions have been listed in the definitional section. As a legal matter, the effect of an exemption is that an agreement or payment that could otherwise be construed as a ''golden parachute payment'' is permitted without FHFA review and consent and cannot be prohibited using authority conferred by Section 4518(e). Since the practical effect of an exemption is the same as if the agreement or payment were permitted by the rule, FHFA believes the rule will be easier to understand and apply if all permissible agreements and payments—whether they are permitted to implement a statutory exemption from the ''golden parachute payment'' definition or by operation of the rule—are located together. To accomplish this, FHFA is proposing to relocate exemptions to the rule's substantive section.

Individually negotiated settlement agreement. FHFA is proposing to add a definition of an ''individually negotiated settlement agreement'' for agreements entered into to settle a claim, or avoid a claim reasonably anticipated, against a regulated entity by an affiliated party, which involve a payment and a release of claims. This definition is used in provisions of the rule permitting such agreements, and payments pursuant to them, provided certain conditions are met.

Nondiscriminatory. FHFA is proposing to remove the definition of ''nondiscriminatory'' from the rule. In the current rule, this definition applies only in the context of an exemption from the ''golden parachute payment'' definition for certain severance pay plans. Severance pay plans that did not meet that condition were subject to FHFA's review, and, based on its experience conducting such reviews, FHFA has determined that severance pay plans should be subject to review. FHFA has also determined that the current definition of ''nondiscriminatory'' may not be appropriate if applied to other types of benefit plans, and thus that the definition should be removed.

Payment. FHFA is not proposing any changes to the rule's definition of ''payment.''

Permitted. FHFA is proposing to add a definition of ''permitted'' when used in the context of a golden parachute payment agreement, to describe those agreements that may be the basis for a payment that does not require FHFA review and consent. A ''permitted'' agreement is an agreement that is permitted by operation of the rule or to which the Director has consented after review.

Troubled condition. FHFA is proposing to remove the definition of ''troubled condition'' but would include that triggering event, and the factors that would cause a regulated entity to be in ''troubled condition,'' within a new definition of ''troubled institution.''

Troubled institution. FHFA proposes to add a new defined term, ''troubled institution,'' to improve the readability of the ''golden parachute payment'' definition. The definition of ''troubled institution'' will include all of the events the occurrence of which at a regulated entity would cause agreements with or payments to terminating affiliated parties to be ''golden parachute payments,'' and will include all events that the current rule lists as defining ''troubled condition.''

FHFA also proposes to add an interpretation of the phrase ''or is made in contemplation of'' to the ''troubled institution'' definition. That phrase is used in Section 4518(e) to refer to agreements or payments that are made before a regulated entity becomes a ''troubled institution'' but which would be ''golden parachute payments'' if they had occurred after the triggering event. This interpretation would establish a rebuttable presumption that an agreement or payment made in the 90 days prior to the regulated entity's becoming a troubled institution is ''made in contemplation of'' becoming a ''troubled institution'' and thus is a golden parachute payment or agreement.

C. § 1231.3—Golden Parachute Payments

FHFA is proposing several changes to § 1231.3, which currently prohibits golden parachute payments unless they are permissible by operation of the rule or are consented to by the Director of FHFA. To reflect the proposed rule's distinctions between agreements and payments, the phrase ''and agreements'' would be added to titles, as appropriate.

Prohibited golden parachute payments. FHFA does not propose any changes to § 1231.3(a) other than to its title, which will now state ''*In general, FHFA consent required*.'' This subsection establishes the rule's overall approach of prohibiting any golden parachute payment or agreement unless it is exempt from the rule, permitted by operation of the rule, or permitted by FHFA after review. FHFA believes the title as proposed to be amended is a more appropriate reflection of FHFA's process.

Permissible golden parachute payments. FHFA proposes extensive revisions to § 1231.3(b), effectively replacing it. Section 1231.3(b) currently addresses permissible golden parachute payments and agreements. As amended, § 1231.3(b) would set forth those agreements and payments that do not require FHFA consent because they are statutorily exempted from the ''golden parachute payment'' definition. To reflect that substantive change, § 1231.3(b) would be renamed ''Exempt agreements and payments.''

Exempt agreements and payments. Exemptions to be set forth in § 1231.3(b) are being relocated from § 1231.2, which now presents them in conjunction with the ''golden parachute payment'' definition. FHFA is also proposing to amend some exemptions, however. First, FHFA is removing references to foreign law, which FHFA does not believe would be applicable to its

regulated entities, from exemptions related to qualified pensions or retirement plans and for certain severance or similar payments. FHFA is also removing an exemption for any ''benefit plan,'' consistent with its proposal to remove ''benefit plan'' as a defined term. ERISA ''employee welfare benefit plans'' currently within the ''benefit plan'' definition, and thus exempt, would now be included as a stand-alone exemption from the ''golden parachute payment'' definition. An exemption for ''bona fide deferred compensation plans or arrangements'' would be expanded, to include plans or arrangements that meet all definitional requirements other than one related to the timing of the plan's establishment or material amendment, but to which FHFA consents after review. An exemption for severance pay plans that are ''nondiscriminatory'' and meet other conditions would be removed, as FHFA has found that the exemption is not realistically available for the market-based severance pay plans of its troubled institutions and, based on experience gained from reviewing such plans, FHFA believes most severance pay plans should be reviewed as a matter of supervisory policy.

FHFA is also proposing to add new exemptions for any ''nondiscriminatory employee plan or program'' as defined for purposes of an IRC provision on parachute payments, at 26 U.S.C. 280G, and for any other benefit plan that the Director determines to be nondiscriminatory. The statutory golden parachute payment definition includes an exemption for ''nondiscriminatory benefit plans,'' but that term is not defined. Incorporation of the IRC ''nondiscriminatory employee plans and programs'' provides FHFA and its regulated entities a common reference and aligns FHFA and IRC treatment for purposes of parachute payments. Because there could be other benefit plans that are ''nondiscriminatory'' but that are not included among the IRC ''nondiscriminatory employee plans and programs,'' however, the rule would also exempt those benefit plans that the Director determines are nondiscriminatory, on request for review by a regulated entity.

Golden parachute payment agreements for which FHFA consent is not required. To distinguish between agreements and payments, FHFA proposes to add subsections that separately address permitted agreements and permitted payments. Within the construct of the rule, an agreement or payment that is not exempt from the definition of ''golden parachute payment'' or permitted by operation of the rule must be submitted to FHFA for review and is prohibited without consent.

New § 1231.3(c) would address only agreements, and would establish three types of agreements that are permitted by operation of the rule. Proposed new § 1231.3(c)(1) would permit agreements with or plans covering any affiliated party, where the plan or agreement is directed or established by the Director exercising authority conferred by 12 U.S.C. 4617. Proposed new § 1231.3(c)(2)(i) and (ii) would address agreements that are permitted provided they are with an affiliated party other than an executive officer—individually negotiated settlement agreements that meet certain conditions, and agreements to make *de minimis* payments.

Provisions of the current rule at § 1231.3(b)(1)(ii) and (iii), on permitted agreements made to hire a person when the regulated entity is, or to prevent it from imminently becoming, a troubled institution, and permitted changed in control agreements, would be removed. These provisions are subsumed in the other proposed amendments.

Golden parachute payments for which FHFA consent is not required. Proposed new § 1231.3(d) would set forth the types of payments that are permitted by the rule. Proposed new § 1231.3(d)(1)(i) and (ii) would address two types of permitted payments to any affiliated party, including an executive officer: Payments pursuant to an individually negotiated settlement agreement, and payments pursuant to a permitted agreement, where the Director provided consent to the payment in conjunction with reviewing the agreement and any conditions established by the Director when consenting to the payment have been met. Proposed new § 1231.3(d)(2) addresses one other permissible payment to any executive officer, a gift valued at $500 or less that recognizes a significant life event such as retirement.

Proposed new § 1231.3(d)(3) would address two other types of payments that could be made to affiliated parties other than executive officers without FHFA review. Section 1231.3(d)(3)(i) would permit payments above a *de minimis* amount to be made to any affiliated party other than an executive officer, where the payment is in accordance with a permitted agreement and the troubled institution is reasonably assured, after conducting appropriate due diligence, that the affiliated party has not engaged in certain types of wrongdoing listed in the rule. Section 1231.3(d)(3)(ii) would permit payments at or below the *de minimis* amount to be made to an affiliated party other than an executive officer without FHFA review.

FHFA is also proposing to clarify the standard that a regulated entity must meet when, in conjunction with a request for FHFA's consent to an agreement or a payment, it considers the behavior of the affiliated party to whom payment would be made. The rule's current standard could imply that a regulated entity may not request FHFA consent if it is not able to certify, with a high degree of certainty, that the affiliated party has not engaged in certain types of wrongdoing listed in the rule. FHFA is not proposing any change to the types of wrongdoing listed, which are currently set forth at § 1231.3(b)(1)(iv)(A) through (D) and would appear in the rule if amended as proposed at § 1231.3(e)(1)(i) through (iv). However, FHFA is proposing new § 1231.3(e)(1) to clarify that the due diligence required of a troubled institution, when assessing whether the affiliated party engaged in the listed types of wrongdoing, should be appropriate to the level and responsibilities of the affiliated party.

Proposed new § 1231.3(e)(2) would set forth the standard that a troubled institution must meet with regard to its assessment and understanding of the affiliated party's behavior, and would operate in conjunction with other proposed provisions that would permit a troubled institution to enter into an agreement to make a golden parachute payment, or to make such a payment without requesting FHFA review. Specifically, § 1231.3(e)(2) would provide that a troubled institution must be ''reasonably assured'' that the affiliated party has not engaged in the listed types of wrongdoing.

Proposed new § 1231.3(e)(3) would require notice to FHFA if a troubled institution intended to enter into a golden parachute payment agreement or make a payment that would be permitted by the rule without FHFA review but was not able to do so because it cannot meet the ''reasonably assured'' standard, and thereafter determines not to submit a request for review. Such notice is intended to ensure that FHFA is informed of concerns about wrongdoing that rise to a level where the troubled institution is not ''reasonably assured'' so that FHFA may follow up with appropriate supervisory action, and would be required to be provided to FHFA within 15 business days after the troubled institution determined that it could not meet the required standard.

Proposed new § 1231.3(f) would set forth factors the Director would consider when reviewing requests for

consent to make a golden parachute payment, or enter into an agreement. All of the factors in the current rule, at § 1231.3(b)(2)(i) through (iii), would be retained but would be re-numbered. In addition, two new factors would be added, to consider whether the golden parachute payment would be made in accordance with an employee benefit plan that is usual and customary and whether the golden parachute payment or agreement is excessive or abusive, or would threaten the financial condition of the regulated entity.

Proposed new § 1231.3(g) would permit, but not require, the regulated entities to increase the regulatory caps for permitted small value gifts and agreements and payments that do not exceed a *de minimis* amount. It would also set forth the formula that must be used, if a regulated entity elects to apply the inflation adjustment to increase the cap.

D. § 1231.4—Indemnification Payments

Section 1231.4 of the current rule is reserved.

E. § 1231.5—Applicability in the Event of Receivership

FHFA is proposing conforming changes to § 1231.5 of the current rule, which addresses the effect of the appointment of a receiver for a regulated entity on any consent or approval provided pursuant to the rule.

F. § 1231.6—Filing Instructions

Section 1231.6 of the current rule sets forth instructions for filing requests for consent, including where such requests must be filed and their content. Minor amendments to § 1231.6(a), on the scope of the filing instructions, would conform to substantive changes proposed to the rule. Likewise, § 1231.6(b), which addresses where to file a request, would be updated and amended to cover any required notice to FHFA.

Content requirements currently set forth in the rule at § 1231.6(c)(1) through (5) would be retained, but would be re-numbered (c)(2) through (6) because of the addition of a requirement that the request be in writing (this was previously implied by reference to a ''letter request''; FHFA wishes to clarify that other forms of writing, such as email, would meet the requirement). Two new requirements would also be added to proposed § 1231.6(c)(7) and (8), to address specific types of agreements or payments (*i.e.,* an agreement that the troubled institution believes is a ''nondiscriminatory benefit plan'' exempt as a matter of law; and a ''bona fide deferred compensation plan or arrangement'' for which the troubled institution seeks re-application of the exemption). Whether a request should include information responsive to content requirements at § 1231.6(c)(7) and (8) will depend on the type of agreement that is being submitted for review.

A content-of-request requirement currently set forth at § 1231.6(c)(6), which addresses certification that a regulated entity must make when submitting a request, would be removed. A new requirement would be added at § 1231.6(c)(9), that the troubled institution requesting review of an agreement with an individual affiliated party or any payment state in the request either that the troubled institution meets the ''reasonably assured'' standard or, if it does not, the reasons why it does not and the further reasons why the troubled institution believes FHFA should nonetheless consent to the golden parachute payment or agreement.

Section 1231.6(e), which addresses FHFA's response to a request, will be relocated to § 1231.6(d), to follow the content-of-request requirements. New subsection (e) will address the content of the notice that must be provided to FHFA when a troubled institution is not ''reasonably assured'' that an affiliated party has not engaged in the rule's listed types of wrongdoing but elects not to submit a request for consent to a golden parachute payment or agreement to FHFA for review. These requirements are intended to ensure that the notice informs FHFA of the results of the troubled institution's due diligence and the basis for its concern that the affiliated party may have engaged in wrongdoing of a type listed in the rule in detail sufficient for an appropriate supervisory response, while not being overly burdensome on the troubled institution.

Section 1231.6 would also be amended to include a new subsection (f), to clarify that FHFA may waive any filing requirement set forth in the rule. FHFA recognizes that in some cases, for example, an oral request may be appropriate.

Finally, notice that FHFA may request additional information during the processing of a request would be re-located to new § 1231.3(g) and expanded to cover notices to FHFA, in addition to requests.

V. Differences Between Banks and Enterprises

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate.

In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision of the proposed rule as it relates to the Banks.

VI. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that this proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1231

Golden parachutes, Government sponsored enterprises, Indemnification.

Authority and Issuance

For the reasons stated in the Supplementary Information, under the authority of 12 U.S.C. 4511, 4513, 4518, 4518a, and 4526, FHFA proposes to amend part 1231 of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER B—ENTITY REGULATIONS

PART 1231—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 1. The authority citation for part 1231 is revised to read as follows:

Authority: 12 U.S.C. 12 U.S.C. 4511, 4513, 4518, 4518a, 4526, and 4617.

■ 2. Revise § 1231.1 to read as follows:

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) by setting forth the factors that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments and agreements and by setting forth prohibited and permissible indemnification payments that regulated entities and the Office of Finance may make to affiliated parties.

■ 3. Revise § 1231.2 to read as follows:

§ 1231.2 Definitions.

The following definitions apply to the terms used in this part:

Affiliated party means:

(1) With respect to a golden parachute payment:

(i) Any director, officer, or employee of a regulated entity or the Office of Finance; and

(ii) Any other person as determined by the Director (by regulation or on a case-by-case basis) who participates or participated in the conduct of the affairs of the regulated entity or the Office of Finance, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank; and

(2) With respect to an indemnification payment:

(i) By the Office of Finance, any director, officer, or manager of the Office of Finance; and

(ii) By a regulated entity:

(A) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(B) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(C) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant) if:

(*1*) The independent contractor knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice; and

(*2*) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity; or

(D) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity.

Agreement means, with respect to a golden parachute payment, any plan, contract, arrangement or other statement setting forth conditions for any payment by a regulated entity or the Office of Finance to an affiliated party.

Bona fide deferred compensation plan or arrangement means any plan, contract, agreement, or other arrangement:

(1) Whereby an affiliated party voluntarily elects to defer all or a portion of the reasonable compensation, wages, or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals); or

(2) That is established as a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (1) of this definition:

(i) Primarily for the purpose of providing benefits for certain affiliated parties in excess of the limitations on contributions and benefits imposed by sections 401(a)(17), 402(g), 415, or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 401(a)(17), 402(g), 415); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management, or highly compensated employees; and

(3) In the case of any plans as described in paragraphs (1) and (2) of this definition, the following requirements shall apply:

(i) The affiliated party has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(ii) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(iii) Any payment made pursuant to such plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than one year prior to the regulated entity or the Office of Finance becoming a troubled institution;

(iv) The regulated entity or Office of Finance has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP, or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits and related expenses, except that the assets of such trust may be available to satisfy claims of the troubled institution's creditors in the case of insolvency; and

(v) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

Executive officer means an ''executive officer'' as defined in 12 CFR 1230.2, and includes any director, officer, employee or other affiliated party whose participation in the conduct of the business of the regulated entity or the Office of Finance has been determined by the Director to be so substantial as to justify treatment as an ''executive officer.''

Golden parachute payment means any payment in the nature of compensation made by a troubled institution for the benefit of any current or former affiliated party that is contingent on or provided in connection with the termination of such party's primary employment or affiliation with the troubled institution.

Individually negotiated settlement agreement means an agreement that settles a claim, or avoids a claim reasonably anticipated to be brought, against a troubled institution by an affiliated party and involves a payment in association with termination to, and a release of claims by, the affiliated party.

Payment means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of any benefit, including but not limited to stock options and stock appreciation rights; and

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of

making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

Permitted means, with regard to any agreement, that the agreement either does not require the Director's consent under this part or has received the Director's consent in accordance with this part.

Troubled institution means a regulated entity or the Office of Finance that is:

(1) Insolvent;

(2) In conservatorship or receivership;

(3) Subject to a cease-and-desist order or written agreement issued by FHFA that requires action to improve its financial condition or is subject to a proceeding initiated by the Director, which contemplates the issuance of an order that requires action to improve its financial condition, unless otherwise informed in writing by FHFA;

(4) Assigned a composite rating of 4 or 5 by FHFA under its CAMELSO examination rating system as it may be revised from time to time;

(5) Informed in writing by the Director that it is a troubled institution for purposes of the requirements of this part on the basis of the most recent report of examination or other information available to FHFA, on account of its financial condition, risk profile, or management deficiencies; or

(6) In contemplation of the occurrence of an event described in paragraphs (1) through (5) of this definition. A regulated entity or the Office of Finance is subject to a rebuttable presumption that it is in contemplation of the occurrence of such an event during the 90 day period preceding such occurrence.

■ 4. Revise § 1231.3 to read as follows:

§ 1231.3 Golden parachute payments and agreements.

(a) *In general, FHFA consent is required.* No troubled institution shall make or agree to make any golden parachute payment without the Director's consent, except as provided in this part.

(b) *Exempt agreements and payments.* The following agreements and payments, including payments associated with an agreement, are not golden parachute agreements or payments for purposes of this part and, for that reason, may be made without the Director's consent:

(1) Any pension or retirement plan that is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401);

(2) Any ''employee welfare benefit plan'' as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), other than:

(i) Any deferred compensation plan or arrangement; and

(ii) Any severance pay plan or agreement;

(3) Any benefit plan that:

(i) Is a ''nondiscriminatory employee plan or program'' for the purposes of section 280G of the Internal Revenue Code of 1986 (26 U.S.C. 280G) and applicable regulations; or

(ii) Has been submitted to the Director for review in accordance with this part and that the Director has determined to be nondiscriminatory, unless such a plan is otherwise specifically addressed by this part;

(4) Any ''bona fide deferred compensation plan or arrangement'' as defined in this part provided that the plan:

(i) Was in effect for, and not materially amended to increase benefits payable thereunder (except for changes required by law) within, the one-year period prior to the regulated entity or Office of Finance becoming a troubled institution; or

(ii) Has been determined to be permissible by the Director;

(5) Any payment made by reason of:

(i) Death; or

(ii) Termination caused by disability of the affiliated party; and

(6) Any severance or similar payment that is required to be made pursuant to a state statute that is applicable to all employers within the appropriate jurisdiction (with the exception of employers that are exempt due to their small number of employees or other similar criteria).

(c) *Golden parachute payment agreements for which FHFA consent is not required.* A troubled institution may enter into the following agreements to make a golden parachute payment without the Director's consent:

(1) With any affiliated party where the agreement is directed or established by the Director exercising authority conferred by 12 U.S.C. 4617.

(2) With an affiliated party who is not an executive officer where the agreement:

(i) Is an individually negotiated settlement agreement, and the conditions of paragraph (e)(2) of this section are met; or

(ii) Provides for a golden parachute payment that, when aggregated with all other golden parachute payments to the affiliated party, does not exceed $2500 (subject to any adjustment for inflation pursuant to paragraph (g) of this section).

(d) *Golden parachute payments for which FHFA consent is not required.* A troubled institution may make the following golden parachute payments without the Director's consent:

(1) To any affiliated party where:

(i) The payment is required to be made pursuant to a permitted individually negotiated settlement agreement; or

(ii) The Director previously consented to such payment in a written notice to the troubled institution (which may be included in the Director's consent to the agreement), the payment is made in accordance with a permitted agreement, and the troubled institution has met any conditions established by the Director for making the payment.

(2) To an executive officer where the payment recognizes a significant life event and does not exceed $500 in value (subject to any adjustment for inflation pursuant to paragraph (g) of this section).

(3) Other payments to an affiliated party who is not an executive officer. A troubled institution may make a golden parachute payment to an affiliated party who is not an executive officer without the Director's consent in accordance with this part, where:

(i) The payment is made in accordance with a permitted agreement and the conditions of paragraph (e)(2) of this section are met; or

(ii) The payment when aggregated with other golden parachute payments to the affiliated party does not exceed $2500 (subject to any adjustment for inflation pursuant to paragraph (g) of this section).

(e) *Required due diligence review; due diligence standard.* (1) *Agreements and payments where consent is requested.* A troubled institution making a request for consent to enter into a golden parachute payment agreement with, or to make a golden parachute payment to, an individual affiliated party shall conduct due diligence appropriate to the level and responsibility of the affiliated party covered by the agreement or to whom payment would be made, to determine whether there is information, evidence, documents, or other materials that indicate there is a reasonable basis to believe, at the time the request is submitted, that the affiliated party:

(i) Has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity or Office of Finance that is likely to have a material adverse effect on the regulated entity or the Office of Finance;

(ii) Is substantially responsible for the regulated entity or the Office of Finance being a troubled institution;

(iii) Has materially violated any applicable Federal or State law or regulation that has had or is likely to have a material effect on the regulated entity or Office of Finance; or

(iv) Has violated or conspired to violate sections 215, 657, 1006, 1014, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a ''financial institution'' as the term is defined in title 18 of the United States Code (18 U.S.C. 20).

(2) *Agreements and payments permitted without the Director's consent.* No troubled institution shall enter into an agreement pursuant to paragraph (c)(2)(i) of this section or make a payment pursuant to paragraph (d)(3)(i) of this section unless it is reasonably assured, following due diligence in accordance with paragraph (e)(1) of this section, that the affiliated party to whom payment would be made has not engaged in any of the actions listed in paragraphs (e)(1)(i) through (iv) of this section.

(3) *Required notice to FHFA.* If a troubled institution determines it is unable to enter into an agreement pursuant to paragraph (c)(2)(i) of this section or make a payment pursuant to paragraph (d)(3)(i) of this section without the Director's consent because it cannot meet the standard set forth in paragraph (e)(2) of this section, and thereafter does not request the Director's consent to make the payment, then the troubled institution shall provide notice to FHFA of each reason for which it cannot meet the standard set forth in paragraph (e)(2) of this section, within 15 business days of its determination.

(f) *Factors for Director Consideration.* In making a determination under this section, the Director may consider:

(1) Whether, and to what degree, the affiliated party was in a position of managerial or fiduciary responsibility;

(2) The length of time the affiliated party was affiliated with the regulated entity or the Office of Finance, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of affiliation;

(3) Whether the golden parachute payment would be made pursuant to an employee benefit plan that is usual and customary;

(4) Whether the golden parachute payment or agreement is excessive or abusive or threatens the financial condition of the troubled institution; and

(5) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment or agreement, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order, or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of the affiliated party.

(g) *Adjustment for inflation.* Monetary amounts set forth in this part may be adjusted for inflation, by increasing the dollar amount set forth in this part by the percentage, if any, by which the Consumer Price Index for all-urban consumers published by the Department of Labor (''CPI–U'') for December of the calendar year preceding payment exceeds the CPI–U for the month of [month prior to the month of publication in the **Federal Register**] 2018, with the resulting sum rounded up to the nearest whole dollar.

■ 5. Revise § 1231.5 to read as follows:

§ 1231.5 Applicability in the event of receivership.

The provisions of this part, or any consent or approval granted under the provisions of this part by FHFA, shall not in any way bind any receiver of a regulated entity. Any consent or approval granted under the provisions of this part by FHFA shall not in any way obligate FHFA as receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification, or other agreement. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of an affiliated party contrary to section 1318(e)(3) of the Safety and Soundness Act (12 U.S.C. 4518(e)(3)).

■ 6. Revise § 1231.6 to read as follows:

§ 1231.6 Filing instructions.

(a) *Scope.* This section contains procedures for requesting the consent of the Director and for filing any notice, where consent or notice is required by § 1231.3.

(b) *Where to file.* A troubled institution must submit any request for consent or notice required by § 1231.3 to the Manager, Executive Compensation Branch, or to such other person as FHFA may direct.

(c) *Content of a request for FHFA consent.* A request pursuant to § 1231.3 must:

(1) Be in writing;

(2) State the reasons why the troubled institution seeks to enter into the agreement or make the payment;

(3) Identify the affiliated party or describe of the class or group of affiliated parties who would receive or be eligible to receive payment;

(4) Include a copy of any agreement, including any plan document, contract, other agreement or policy regarding the subject matter of the request;

(5) State the cost of the proposed payment or payments, and the impact on the capital and earnings of the troubled institution;

(6) State the reasons why consent to the agreement or payment, or to both the agreement and payment, should be granted;

(7) For any plan that the troubled institution believes is a nondiscriminatory benefit plan, other than a plan covered by § 1231.3(b)(3)(i), state the basis for the conclusion that the plan is nondiscriminatory;

(8) For any bona fide deferred compensation plan or arrangement, state whether the plan would be exempt under this part but for the fact that it was either established or materially amended to increase benefits payable thereunder (except for changes required by law) within the one-year period prior to the regulated entity or Office of Finance becoming a troubled institution;

(9) For any agreement with an individual affiliated party, or for any payment, either:

(i) State that the troubled institution is reasonably assured that the affiliated party has not engaged in any of the actions listed in § 1231.3(e)(1)(i) through (iv), or,

(ii) If the troubled institution is not reasonably assured that the affiliated party has not engaged in any of the actions listed in § 1231.3(e)(1)(i) through (iv) but nonetheless wishes to request consent, describe the results of its due diligence and, in light of those results, the reason why consent to the agreement or payment should be granted.

(d) *FHFA decision on a request.* FHFA shall provide the troubled institution with written notice of the decision on a request as soon as practicable after it is rendered.

(e) *Content of notice to FHFA.* A notice pursuant to § 1231.3(e)(3) must:

(1) Be in writing;

(2) Identify the affiliated party who would receive or be eligible to receive payment;

(3) Include a copy of any agreement or policy regarding the subject matter of the request; and

(4) State each reason why the troubled institution cannot meet the standard set forth in § 1231.3(e)(2).

(f) *Waiver of form or content requirements.* FHFA may waive or modify any requirement related to the form or content of a request or notice, in circumstances deemed appropriate by FHFA.

(g) *Additional information.* FHFA may request additional information at any time during the processing of the request or after receiving a notice.

Dated: August 20, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2018–18511 Filed 8–27–18; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 541

White Collar Exemption Regulations; Public Listening Sessions

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notification of public listening sessions.

SUMMARY: The Department of Labor will conduct public listening sessions to gather views on white collar exemption regulations. The Fair Labor Standards Act (FLSA) generally requires covered employers to pay their employees at least the federal minimum wage (currently $7.25 an hour) for all hours worked, and overtime premium pay of not less than one and one-half times the employee's regular rate of pay for any hours worked over 40 in a workweek. The FLSA exempts from both minimum wage and overtime protection ''any employee employed in a bona fide executive, administrative, or professional capacity'' and delegates to the Secretary of Labor the power to define and delimit these terms through regulation.

DATES: The dates, locations, and times for the public listening sessions are listed below:

September 7, 2018, Atlanta, Georgia, 10 a.m.–12 p.m.

September 11, 2018, Seattle, Washington, 10 a.m.–12 p.m.

September 13, 2018, Kansas City, Missouri, 10 a.m.–12 p.m.

September 14, 2018, Denver, Colorado, 10 a.m.–12 p.m.

September 24, 2018, Providence, Rhode Island, 10 a.m.–12 p.m.

Members of the public may attend these listening sessions in person up to the seating capacity of the room. The Department will not attempt to achieve a consensus view in these listening sessions, but rather is interested in hearing the views and ideas of participants.

ADDRESSES: To obtain specific location details and register to attend, please visit this link: *https://www.eventbrite.com/e/overtime-rule-outreach-sessions-tickets-49216139799.*

FOR FURTHER INFORMATION CONTACT: Stephen Davis, Listening Session Coordinator, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: On July 26, 2017, the Department of Labor published a Request for Information (RFI), Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees. *See* 82 FR 34616. The RFI was one opportunity for the public to provide information to aid the Department in formulating a proposal to revise the white collar exemption regulations. Public listening sessions will provide further opportunity for the public to provide input on issues related to the salary level test, such as:

1. What is the appropriate salary level (or range of salary levels) above which the overtime exemptions for bona fide executive, administrative, or professional employees may apply? Why?

2. What benefits and costs to employees and employers might accompany an increased salary level? How would an increased salary level affect real wages (*e.g.,* increasing overtime pay for employees whose current salaries are below a new level but above the current threshold)? Could an increased salary level reduce litigation costs by reducing the number of employees whose exemption status is unclear? Could this additional certainty produce other benefits for employees and employers?

3. What is the best methodology to determine an updated salary level? Should the update derive from wage growth, cost-of-living increases, actual wages paid to employees, or some other measure?

4. Should the Department more regularly update the standard salary level and the total-annual-compensation level for highly compensated employees? If so, how should these updates be made? How frequently should updates occur? What benefits, if any, could result from more frequent updates?

Dated: August 23, 2018.

Melissa Smith,

Director, Division of Regulations, Legislation and Interpretation.

[FR Doc. 2018–18649 Filed 8–27–18; 8:45 am]

BILLING CODE 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0147; FRL–9982–90—Region 5]

Air Plan Approval; Indiana; Reasonable Further Progress Plan and Other Plan Elements for the Chicago Nonattainment Area for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Indiana State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nonattainment new source review (nonattainment NSR), volatile organic compound (VOC) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Indiana portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago area) for the 2008 ozone national ambient air quality standard (NAAQS or standard). EPA is also proposing to approve the 2017 transportation conformity motor vehicle emissions budgets (MVEBs) for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. EPA is proposing to approve the state's submission as a SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emission inventory, RFP, RFP contingency measure, nonattainment NSR, VOC RACT, I/M, and transportation conformity requirements for areas classified as moderate

nonattainment for the 2008 ozone NAAQS. Final approval of Indiana's SIP as meeting the nonattainment NSR requirements of the CAA for the 2008 ozone NAAQS will permanently stop the sanctions and Federal Implementation Plan (FIP) clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

DATES: Comments must be received on or before September 27, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0147, at *http://www.regulations.gov,* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *Dagostino.Kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

A. Background on the 2008 Ozone Standard

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Promulgation of a revised NAAQS triggers a requirement for EPA to designate all areas of the country as nonattainment, attainment, or unclassifiable for the NAAQS. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.[2] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.[3]

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources, and implement a nonattainment NSR program for the relevant ozone NAAQS.[4] For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.[5]

[1] 73 FR 16436 (March 27, 2008), codified at 40 CFR 50.15.

[2] CAA sections 107(d)(1) and 181(a)(1).

[3] CAA section 181(a)(1).

[4] CAA section 182(a).

[5] CAA section 182(b).

B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,[6] EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin. On May 4, 2016,[7] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015, marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for the state to submit all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

In addition, effective March 6, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain nonattainment plan requirements for the 2008 ozone NAAQS.[8] This finding established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which EPA made the finding and for EPA to promulgate a FIP to address any outstanding SIP requirements. As part of that action, EPA made a finding that Indiana failed to submit a SIP submission to meet the marginal nonattainment NSR requirements for the Indiana portion of the Chicago area.

II. What is EPA's evaluation of Indiana's submittal?

Indiana submitted a SIP revision request on February 28, 2017, and submitted supplemental information on January 9, 2018, to address the moderate area requirements for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. The submission contained a number of nonattainment plan elements, including a revised 2011 base year emissions inventory for VOC and oxides of nitrogen (NO_X), a 15% RFP plan, a 3% RFP contingency measure plan, 2017 VOC and NO_X motor vehicle emissions budgets, a nonattainment NSR certification, a VOC RACT certification, and an enhanced I/M certification. The nonattainment NSR certification included in the SIP submission addresses the deficiency that was the basis for the March 6, 2017,

[6] 77 FR 34221, effective July 20, 2012.

[7] 81 FR 26697.

[8] 82 FR 9158 (February 3, 2017).

finding; therefore, approval of this SIP revision would permanently stop the sanctions and FIP clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan. The submission also included an attainment demonstration, which will be addressed in a separate action.

A. Revised 2011 Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, comprehensive, accurate, and complete emissions inventories for all areas designated as nonattainment for the ozone NAAQS. An emissions inventory for ozone is an estimation of actual emissions of VOC and NO_X from all sources located in the relevant designated nonattainment area. For the 2008 ozone NAAQS, EPA has recommended that states use 2011 as a base year for the emissions estimates.[9] On April 7, 2017,[10] EPA approved the 2011 base year emissions inventory submitted by the Indiana Department of Environmental Management (IDEM) on June 15, 2016, for the Indiana portion of the Chicago area. IDEM included a revised 2011 base year emissions inventory in its February 27, 2017, submission. The revised 2011 base year emissions inventory only modifies the emissions estimates for the on-road mobile sector, with emissions estimates for point, area, and non-road mobile sectors remaining unchanged from the inventory approved by EPA.

In the original 2011 base year emissions inventory approved by EPA, Indiana derived 2011 onroad mobile emissions by back-casting emissions estimates generated by the MOVES2014 model for 2015 and 2020. The revised onroad emissions estimates were generated by running the MOVES2014 model for 2011. This is a more accurate method for estimating 2011 onroad emissions. Thus, EPA is proposing to approve the 2011 base year emissions inventory the state submitted with the RFP plan as a revision to the Indiana SIP.

TABLE 1—REVISED 2011 BASE YEAR EMISSIONS INVENTORY IN TONS PER SUMMER DAY

[tpsd]

Source sector	VOC			NO_X		
	Lake County	Porter County	Total	Lake County	Porter County	Total
EGU Point	0.44	0.19	0.63	24.62	5.53	30.15
Point	15.39	1.68	17.07	43.10	23.36	66.46
Area	12.54	5.53	18.07	5.80	3.89	9.69
Non-road	7.55	6.64	14.19	8.07	4.62	12.69
On-road	6.92	2.66	9.58	17.85	6.85	24.70
Total	42.84	16.70	59.54	99.44	44.25	143.69

B. 15% RFP Plan and 3% Contingency Plan

1. Background

The CAA requires that states with areas designated as nonattainment for ozone achieve RFP toward attainment of the ozone NAAQS. CAA section 172(c)(2) contains a general requirement that nonattainment plans must provide for emissions reductions that meet RFP. For areas classified moderate and above, section 182(b)(1) imposes a more specific RFP requirement that a state had to meet through a 15% reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990. The state must meet the 15% requirement by the end of the 6-year period, regardless of when the nonattainment area attains the NAAQS. As with other nonattainment plan requirements for more recent iterations of the ozone NAAQS, EPA has promulgated regulations and guidance to interpret the statutory requirements of the CAA.

EPA's final rule to implement the 2008 ozone NAAQS (SIP Requirements Rule),[11] addressed, among other things, the RFP requirements as they apply to areas designated nonattainment and classified as moderate for the 2008 ozone NAAQS.[12] EPA interprets the 15% VOC emission reduction requirement in CAA section 182(b)(1) such that a state that has already met the 15% requirement for VOC for an area under either the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS would not have to fulfill that requirement through reductions of VOC again. Instead, EPA is interpreting CAA section 172(c)(2) to require states with such areas to obtain 15% ozone precursor emission reductions (VOC and/or NO_X) over the first 6 years after the baseline year for the 2008 ozone NAAQS. The state previously met the 15% VOC reduction requirement of CAA section 182(b)(1) for the Indiana portion of the Chicago area under the 1-hour ozone NAAQS. Therefore, the state may rely upon both VOC and NO_X emissions reductions to meet the RFP requirement for the 2008 ozone NAAQS.

EPA's SIP Requirements Rule indicates the base year for the 2008 ozone NAAQS, for which areas were designated nonattainment effective July 20, 2012, can be 2011 or a different year of the states choosing. However, states selecting a pre-2011 alternate baseline year must achieve 3% emission reductions each year after the initial 6-year period has concluded up to the beginning of the attainment year. For a multi-state area, states must agree on the same base year. Wisconsin, Illinois, and Indiana have selected the EPA-recommended base year of 2011.[13]

States may not take credit for VOC or NO_X reductions occurring from sources outside the nonattainment area for purposes of meeting the 15% ROP and 3% RFP requirements of CAA sections 172(c)(2), 182(b)(1) and 182(c)(2)(B). Indiana's 15% RFP represents emissions reductions which occurred in Indiana's portion of the nonattainment area from

[9] 78 FR 34178, 34190, (June 6, 2013).

[10] 82 FR 16934.

[11] 80 FR 12264. (March 6, 2015).

[12] *Ibid,* at 12271 and 40 CFR 51.1110.

[13] On February 16, 2018, the D.C. Circuit Court issued a decision in South Coast Air Quality Management District v. EPA, 882 F.3d 1138 (D.C. Cir. 2018), in which several parties challenged different aspects of EPA's SIP Requirements Rule for the 2008 Ozone NAAQS. In this decision, the Court upheld 2011 as a reasonable baseline year for the 2008 ozone NAAQS but vacated the provision allowing for an alternate year. Because Wisconsin, Illinois, and Indiana have selected 2011 as the baseline year, the decision does not impact Indiana's ROP plan.

2011 to 2017, thereby satisfying this requirement.

Except as specifically provided in section 182(b)(1)(D) of the CAA, all state control measures approved into the SIP or Federal measures that provide emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided that the reductions meet the standard requirements for creditability which include being enforceable, quantifiable, permanent, and surplus in terms of not having previously been counted toward RFP.

States must also include contingency measures in their nonattainment plans. The contingency measures required for areas classified as moderate and above under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to attain or to meet any applicable RFP milestone. The state must submit these measures for approval by EPA into the SIP as adopted measures that would take effect without further rulemaking action by the state or the EPA upon a determination that an area failed to attain or to meet the applicable milestone. Per EPA guidance for purposes of the ozone NAAQS, contingency measures should represent one year's worth of RFP progress, amounting to reductions of at least 3% of the baseline emissions inventory for the nonattainment area.[14] The purpose of the contingency measures is to provide additional emission reductions in the event of a failure to attain or meet any applicable milestone, which would occur while the state is revising its SIP for the area to rectify the failure to attain or to meet RFP requirements.[15]

Regarding the contingency measures, EPA's prior guidance for purposes of the ozone NAAQS specifies that some portion of the contingency measures must include VOC reductions. This previous limitation is no longer necessary in all areas. In particular, EPA has concluded that states with nonattainment areas classified as moderate and above that have already completed the initial 15% VOC reduction required by CAA section 182(b)(1)(A)(i), can meet the contingency measures requirement based entirely on NO_X controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement. Also, EPA is continuing its long-standing policy that allows states to use promulgated Federal measures as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP.[16]

2. Indiana's 15% RFP and 3% RFP Contingency Measures Plan

To demonstrate that the Indiana portion of the Chicago area has achieved 15% RFP over the 6-year attainment planning period, Indiana is using a 2011 base year inventory and a 2017 RFP inventory. To develop the 2017 inventory, Indiana calculated on-road emissions using EPA's MOVES2014 model and non-road emissions using EPA's National Mobile Inventory Model (NMIM). The MOVES model for the on-road sector and NMIM for the non-road sector incorporate a number of Federal emissions control programs into its projections. These emissions reduction measures are permanent and enforceable and are implemented in the nonattainment area. The MOVES and NMIM models assumed increases in vehicle or equipment population and usage while projecting decreases in ozone precursor emissions from 2011 to 2017. The estimated emissions reductions are therefore not due to reductions in source activity, but to the implementation of control measures. Tables 2 and 3 list the Federal permanent and enforceable control programs modeled by the MOVES model for the on-road sector and NMIM for the non-road sector, respectively.

TABLE 2—FEDERAL ON-ROAD EMISSION CONTROL PROGRAMS MODELED BY MOVES

On-road control program	Pollutants	Model year*	Regulation
Passenger vehicles, SUVs, and light duty trucks—emissions and fuel standards.	VOC & NO_X	2004–09+ (Tier 2) 2017+ (Tier 3).	40 CFR parts 85 & 86.
Light-duty trucks and medium duty passenger vehicle—evaporative standards.	VOC	2004–10	40 CFR part 86.
Heavy-duty highway compression engines	VOC & NO_X	2007+	40 CFR part 86.
Heavy-duty spark ignition engines	VOC & NO_X	2005–08+	40 CFR part 86.
Motorcycles	VOC & NO_X	2006–10 (Tier 1 & 2)	40 CFR part 86.
Mobile Source Air Toxics—fuel formulation, passenger vehicle emissions, and portable container emissions.	Organic Toxics & VOC	2009–15**	40 CFR parts 59, 80, 85, & 86.
Light duty vehicle corporate average fuel economy standards	Fuel efficiency (VOC & NO_X).	2012–16 & 2017–25	40 CFR part 600.

*The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

**The range in model years reflects phased implementation of fuel, passenger vehicle, and portable container emission requirements as well as the phasing by vehicle size and type.

TABLE 3—FEDERAL NON-ROAD EMISSION CONTROL PROGRAMS MODELED BY NMIM

Nonroad control program*	Pollutants	Model year**	Regulation
Compression Ignition	VOC & NO_X	2000–2015+ (Tier 4)	40 CFR parts 89 & 1039.
Large Spark Ignition	VOC & NO_X	2007+	40 CFR part 1048.
Marine Spark Ignition	VOC & NO_X	2010+	40 CFR part 1045.
Recreational Vehicle	VOC & NO_X	2006–2012 (Tiers 1–3)	40 CFR part 1051.
Small Spark Ignition Engine <19 Kw—emission standards	VOC & NO_X	2005–2012 (Tiers 2 & 3).	40 CFR parts 90 & 1054.

[14] See the March 6, 2015 SIP Requirements Rule (80 FR 12264 at 12285) and April 16, 1992 General Preamble section III.A.3.c (57 FR 13498 at 13511).

[15] 80 FR 12264 at 12285.

[16] 80 FR 12264 at 12285.

TABLE 3—FEDERAL NON-ROAD EMISSION CONTROL PROGRAMS MODELED BY NMIM—Continued

Nonroad control program *	Pollutants	Model year **	Regulation
Small Spark Ignition Engine <19 Kw—evaporative standards	VOC	2008–2016	40 CFR parts 1045, 54, & 60.

* Compression ignition applies to diesel non-road compression engines including engines operated in construction, agricultural, and mining equipment. Recreational vehicles include snowmobiles, off-road motorcycles, and all-terrain vehicles. Small spark ignition engines include engines operated in lawn and hand-held equipment.
** The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

Indiana used the 2017 EPA-projected National Emissions Inventory (NEI) to obtain estimated point and area source emissions. While EPA projected point and area source emissions to decrease between 2011 and 2017, Indiana did not document the control programs and associated reductions in emissions for these sectors or determine to what extent any reduction may be attributed to reductions in source activity. Therefore, Indiana took no credit for emissions reductions from these source sectors in its RFP or RFP contingency measures calculations. Table 4 shows Indiana's 2017 projected emissions inventory. Table 5 shows Indiana's 2017 RFP and RFP contingency emissions inventory, which assumes no reduction in emissions between 2011 and 2017 from the point and area source sectors.

TABLE 4—PROJECTED 2017 EMISSIONS INVENTORY

[tpsd]

Source sector	VOC			NO_X		
	Lake County	Porter County	Total	Lake County	Porter County	Total
EGU Point	0.09	0.07	0.16	4.07	1.36	5.43
Non-EGU Point	15.34	1.67	17.01	42.44	23.10	65.54
Area	11.73	5.08	16.81	5.10	3.25	8.35
Non-road	5.03	4.44	9.47	5.59	3.48	9.07
On-road	4.33	1.63	5.96	10.15	4.35	14.50
Total	36.52	12.89	49.41	67.35	35.54	102.90

TABLE 5—2017 RFP AND RFP CONTINGENCY MEASURES EMISSIONS INVENTORY

[tpsd]

Source sector	VOC			NO_X		
	Lake County	Porter County	Total	Lake County	Porter County	Total
EGU Point	0.44	0.19	0.63	24.62	5.53	30.15
Non-EGU Point	15.39	1.68	17.07	43.10	23.36	66.46
Area	12.54	5.53	18.07	5.80	3.89	9.69
Non-road	5.03	4.44	9.47	5.59	3.48	9.07
On-road	4.33	1.63	5.96	10.15	4.35	14.50
Total	37.73	13.47	51.20	89.26	40.61	129.87

Indiana submitted documentation showing that emission reductions in the Indiana portion of the Chicago area met the 15% RFP and 3% RFP contingency measures requirements entirely through Federal permanent and enforceable control measures within the mobile source sectors. Table 6 shows the calculations Indiana used to determine that the mobile source emissions reductions meet the RFP and RFP contingency measures requirements.

TABLE 6—2017 RFP AND CONTINGENCY TARGET LEVEL CALCULATIONS

[emissions in tpsd]

Description	Formula	VOC	NO_X
A. 2011 RFP Base Year Inventory	.....	59.54	143.69
B. RFP Reductions totaling 15%	.....	9%	6%
C. RFP Emissions Reductions Required Between 2011 & 2017	A * B	5.36	8.62
D. RFP Target Level for 2017	A – C	54.18	135.07
E. Contingency Percentage	.....	2%	1%
F. Contingency Emission Reduction Requirements	A * E	1.2	1.44
G. RFP + Contingency Target Level	A – C – F	52.99	133.63
H. 2017 Projected Emissions (2017 RFP & Contingency Inventory)	.....	51.20	129.87
I. Compare RFP & Contingency Target with 2017 Projected Emissions to determine if RFP and Contingency Measure Requirements Are Met	H<G?	Yes	Yes

TABLE 6—2017 RFP AND CONTINGENCY TARGET LEVEL CALCULATIONS—Continued

[emissions in tpsd]

Description	Formula	VOC	NO_X
J. Total Surplus Reductions	G – H	1.79	3.76

Indiana has demonstrated that emission reductions attributable to permanent and enforceable measures will result in at least an 18% reduction (15% for RFP and 3% for contingency measure requirements) in the Indiana portion of the Chicago area over the 6-year attainment planning time period, starting with the 2011 base year. Thus, EPA is proposing to approve Indiana's 15% RFP and 3% contingency measure plan for the Indiana portion of the Chicago area for the 2008 ozone standard.

EPA notes that the control measures Indiana is relying upon to meet the RFP contingency measures requirement are already implemented. Contingency measures may include Federal measures and local measures already scheduled for implementation, as long as the resulting emission reductions are in excess of those needed for attainment or to meet other nonattainment plan requirements. EPA interprets the CAA not to preclude a state from implementing such measures before they are triggered by a failure to meet RFP or failure to attain. For more information on contingency measures, see the General Preamble (57 FR 13510) and the 2008 Ozone Implementation Rule (80 FR 12264, 12285).

The appropriateness of relying on already-implemented control measures to meet the contingency measures requirement has been addressed in two Federal circuit court decisions. See Louisiana Environmental Action Network (LEAN) v. EPA, 382 F.3d 575, 586 (5th Cir. 2004), Bahr v. United States EPA, 836 F.3d 1218 (9th Cir. 2016), *cert. denied,* 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018). EPA believes that the language of section 172(c)(9) and 182(c)(9) is ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, so long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to meet other nonattainment plan requirements or in the modeled attainment demonstration in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called ''early triggered'' contingency measures) as a valid means to meet the Act's contingency measures requirement. The Ninth Circuit decision in *Bahr* leaves a split among the Federal circuit courts, with the Fifth Circuit upholding the Agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation. The Seventh Circuit in which Indiana is located has not addressed the issue, nor has the Supreme Court or any other circuit court other than the Fifth and Ninth.

Because there is a split in the Federal circuits on this issue, EPA expects that states located in circuits other than the Ninth may elect to rely on EPA's longstanding interpretation of section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the Agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, EPA will carefully review each such measure, and intends to consult with states considering such measures early in the attainment plan development process.

As shown above, the emissions reductions projected through 2018 are sufficient to meet the requirements for RFP contingency measures, consistent with EPA's interpretation of the CAA to allow approval of already implemented control measures as contingency measures in states outside the Ninth Circuit. Therefore, we propose approval of the contingency measures submitted by the state in the nonattainment plan for the Wisconsin portion of the Chicago area.

C. 2017 Motor Vehicle Emissions Budgets (MVEBs)

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

Under the CAA, states are required to submit, at various times, control strategy plans for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas.[17] These control strategy plans (including reasonable further progress plans and attainment plans for purposes of the ozone NAAQS) and maintenance plans must include MVEBs for the relevant criteria pollutant or its precursor pollutants (VOC and NO_X for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will meet an RFP milestone or provide for attainment or maintenance of the NAAQS.[18] The MVEB serves as a ceiling on emissions from an area's planned transportation system.[19]

When reviewing control strategy or maintenance plan submissions, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process

[17] See the SIP requirements for the 2008 ozone standard in EPA's March 6, 2015 implementation rule (80 FR 12264).

[18] 40 CFR 93.101.

[19] The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004.[20] Additional information on the adequacy process for transportation conformity purposes is available in a June 30, 2003, proposed rule titled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes.'' [21]

Indiana's RFP and contingency measure plan includes VOC and NO_X MVEBs for the Indiana portion of the Chicago area for 2017. EPA reviewed the VOC and NO_X MVEBs through the adequacy process. Indiana's February 28, 2017, RFP and contingency measure SIP submission (as supplemented on January 9, 2018), including the VOC and NO_X MVEBs for the Indiana portion of the Chicago area, was available for public comment on EPA's adequacy website on February 2, 2018, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2017 MVEBs for the Indiana portion of the Chicago area closed on March 5, 2018. No comments on the submittal were received during the adequacy comment period. The submitted RFP and contingency measure plan, which included the MVEBs, was endorsed by the Governor's designee and was subject to a state public hearing. The MVEBs were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBs were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with the 15% RFP and 3% RFP contingency measures requirements of the 2008 8-hour ozone standard.

TABLE 7—2017 VOC AND NO_X MVEBS FOR THE INDIANA PORTION OF THE CHICAGO AREA

[tpsd]

	2017 On-road emissions	RFP + Contingency plan surplus reductions	Allocation of surplus reductions to on-road mobile sector	2017 MVEBs
VOC	5.96	1.79	0.89	6.85
NO_X	14.50	3.65	2.18	16.68

As shown in Table 7, the 2017 MVEBs exceed the estimated 2017 on-road sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, Indiana allocated a portion of the surplus RFP and contingency plan reductions to the mobile sector. Indiana has demonstrated that the Indiana portion of the Chicago area can meet the 15% RFP and 3% RFP contingency measure requirements of the 2008 ozone NAAQS with mobile source emissions of 6.85 tpsd of VOC and 16.68 tpsd of NO_X in 2017, because despite partial allocation of the RFP and RFP contingency measures plan surplus reductions, emissions will remain under 2017 RFP plus contingency measure target levels. EPA has found adequate and is thus proposing to approve the 2017 VOC and NO_X MVEBs for use to determine transportation conformity in the Indiana portion of the Chicago area under the 2008 ozone NAAQS because EPA has determined that the area can meet the 15% RFP and 3% RFP contingency measure requirements of the 2008 ozone NAAQS with mobile source emissions at the levels of the MVEBs.

D. VOC RACT Certification

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in ozone nonattainment areas classified as moderate (and higher). Specifically, these areas are required to implement RACT for all major VOC and NO_X emissions sources and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. States must submit rules, or negative declarations when no such sources exist for CTG source categories.

EPA's SIP Requirements Rule for the 2008 ozone NAAQS indicates that states may meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIPs approved by EPA for a prior ozone NAAQS also represent adequate RACT control levels for attainment of the 2008 ozone NAAQS, or with a combination of these two approaches. In addition, a state must submit a negative declaration in instances where there are no CTG sources.

In its February 28, 2017 submission, Indiana certified that the existing VOC rules contained in 326 Indiana Administrative Code (IAC) 8 satisfy the VOC RACT requirements of Section 182(b)(2) of the CAA and have been approved into the SIP by EPA. Indiana also certified that the negative declaration approved into the SIP by EPA for the fiberglass boat manufacturing materials CTG is still current.[22] Table 8 lists these state regulations and identifies the associated SIP approvals by EPA.

[20] 69 FR 40004.

[21] 68 FR 38974, 38984.

[22] The NEI, the Harris Manufacturing Directory and the Manta small business directory were reviewed to spot check the validity of the previously approved negative declaration for this category. No fiberglass boat manufacturing facilities subject to the CTG were identified.

TABLE 8—VOC RACT REGULATIONS APPROVED INTO THE INDIANA SIP

CTGs and ACTs [1]	Applicable Indiana regulation	EPA approval into the SIP
EPA 453/R–08–004 2008/09—Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials.	Negative Declaration Letter—06/05/2009.	75 FR 8246 (02/24/2010).
EPA 453/R–08–006, 2008/09—Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings *and* EPA 453/R–08–002, 2008/09—Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat Operations.	326 IAC 8–2–2—Automobile and Light Duty Truck Coating Operations.	
EPA 453/R–07–003, 2007/09—Control Techniques Guidelines for Paper, Film, and Foil Coatings.	326 IAC 8–2–5—Paper Coating Operations.	
EPA 453/R–07–005, 2007/09—Control Techniques Guidelines for Metal Furniture Coatings.	326 IAC 8–2–6—Metal Furniture Coating Operations.	
EPA 453/R–07–004, 2007/09—Control Techniques Guidelines for Large Appliance Coatings.	326 IAC 8–2–7—Large Appliance Coating Operations.	
EPA 453/R–08–003, 2008/09—Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings.	326 IAC 8–2–9—Miscellaneous Metal and Plastic Parts Coating Operations.	75 FR 8246 (02/24/2010) *Revision:* 76 FR 63549 (10/13/2011).
EPA–453/R–06–004 2006/09—Control Techniques Guidelines for Flat Wood Paneling Coatings.	326 IAC 8–2–10—Flat Wood Panels; Manufacturing Operations.	75 FR 8246 (02/24/2010).
EPA–453/R–06–003 2006/09—Control Techniques Guidelines for Flexible Package Printing.	326 IAC 8–5–5—Graphic Arts and Graphic Arts Operations.	63 FR 35141 (06/29/1998) and 75 FR 8246 (02/24/2010).
Non-CTG	IAC 326 8–7—Specific VOC Reduction Requirements for Lake, Porter, Clark, and Floyd Counties.	60 FR 34856 (07/05/1995).
EPA–453/R–06–002 2006/09—Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing.	326 IAC 8–16—Offset Lithographic Printing and Letterpress Printing.	75 FR 8246 (02/24/2010).
EPA–453/R–06–001, 2006/09—Control Techniques Guidelines for Industrial Cleaning Solvents.	326 IAC 8–17—Industrial Solvent Cleaning Operations.	
EPA–450/3–84–015 1984/12—Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry and EPA–450/4–91–031 1993/08—Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.	326 IAC 8–18—Synthetic Organic Chemical Manufacturing Industry Air Oxidation, Distillation, and Reactor Processes.	
EPA–453/R–93–020, 1994/02—Control of Volatile Organic Compound Emissions from Batch Processes ACT (Note—also released as EPA–453/R–93–017).	326 IAC 8–19—Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations.	
EPA–453/D–93–056, 1992/09—Control of Volatile Organic Compound Emissions from Industrial Wastewater CTG (draft).	326 IAC 8–20—Industrial Wastewater.	
Note—CTG not finalized but issued as ACT in 1994.		
(No Report ID) 1994/04 Industrial Wastewater Alternative Control Technology..		
Note—ACT consists of cover memo with option tables + CTG (draft) EPA–453/D-93–056..		
59 FR–29216, 6/06/94—1994/06 Aerospace MACT *and* EPA–453/R–97–004, 1997/12 Aerospace (CTG & MACT).	326 IAC 8–21—Aerospace Manufacturing and Rework Operations.	
EPA 453/R–08–005, 2008/09—Control Techniques Guidelines for Miscellaneous Industrial Adhesives.	326 IAC 8–22—Miscellaneous Industrial Adhesives.	

[1] ACTs describe available control technologies and their respective cost effectiveness but do not establish presumptive RACT.

EPA has reviewed Indiana's certification that it has adopted VOC control regulations for stationary sources that constitute RACT, and determined that the set of regulations cited by the state and negative declaration for fiberglass boat manufacturing constitute RACT for purposes of the 2008 ozone NAAQS in this nonattainment area. Therefore, EPA is proposing to approve the state's submission as meeting the VOC RACT requirements for the Indiana portion of the Chicago area for the 2008 ozone NAAQS.

E. Motor Vehicle I/M Program Certification

The requirement to adopt a motor vehicle I/M program for moderate ozone nonattainment areas is described in CAA section 182(b)(4), and the regulations for basic and enhanced I/M programs are found at 40 CFR part 51, subpart S. Under these cumulative requirements, states with areas classified as moderate nonattainment for ozone with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt basic I/M programs, while serious and higher classified ozone nonattainment areas outside of the northeast ozone transport region with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. The Chicago area meets the criteria for mandatory I/M under the 2008 ozone NAAQS.

The Indiana portion of the Chicago area was required to adopt an enhanced I/M program under the 1-hour ozone NAAQS. EPA approved Indiana's enhanced I/M program on March 19, 1996 (61 FR 11142). Indiana's I/M program is authorized by state statute

Indiana Code (IC) 13–17–5, paid through the general funds, and implemented through rules promulgated by the Indiana Environmental Rules Board at 326 IAC 13. These requirements remain in place in Indiana's ozone SIP. In its February 28, 2017, submission, Indiana certified that the existing enhanced I/M program continues to satisfy the I/M requirements of the CAA for the Indiana portion of the Chicago area. Therefore, EPA is proposing to find that Indiana has met the I/M requirement for its portion of the Chicago area for the 2008 ozone NAAQS.

F. Nonattainment New Source Review

1. Background

CAA sections 110(a)(2) and 172(c)(5) require permits for the construction of new or modified major stationary sources anywhere in a nonattainment area in accordance with CAA section 173. CAA section 182 contains additional requirements applicable to ozone nonattainment areas. Nonattainment NSR requirements are codified at 40 CFR 51.165.

On March 6, 2017, EPA found that Indiana failed to submit marginal ozone nonattainment NSR rules for the Indiana portions of the Chicago area and Cincinnati [23] 2008 ozone nonattainment areas.[24] On February 28, 2017, Indiana submitted its nonattainment NSR certification to address nonattainment NSR requirements for marginal and moderate ozone nonattainment areas.[25]

Indiana has certified that specific sections of its nonattainment NSR rules at 326 IAC 2–3 continue to meet the nonattainment NSR program requirements for ozone nonattainment areas under the 2008 ozone NAAQS. Table 9 provides the sections of Indiana's nonattainment NSR rule corresponding to the relevant requirements at 40 CFR 51.165. 326 IAC 2–3 was originally approved into the SIP effective December 6, 1994,[26] with revisions subsequently approved into the SIP effective September 6, 2011.[27] Each requirement identified in Indiana's certification has been unchanged since EPA last approved it.

TABLE 9—NONATTAINMENT NSR RULES INDIANA CERTIFIED AS MEETING FEDERAL RULES

Federal rule	Indiana rule
40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iii)	326 IAC 2–3–1(z)(1) and (2).
40 CFR 51.165(a)(1)(iv)(A)(2)	326 IAC 2–3–1(z)(1) and (2).
40 CFR 51.165(a)(1)(iv)(A)(3)	326 IAC 2–3–1(z)(5).
40 CFR 51.165(a)(1)(v)(E)	326 IAC 2–3–1(y)(1).
40 CFR 51.165(a)(1)(x)(A)–(C)	326 IAC 2–3–1(pp).
40 CFR 51.165(a)(3)(ii)(C)(1)–(2)	326 IAC 2–3–3(b)(5).
40 CFR 51.165(a)(8)	326 IAC 2–3–1(y); 326 IAC 2–3–2(a) and (b).
40 CFR 51.165(a)(9)(ii)-(iv)	326 IAC 2–3–3(a)(5)(B).

For the following reasons, we are proposing to approve Indiana's certification that 326 IAC 2–3 is consistent with 40 CFR 51.165 and meets the requirements of CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4), and 182(b)(5) under the 2008 ozone standard for the Indiana portion of the Chicago area ozone nonattainment area. Approval of Indiana's nonattainment NSR certification would address the deficiency that was the basis for the March 6, 2017 finding. Therefore, final approval of this SIP revision will permanently stop the sanctions and FIP clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

2. Extreme Ozone Nonattainment Area and Ozone Transport Region Nonattainment NSR Requirements

In its February 28, 2017 submission, Indiana states that its nonattainment NSR rules do not include extreme ozone nonattainment requirements because Indiana has never had an extreme ozone nonattainment area. We concur with the statement that Indiana has never had an extreme ozone nonattainment area. Further, the finding of failure to submit applies to marginal ozone nonattainment NSR requirements, not extreme. Finally, the Chicago area ozone nonattainment area was reclassified to a moderate ozone nonattainment area which requires moderate, not extreme, ozone nonattainment NSR requirements. For these reasons, Indiana's nonattainment NSR program does not require extreme ozone nonattainment requirements at this time. The following extreme ozone nonattainment NSR requirements are not included as part of Indiana's nonattainment NSR rules: 40 CFR 51.165(a)(1)(iv)(A)(1)(iv), 40 CFR 51.165(a)(1)(iv)(A)(2)(vi), 40 CFR 51.165(a)(1)(v)(F), 40 CFR 51.165(a)(1)(x)(E), and 40 CFR 51.165(a)(9)(ii)(E).

Indiana's submission does not address ozone transport region requirements. However, no portion of Indiana is currently part of an ozone transport region; therefore, ozone transport region nonattainment NSR requirements do not apply in Indiana. The following ozone transport region nonattainment NSR requirements are not included as part of Indiana's nonattainment NSR rules: 40 CFR 51.165(a)(1)(iv)(A)(1)(ii), 40 CFR 51.165(a)(1)(iv)(A)(2)(ii), 40 CFR 51.165(a)(1)(iv)(A)(2)(ii), 40 CFR 51.165(a)(1)(v)(E), 40 CFR 51.165(a)(1)(x)(C), 40 CFR 51.165(a)(8), and 40 CFR 51.165(a)(9)(iii).

Extreme ozone nonattainment area and ozone transport region nonattainment NSR requirements will not be addressed further in this analysis of Indiana's ozone nonattainment NSR program certification because they do not apply to Indiana at this time. If, in the future, Indiana has an extreme ozone nonattainment area or becomes part of an ozone transport region, then

[23] The Cincinnati, Ohio-Kentucky-Indiana 8-hour ozone nonattainment area has since been redesignated to attainment effective April 7, 2017. See 82 FR 16940.

[24] See 82 FR 9158.

[25] The Chicago-Naperville 2008 8-hour ozone nonattainment area was reclassified to moderate nonattainment effective June 3, 2017. See 81 FR 26697.

[26] See 59 FR 51108. In its submittal, Indiana cites 94 FR 24838 as the initial approval for each requirement. The **Federal Register** Document Number of the initial approval is 94–24838 and corresponds to the proposed Approval and Promulgation of a New Source Review Implementation Plan; Indiana. **Federal Register** Document Number 94–24837 is the direct final Approval and Promulgation of a New Source Review Implementation Plan; Indiana. The direct final rule can be found at 59 FR 51108. Throughout today's proposed rule, the direct final approval of Indiana's NSR program will be cited as 59 FR 51108.

[27] See 76 FR 40242.

Indiana's SIP would need to be revised to establish the appropriate nonattainment NSR requirements.

3. 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2)—Major Source Thresholds for Ozone

40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2) defines the major source thresholds for the ozone precursors VOC and NO_X. The major source threshold for both VOC and NO_X vary depending on the classification of the ozone nonattainment area. For marginal and moderate ozone nonattainment areas, a major stationary source of ozone is a source that emits, or has the potential to emit, 100 tons per year or more of VOC or NO_X. Different emissions thresholds apply for serious, severe, and extreme ozone nonattainment areas and areas in an ozone transport region.

326 IAC 2–3–1(z)(1) generally defines a major stationary source as a stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, with an exception for ozone provided in 326 IAC 2–3–1(z)(2). 326 IAC 2–3–1(z)(2) defines a major stationary source for ozone nonattainment areas, specifying that the major source threshold is 100 tons per year or more of VOC or NO_X in marginal and moderate ozone nonattainment areas. 326 IAC 2–3–1(z)(1) and (2) remain consistent with 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2) for marginal and moderate ozone nonattainment areas.

4. 40 CFR 51.165(a)(1)(iv)(A)(3)—Change Constitutes Major Source by Itself

40 CFR 51.165(a)(1)(iv)(A)(3) requires any physical change that would constitute a major stationary source by itself to be treated as a major stationary source if the stationary source does not qualify as a major stationary source. 326 IAC 2–3–1(z)(5) requires the same and remains consistent with 40 CFR 51.165(a)(1)(iv)(A)(3).

5. 40 CFR 51.165(a)(1)(v)(E)—Significant Net Emissions Increase of NO_X is Significant for Ozone

40 CFR 51.165(a)(1)(v)(E) requires significant net emissions increases of NO_X to be considered significant for ozone. For major modifications, 326 IAC 2–3–1(y)(1) requires significant net emissions increases of NO_X to be considered significant for ozone in ozone nonattainment areas. 326 IAC 2–3–1(y)(1) exempts NO_X when the Administrator has granted a NO_X waiver pursuant to CAA section 182(f) and 40 CFR 51.165(a)(8). As a result, 326 IAC 2–3–1(y)(1) remains consistent with 40 CFR 51.165(a)(1)(v)(E).

6. 40 CFR 51.165(a)(1)(x)(A)–(C)—Significant Emission Rates for VOC and NO_X as Ozone Precursors

40 CFR 51.165(a)(1)(x)(A) defines the significant emission rate for ozone as 40 tons per year of VOC or NO_X. 326 IAC 2–3–1(pp) defines the significant emission rate for ozone in marginal and moderate nonattainment areas as 40 tons per year of VOC or NO_X (unless a NO_X waiver is in effect). 326 IAC 2–3–1(pp) remains consistent with 40 CFR 51.165(a)(1)(x)(A) for marginal and moderate ozone nonattainment areas.

40 CFR 51.165(a)(1)(x)(B) and (C) define the significant emission rate for ozone in serious or severe nonattainment areas as 25 tons per year of VOC or NO_X. For the purpose of implementing nonattainment NSR in marginal and moderate ozone nonattainment areas, serious and severe ozone significant emission rates are not required.

7. 40 CFR 51.165(a)(3)(ii)(C)(1)–(2)—Provisions for Emissions Reduction Credits

40 CFR 51.165(a)(3)(ii)(C)(1) and (2) are the requirements that make emission reductions achieved by shutting down an existing emission unit or curtailing production or operating hours creditable. Such reductions must be surplus, permanent, quantifiable, and federally enforceable. Shutdowns or curtailments must have occurred after the last day of the base year for the SIP planning process. Reviewing authorities may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes emissions from the previously shutdown or curtailed emissions units, but in no event may credit be granted for shutdowns that occurred prior to August 7, 1977. Shutdown or curtailment reductions occurring before the last day of the base year for the SIP planning process may also be generally credited if the shutdown or curtailment occurred on or after the date the construction permit application is filed or if the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emission unit and the emission reductions that result are surplus, permanent, quantifiable, and federally enforceable. 326 IAC 2–3–3(b)(5) remains consistent with 40 CFR 51.165(a)(3)(ii)(C)(1)(i) and 40 CFR 51.165(a)(3)(ii)(C)(2)(ii).

326 IAC 2–3–3(b)(5)(A) credits emission reductions from emission unit shutdowns and curtailments if they occurred on or after the date of the most recent emissions inventory or attainment demonstration. Prior shutdown or curtailment emission reductions may be considered to have occurred after the date of the most recent emissions inventory if the inventory explicitly includes the emissions from the previously shutdown or curtailed emissions units. 326 IAC 2–3–3(b)(5)(A) remains consistent with 40 CFR 51.165(a)(3)(ii)(C)(1)(ii).

326 IAC 2–3–3(b)(5)(B) allows reductions to be credited absent an approved attainment demonstration if the shutdown or curtailment occurred on or after the date the new source permit application is filed or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed emissions unit, with the exception of shutdowns occurring prior to August 7, 1977. 326 IAC 2–3–3(b)(5)(B) remains consistent with 40 CFR 51.165(a)(3)(ii)(C)(2)(ii).

8. 40 CFR 51.165(a)(8)—Requirements for VOC Apply to NO_X as Ozone Precursors

40 CFR 51.165(a)(8) requires that all requirements applicable to major stationary sources and major modifications of VOCs shall apply to NO_X except where the Administrator has granted a NO_X waiver applying the standards set forth under CAA section 182(f) and the waiver continues to apply. In its submittal, Indiana certifies that 326 IAC 2–3–1(y) and 326 IAC 2–3–2(a) and (b) meet this requirement.

326 IAC 2–3–1(y) defines major modification. As discussed above, 326 IAC 2–3–1(y)(1) is consistent with 40 CFR 51.165(a)(8) since it considers increases in both VOC and NO_X unless a NO_X waiver is in effect. 326 IAC 2–3–1(y) considers, in serious and severe ozone nonattainment areas, increases in VOC or NO_X unless a NO_X waiver is in effect and is consistent with 40 CFR 51.165(a)(8). 326 IAC 2–3–1(y) remains consistent with the definition of major modification at 40 CFR 51.165(a)(1)(v)(A) through (E) for marginal and moderate ozone nonattainment areas.

326 IAC 2–3–2(a) states that ozone nonattainment NSR applies to new major stationary sources or major modifications in an area designated as nonattainment for which the stationary source or modification is major. As previously discussed, 326 IAC 2–3–1(z)(1), (2), and (5) and 326 IAC 2–3–1(y) define major source and major

modification, respectively, as they relate to ozone nonattainment areas and remain consistent with 40 CFR 51.165(a)(8).

326 IAC 2–3–2(b) applies to modifications of VOC and NO_X major stationary sources in serious and severe ozone nonattainment areas. 326 IAC 2–3–2(b)(1) through (3) remain consistent with CAA sections 182(c)(6) through (8) and 182(d).

9. 40 CFR 51.165(a)(9)(ii)–(iv)—Offset Ratios for VOC and NO_X for Ozone Nonattainment Areas

40 CFR 51.165(a)(9)(ii)(A)–(D) requires the VOC offset ratio to be 1.1:1 in marginal ozone nonattainment areas, 1.15:1 in moderate ozone nonattainment areas, 1.2:1 in serious ozone nonattainment areas, and 1.3:1 in severe ozone nonattainment areas. 326 IAC 2–3–3(a)(5)(B) requires offset ratios for both VOC and NO_X that are consistent with 40 CFR 51.165(a)(9)(ii)(A)–(D).

40 CFR 51.165(a)(9)(iv) requires, for ozone nonattainment areas subject to CAA Title I, Part D, Subpart 1 but not Subpart 2, an offset ratio of at least 1:1. All of the current ozone nonattainment areas in Indiana were designated pursuant to CAA Title I, Part D, Subpart 2, so this requirement does not apply to Indiana at this time.

10. 40 CFR 51.165(a)(12)—Anti-backsliding Provisions

40 CFR 51.165(a)(12) requires anti-Backsliding requirements at 40 CFR 51.1105 to apply in any area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015. Indiana certified that there were no areas designated as nonattainment for the 1997 8-hour ozone NAAQS on April 6, 2015.

40 CFR 81.315 provides the attainment status designations for Indiana. For the 1997 8-hour ozone NAAQS, 40 CFR 81.315 codifies the fact that all areas in Indiana attained the 1997 8-hour ozone NAAQS prior to April 6, 2015. Table 10 includes relevant information about the 1997 8-hour ozone NAAQS, including the date that areas previously designated as nonattainment under the 1997 8-hour ozone NAAQS were redesignated to attainment. All other areas in Indiana that are not listed in the table were designated unclassifiable/attainment for the 1997 8-hour ozone standard on June 15, 2004.[28]

TABLE 10—1997 8-HOUR OZONE NAAQS REDESIGNATION DATES AND **Federal Register** CITATIONS

Designated areas	Counties	Redesignation date	**Federal Register** citation
Chicago-Gary-Lake County, IL-IN	Lake, Porter	5/11/2010	75 FR 26113
Cincinnati-Hamilton OH-KY-IN	Dearborn (part)	5/11/2010	75 FR 26118
Evansville, IN	Vanderburgh, Warrick	1/30/2006	70 FR 77026
Fort Wayne, IN	Allen	2/12/2007	72 FR 1292
Greene Co., IN	Greene	12/29/2005	70 FR 69085
Indianapolis, IN	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby.	10/19/2007	72 FR 59210
Jackson Co., IN	Jackson	12/29/2005	70 FR 69085
LaPorte Co., IN	LaPorte	7/19/2007	72 FR 39574
Louisville, KY-IN	Clark, Floyd	7/19/2007	72 FR 39571
Muncie, IN	Delaware	1/3/2006	70 FR 69443
South Bend-Elkhart, IN	Elkhart, St. Joseph	7/19/2007	72 FR 39577
Terre Haute, IN	Vigo	2/6/2006	71 FR 541

Since all areas in Indiana were designated as attainment or unclassifiable/attainment on April 6, 2015 for the 1997 8-hour ozone NAAQS, the anti-backsliding requirements of 40 CFR 51.165(a)(12) do not apply for the 2008 8-hour ozone NAAQS.

11. Conclusion

Indiana's nonattainment NSR rules, codified at 326 IAC 2–3, remain consistent with Federal marginal and moderate ozone nonattainment NSR rules codified at 40 CFR 51.165. Therefore, EPA is proposing to approve Indiana's certification that its nonattainment NSR rules at 326 IAC 2–3 meet the requirements of 40 CFR 51.165 and CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4), and 182(b)(5) for the Indiana portion of the Chicago area ozone nonattainment area. EPA's final approval of Indiana's nonattainment NSR certification will permanently stop the sanctions and FIP clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

III. What action is EPA proposing?

EPA is proposing to approve revisions to Indiana's SIP pursuant to section 110 and part D of the CAA and EPA's regulations because Indiana's February 28, 2017, nonattainment plan submission and January 1, 2018, supplement satisfy the emissions inventory, RFP, RFP contingency measures, transportation conformity, VOC RACT, I/M, and nonattainment NSR requirements of the CAA for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. Final approval of Indiana's SIP as meeting the nonattainment NSR requirements of the CAA for the 2008 ozone NAAQS will permanently stop the sanctions and FIP clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

[28] See 69 FR 23857.

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: August 16, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–18640 Filed 8–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0633; FRL–9982–79—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revisions to Regulation for Control of Ozone Season Nitrogen Oxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions submitted by the State of West Virginia. The revisions pertain to a West Virginia regulation that established the nitrogen oxides (NO_X) ozone season trading program under the Clean Air Interstate Rule (CAIR), which implemented requirements for NO_X reductions necessary to reduce interstate transport of pollution. The EPA-administered trading programs under CAIR were discontinued upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by EPA to replace CAIR. CSAPR established federal implementation plans (FIPs) for 28 states, including West Virginia, and applied to electric generating units (EGUs) as defined. The SIP submittals are comprised of revisions to the West Virginia regulation that implemented the CAIR ozone season NO_X trading program and that had previously been included in the West Virginia SIP. The revised West Virginia regulation removed the CAIR ozone season NO_X trading program provisions, which also addressed certain large non-electric generating units (non-EGUs), established new requirements for these large non-EGUs, included a state-wide NO_X emissions cap, and recodified certain other provisions that address the NO_X emission reductions required for cement kilns and internal combustion engines. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 27, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017- 0633 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 13, 2016, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a revised version of West Virginia Regulation 45CSR40—*Control of Ozone Season Nitrogen Oxides Emissions* for inclusion in the West Virginia SIP. The revised 45CSR40 made the following changes—(1) removed the provisions that implemented the CAIR ozone season trading program, (2) added new requirements to address the NO_X reduction obligations for non-EGUs in the State that were trading under the CAIR ozone season trading program but are no longer part of a trading program, and (3) recodified the requirements that applied to cement kilns and internal combustion engines. On October 13, 2017, WVDEP provided a supplemental SIP submission comprised of a demonstration showing that NO_X emissions from applicable non-EGUs do not exceed the West Virginia NO_X budget under the NO_X SIP Call.

I. Background

On October 27, 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone''—commonly called the NO_X SIP Call. The

NO_X SIP Call was designed to mitigate significant transport of NO_X, one of the precursors of ozone. EPA developed the NO_X Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_X SIP Call. The NO_X Budget Trading Program allowed EGUs greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as ''large non-EGUs'', to participate in a regional NO_X cap and trade program. The NO_X SIP call also established NO_X reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines. EPA has implementing regulations for the NO_X SIP Call at 40 CFR 51.121.

On May 12, 2005, 70 FR 25162, EPA promulgated CAIR to address transported emissions that significantly contributed to downwind states' nonattainment and maintenance of the 1997 ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). CAIR required 28 states, including West Virginia, to reduce emissions of NO_X and sulfur dioxide (SO_2), which are precursors to ozone and $PM_{2.5}$. Under CAIR, EPA established separate cap and trade programs for annual NO_X, ozone season NO_X, and annual SO_2 emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated FIPs requiring the EGUs in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. States could comply with the requirements of CAIR by either remaining on the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that included as trading sources EGUs and the non-EGUs that formerly traded in the NO_X Budget Trading Program under the NO_X SIP Call. EPA discontinued administration of the NO_X Budget Trading Program in 2009 upon the start of the CAIR trading programs.[1] The NO_X SIP Call requirements continued to apply, however, and EGUs that were formerly trading under the NO_X Budget Trading Program continued to meet their NO_X SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. Large non-EGUs that were trading under the NO_X Budget Trading Program were not addressed in the CAIR FIPs. States therefore needed to assess their NO_X SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met. Under CAIR, states had the option to include the non-EGUs as trading participants in the regional CAIR ozone season trading program either through a full CAIR SIP or through an abbreviated CAIR SIP. In either of these options, expansion of the applicability to include the non-EGUs and increasing the ozone season NO_X budget by the amount of the non-EGU budget in 40 CFR part 97 Appendix C of Subpart E effected inclusion of the non-EGUs into the trading program. Otherwise, states needed to assess their NO_X SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for these units continued to be met. West Virginia chose to include the non-EGUs as CAIR trading sources, and submitted, for inclusion in the SIP Regulation 45CSR40 which consisted of provisions that implemented the CAIR NO_X ozone season trading program, included the large non-EGUs as trading sources, and also included emission reduction requirements for certain non-trading non-EGUs (cement kilns and IC engines) that were subject to the NO_X SIP Call. EPA approved Regulation 45CSR 40 into the West Virginia SIP on August 4, 2009 (74 FR 38536).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,[2] but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR.[3] The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the Court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was delayed by litigation, and EPA began implementing CSAPR on January 1, 2015.

Starting in January 2015, the CSAPR FIP trading programs for annual NO_X, ozone season NO_X and annual SO_2 were applicable in West Virginia. Thus, since January 1, 2015, the provisions related to implementation of the CAIR ozone season trading program in West Virginia regulation 45CSR40 have become obsolete. The CSAPR FIP trading programs applied only to EGUs and, unlike CAIR, did not provide for expansion of the ozone season trading program to include the NO_X SIP Call non-EGUs. States, like West Virginia, whose non-EGUs had previously traded in the CAIR ozone season trading program, were therefore required to address the non-EGU reduction requirements of the NO_X SIP Call outside of a regional trading program.[4]

On October 26, 2016 (81 FR 74504), EPA finalized the CSAPR Update Rule to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS, and issued FIPs that updated the ozone season NO_X budgets for 22 states, including West Virginia. Starting in January 2017, the CSAPR Update budgets were implemented via establishment of a new CSAPR NO_X ozone season allowance trading program that was established under the original CSAPR. The CSAPR Update Rule reinstates the option for States to allow non-EGUs to participate in a regional trading program. States wishing to do this can at any time submit a SIP revision that expands the CSAPR Ozone Season NO_X budget and applicability to include large non-EGUs.

II. Summary of SIP Revision and EPA Analysis

Regulation 45CSR40 was originally adopted by WVDEP to implement the ozone season trading program under CAIR, which included as CAIR trading sources EGUs and the non-EGUs that had formerly been trading under the NO_X SIP Call trading program. As noted previously, WVDEP consolidated all the

[1] CAIR was subsequently vacated and remanded. *See North Carolina* v. *EPA*, 531 F.3d 896 (DC Cir. 2008), modified by 550 F.3d 1176 (remanding CAIR). CAIR was replaced with the Cross-State Air Pollution Rule, or CSAPR (76 FR 48208, August 8, 2011), which, after legal challenges, was implemented starting in January 2015. The NO_X Ozone Season Trading Program under CSAPR was replaced in West Virginia and most other states by a new trading program for ozone season NO_X under the CSAPR Update rule in January 2017 (81 FR 74504, October 26, 2016).

[2] *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008).

[3] *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008).

[4] Subsequent to West Virginia's July 13, 2016 submission, EPA finalized the CSAPR Update Rule to address transport related to the 2008 ozone NAAQS. It is noted that CSAPR Update included flexibility for states to submit SIPs that expand the CSAPR ozone season trading program to include the large non-EGUs.

NO_X SIP Call and CAIR ozone season requirements into 45CSR40, including the requirements that apply to stationary IC engines and cement manufacturing kilns. The CSAPR FIPs which replaced CAIR only applied to EGUs, and, at the time West Virginia developed its SIP submittal, states did not have an option under CSAPR to bring their non-EGUs into the CSAPR NO_X Ozone Season Trading Program. So, while EGU compliance with CSAPR satisfied their NO_X SIP Call requirements, West Virginia needed to modify its ozone season NO_X regulation to address the NO_X SIP Call requirements for the large non-EGUs that were formerly trading in the CAIR NO_X ozone season trading program. 40 CFR 51.121(f) sets forth alternatives for states to address NO_X SIP Call reduction obligations for non-EGUs including (1) imposing a NO_X mass emissions cap on each source, (2) imposing a NO_X emissions rate limit on each source and assuming maximum operating capacity for every such source for purposes of estimating NO_X mass emissions, or (3) imposing other regulatory requirements that the state has demonstrated to EPA provide equivalent or greater assurance that the state will comply with its ozone season NO_X budget.

The July 13, 2016 West Virginia SIP submittal includes a modified 45CSR40 which removed the CAIR ozone season trading program provisions, retained the definitions, applicability, and other provisions responding to the NO_X SIP Call, added new requirements to address its NO_X SIP Call obligations for sources that were trading under CAIR but are no longer part of a trading program, and retained and recodified the limits on NO_X emissions that applied to stationary IC engines and cement kilns previously in the former version of 45CSR40 (with a State effective date of May 1, 2008) which EPA had included in the West Virginia SIP.

Removal of CAIR Ozone Season Trading Program Requirements

Former Regulation 45CSR40 (State effective date of May 1, 2008), which was approved into the West Virginia SIP, was originally adopted by WVDEP to implement the ozone season trading program under CAIR and to address NO_X SIP Call requirements. The July 13, 2016 SIP submission (with revised 45CSR40, effective in West Virginia on July 1, 2016) removed all the requirements in sections 1 through 75 that pertained to the CAIR ozone season trading program, but retained the general provisions, definitions (including references to continuous emissions monitoring under 40 CFR part 75, subpart H), and applicability provisions that applied to the West Virginia regulated sources under the NO_X SIP Call. As the CAIR trading program has been replaced by the trading programs under CSAPR, as described previously, these revisions removing references to CAIR are approvable for CAA 110(l) as the provisions related to CAIR were moot as CAIR was replaced by CSAPR and thus CAIR no longer yielded reductions in pollutants nor presently applied to any sources. In addition, sources formerly subject to CAIR are now subject to the more stringent NO_X and SO_2 provisions of CSAPR to which the EGU sources in West Virginia are subject via a FIP. *See* 81 FR 74504.

Requirements for Non-EGUs Subject to the NO_X SIP Call Formerly Trading Under CAIR

New sections 4 through 8 of 45CSR40 (effective July 1, 2016) established new ozone season NO_X requirements for the large non-EGUs that were formerly trading in the CAIR NO_X ozone season trading program. These requirements are summarized as follows:

Section 4—*Applicability* requires the owner or operator of a unit that has a maximum heat input greater than 250 MMBtu/hr to comply with the ozone season NO_X emission limits, monitoring, recordkeeping, and reporting requirements established in sections 5 and 6 of 45CSR40. This section also specifically excludes any unit that is already subject to the federal CSAPR NO_X Ozone Season Trading Program via a FIP.

Section 5—*Ozone Season NO_X Emission Limitation* requires that an owner or operator of affected units (see section 4) limit ozone season NO_X emissions pursuant to specific limits established in a permit issued under West Virginia regulations 45CSR13, 45CSR14, or 45CSR19, or under a consent order issued by the State, including any limits on operating time during the ozone season.

Section 6—*Monitoring, Recordkeeping and Reporting Requirements* requires continuous emissions monitoring, reporting, and recording in accordance with 40 CFR part 75, subpart H for the non-EGUs to be used to determine compliance with the requirements in section 5.

Section 7—*Violation* establishes enforcement provisions in the event a unit emits in excess of its ozone season NO_X emission limitations established via section 5.

Section 8—*Ozone Season NO_X Budget Demonstration* establishes a NO_X ozone season budget of 2,184 tons for all applicable units in the State. Subsection 8.2 requires submittal to EPA of a demonstration showing that the sum of NO_X emissions from all affected units does not exceed the ozone season NO_X budget, based on each unit's permitted limits or consent order limits operating at maximum capacity (or at the operational limit if required in the permit or consent order). Subsection 8.3 requires that whenever a new unit meets the applicability requirements under section 4, the demonstration is required to be revised to show continuing compliance with the statewide NO_X budget.

The July 13, 2016 SIP revision submittal did not include the demonstration required under section 8.2 of 45CSR40. On October 11, 2017, WVDEP submitted a supplemental SIP revision consisting of such demonstration showing that total ozone season emissions from large non-EGUs in the State subject to the NO_X SIP Call do not exceed the West Virginia non-EGU ozone season trading budget of 2,184 tons.[5] The demonstration identifies seven sources that meet the applicability criteria for large non-EGUs subject to NO_X SIP Call requirements. Table 1 in this proposed rulemaking shows that with these limits at maximum operating capacity, or at permitted operating time restrictions if applicable, the total NO_X emissions from these sources subject to the NO_X SIP Call are 941 tons, which is less than 50 percent of the West Virginia ozone season NO_X budget of 2,184 tons.

[5] *See* 40 CFR part 97, Appendix C of Subpart E for non-EGU trading budgets for affected states.

TABLE 1—TOTAL OZONE SEASON NO_X EMISSIONS FROM LARGE NON-EGUS IN WEST VIRGINIA

Source	Units (boiler #)	Maximum design heat input (mmBtu/hr)	Ozone season operating time (hrs)	NO_X emission rate limit	Ozone season emissions
Appalachian Power Company, John E Amos	AUX1	642	876	0.20 lb/mmBtu	56
	AUX3	600	876	0.20 lb/mmBtu	53
Appalachian Power Company, Mountaineer	AUX1	600	876	99.67 pounds per hour (lb/hr).	44
	AUX2	600	876	99.67 lb/hr	44
Westlake Chemical, Natrium	5	999	3,672	0.16 lb/mmBtu	293
Chemours Company, Belle	10	275	3,672	0.20 lb/mmBtu	101
Kentucky Power Company, Mitchell	AUX1	663	876	99.45 lb/hr	44
Union Carbide	16	350	3,672	.036 lb/mmBtu	23
Corporation, Institute	17	350	3,672	.036 lb/mmBtu	23
Union Carbide Corporation, South Charleston	26	352	3,672	70.4 lb/hr	130
	27	353	3,672	70.6 lb/hr	130
Total Ozone Season NO_X (tons)					941

The October 11, 2017 West Virginia supplemental SIP submission of an initial demonstration shows that total ozone season NO_X emissions from non-EGUs in the State that are subject to the NO_X SIP Call do not exceed the West Virginia ozone season budget of 2,184 tons for non-EGUs that the State established in its SIP in 2002 responding to the NO_X SIP Call.[6] The maximum potential ozone season NO_X emissions of 941 tons based on permit limits shown in Table 1 for Appalachian Power, Westlake Chemical, Kentucky Power, and Union Carbide and the Consent Order limits for Chemours is less than 50 percent of the total West Virginia NO_X budget and leaves 1,245 tons in the budget available for new units which may at a later date become subject to NO_X SIP Call requirements. Whenever a new unit that meets the applicability of section 4.1 (and thus is also subject to the NO_X SIP Call) commences operation or an existing unit becomes newly applicable, West Virginia is required under subsection 8.3 of 45CSR40 to submit a revised demonstration to EPA that shows continuing compliance with the state-wide emissions cap of 2,184 tons. EPA finds West Virginia's revised provisions in 45CSR40 meet requirements for NO_X SIP Call in CAA (including section 110) and 40 CFR 51.121 for the large non EGUs.

[6] *See* 67 FR 31733, 31735 (May 10, 2002). EPA notes that the non-EGU budget amount adopted by West Virginia in its NO_X Budget Trading Program regulations matches the budget amount separately established for the state's non-EGUs under a different federal rule promulgated contemporaneously with the NO_X SIP Call pursuant to CAA section 126. *See* 40 CFR part 97, subpart E, appendix C.

Recodification of Previously SIP-Approved Provisions

The previously SIP-approved section 90 of 45CSR40 (effective 200x) entitled *Ozone Season NO_X Reduction Requirements for Stationary Internal Combustion Engines* has been recodified as section 9. Other than revisions to cross referencing necessitated by the recodification and removal of references to the CAIR program, the provisions in section 9 which were formerly in section 90 are unchanged and include the same ozone season NO_X caps for affected sources and compliance requirements including a compliance plan, monitoring, recordkeeping, and reporting requirements for IC engines as was in the regulation when EPA previously approved 45CSR40 for the West Virginia SIP.

Similarly, section 100 of 45CSR40 entitled *Ozone Season NO_X Reduction Requirements for Emissions of NO_X from Cement Manufacturing Kilns* has been recodified as section 10. Other than revisions to cross referencing necessitated by the recodification, the provisions in section 10 which were formerly in section 100 for cement kilns are unchanged and include the same requirements for specific controls (or reductions equivalent to that achieved by the control) and compliance plan requirements, and monitoring, recordkeeping, and reporting requirements for cement kilns as was in the regulation when EPA previously approved 45CSR40 for the West Virginia SIP.

The changes West Virginia has made to 45CSR40 are approvable under CAA section 110 because—(1) CAIR has been replaced by CSAPR and thus removal of CAIR provisions is appropriate; (2) the applicability provisions at section 4.1 of 45CSR40 cover all existing and new NO_X SIP Call non-EGUs not subject to the current CSAPR trading program for ozone season NO_X emissions; (3) the enforceable cap on collective ozone season NO_X emissions from covered non-EGUs in section 8.1 of the State's rule does not exceed the non-EGU emissions budget adopted by West Virginia in its SIP responding to the NO_X SIP Call and identified in 40 CFR part 97, subpart E, appendix C.; (4) monitoring, recordkeeping and reporting in accordance with 40 CFR part 75 continue to be required for the non-EGUs; (5) the cement kiln and IC engine provisions are identical to requirements previously applicable to such sources in the West Virginia SIP and are merely recodified; and (6) the revised 45CSR40 generally addresses the requirements for large non-EGUs for the NO_X SIP Call pursuant to 40 CFR 51.121. The SIP revision addresses provisions in CAA section 110(l) for revisions to a state's SIP because it maintains the NO_X ozone season budget originally established under the NO_X SIP Call and in the West Virginia SIP, removes the obsolete CAIR provisions, and recodifies other provisions maintaining requirements already in the SIP for cement kilns and IC engines. Thus, EPA does not expect any emission increases, or interference with attainment or maintenance of the NAAQS, reasonable further progress or any other CAA requirements.

On February 8, 2018, WVDEP provided a letter clarifying a provision in the July 13, 2016 SIP submittal. The letter is available in the docket for this rulemaking and is available on *www.regulations.gov.* Specifically, subsection 4.1 of 45CSR40, which sets forth applicability provisions, exempted any unit that is already subject to the CSAPR NO_X Ozone Season Trading

program under 40 CFR part 97 Subpart BBBBB. The letter explains that when West Virginia revised regulation 45CSR40, it cited to the CSAPR NO_X Ozone Season Trading Program that was in effect at the time the rule was finalized. Subsequent to WVDEP's submission of the SIP revision in 2016, EPA finalized an update to CSAPR that removed EGUs in West Virginia from the original CSAPR trading program for ozone season NO_X emissions at 40 CFR part 97, subpart BBBBB and instead made the state's EGUs subject to the new CSAPR NO_X Ozone Season Group 2 Trading Program at 40 CFR part 97, subpart EEEEE. The February 8, 2018 letter clarifies that the West Virginia regulation was intended to refer to current provisions of CSAPR, and thus is intended to refer to the updated CSAPR provisions. The letter states that West Virginia will work towards revising 45CSR40 as expeditiously as possible to conform the regulation to refer to currently enforceable CSAPR provisions and will submit the revised 45CSR40 as a SIP revision to EPA for approval once the regulation correctly refers to 40 CFR part 97, subpart EEEEE.[7] EPA finds 45CSR40 approvable for the West Virginia SIP (despite this inadvertent incorrect citation to CSAPR using subpart BBBBB in lieu of subpart EEEEE) as the revised regulation addresses CAA requirements in section 110 and 40 CFR 51.121 for the NO_X SIP Call and for units subject to the NO_X SIP Call as discussed specifically above and because West Virginia clarified its intent to refer specifically to provisions of CSAPR presently enforceable and its intent to address the minor citation cross reference expeditiously with a future SIP revision submittal.

III. Proposed Action

EPA's review of this material indicates the July 13, 2016 SIP revision submittal as supplemented on October 11, 2017 and clarified on February 8, 2018 is approvable. The 2016 SIP submission as amended by the 2017 submission and clarified on February 8, 2018, requests EPA include the amended version of 45CSR40 in the West Virginia SIP. Amended regulation 45CSR40 removes the moot provisions that implemented the CAIR NO_X Ozone Season Trading Program, establishes new requirements to address the NO_X SIP Call obligations for large non-EGUs in the State that were trading under CAIR but are no longer part of a trading program, establishes an enforceable statewide cap on ozone season NO_X emissions for these non-EGUs in accordance with West Virginia's state budget under the NO_X SIP Call, and recodifies previously SIP-approved provisions that apply to IC engines and cement kilns. The non-EGUs are also required to meet the monitoring, recordkeeping, and reporting requirements under 40 CFR part 75, as required under 50 CFR 51.121. The October 11, 2017 supplemental submittal demonstrates that the total NO_X emissions from all affected non-EGUs in West Virginia are less than the State cap previously established for West Virginia. As the amended regulation establishes a NO_X emissions cap equal to the amount of the West Virginia NO_X budget under the NO_X SIP Call as discussed in this proposal and West Virginia has demonstrated that emissions from non-EGUs are well below the cap, there is no expected emissions impact on any pollutant and thus SIP revision is not expected to interfere with reasonable further progress, any NAAQS or any other CAA requirement, therefore meeting the requirements under section 110(l) of the CAA. EPA is proposing to approve the West Virginia SIP revision submitted on July 13, 2016, as supplemented on October 11, 2017, because the revised 45CSR40 addresses CAA requirements in section 110 and 40 CFR 51.121 for the NO_X SIP Call and for units subject to the NO_X SIP Call. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in a final EPA rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the revisions to West Virginia regulation 45CSR40—Control of Ozone Season Nitrogen Oxides Emissions. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, this action proposing approval of revisions to West Virginia regulation 45CSR40 does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

[7] West Virginia has drafted the revision to 45CSR40 that corrects the reference to CSAPR, and expects to finalize the revision in its 2019 legislative session.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 9, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2018–18524 Filed 8–27–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 167
Tuesday, August 28, 2018

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

August 23, 2018.

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 and other forms of information technology.

Comments regarding this information collection received by September 27, 2018 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 20503. Commentors 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) 720–8681.

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

Forest Service

Title: National Woodland Owner Survey.

OMB Control Number: 0596–0078.

Summary of Collection: The Forest and Rangeland Renewable Resources Planning Act of 1974 (Pub. L. 93–278 Sec. 3) and the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 307 Sec. 3) are the legal authorities for conducting the National Woodland Owner Survey. In the United States, there are an estimated 816 million acres of forests and other wooded land. Over half of this land is privately owned by an estimated 11.5 million private ownerships that control over half of the nation's forests and other wooded land. The remaining forestland is managed by over a thousand federal, state, and local government agencies. The National Woodland Owner Survey (NWOS) collects information to help answer questions related to the characteristics of the landholdings and landowners, ownership objectives, the supply of timber and non-timber products, forest management practices, climate change, wildfires, invasive species, and delivery of the concerns/constraints perceived by the landowners.

Need and Use of the Information: The NWOS will utilize a mixed-mode survey technique involving cognitive interviews, focus groups, self-administered questionnaires, and telephone interviews. The Forest Service (FS) will use several, interrelated forms: Long, short, state-specific, science modules, corporate, public and urban versions to collect information. Data collected will help FS to determine the opportunities and constraints that private woodland owners typically face; and facilitate planning and implementing forest policies and programs. If the information is not collected the knowledge and understanding of private woodland ownerships and their concerns and activities will be severely limited.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 4,188.

Frequency of Responses: Reporting: Other (every 5 years).

Total Burden Hours: 2,198.

Forest Service

Title: The Stewardship Mapping and Assessment Project (STEW–MAP).

OMB Control Number: 0596–0240.

Summary of Collection: The Cooperative Forestry Assistance Act of 1978 (Pub. L. 113–79) Section 9(a); (b)(8); (c) and (d); The Forest and Rangeland Renewable Resources Research Act of 1978 and the National Environmental Policy act of 1969 authorize the Forest Service to expand and strengthen existing research, education, technical assistance and public information and participation in tree planting and maintenance programs through stewardship. Civic environmental stewards are involved in a range of activities like planting trees, organizing community gardens, offering environment-themed classes, leading local conservation efforts, monitoring plants and animals, and cleaning up nearby parks or natural areas. These stewards may be nonprofit organizations, formal or informal community groups, faith-based organizations, or academic institutions. STEW–MAP will create a publicly available database and map of stewardship groups, their activities, and where they work.

Need and Use of the Information: Information will be gathered on civic stewardship groups and their efforts such as where they work, the types of projects they focus on, and how they are organized. There are three phases to a STEW–MAP project: (1) A census to put together a master list of known stewardship groups and their contact information in the target city or region; (2) a survey distributed to all of the organizations identified in phase one to collect information about what they work on, structure of the group and what other groups they collaborate with; and (3) follow-up interviews with key longstanding organizations identified during phase two, to collect more detailed information about organizational histories. Without this information collection, FS would be unable to understand the current state of civic natural resource stewardship and would be unable to identify the

organizations that may provide assistance to a given geographical area.

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

Number of Respondents: 6,050.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,642.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–18583 Filed 8–27–18; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 23, 2018.

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 and other forms of information technology.

Comments regarding this information collection received by September 27, 2018 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 20503. Commentors 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) 720–8681.

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

Forest Service

Title: National Woodland Owner Survey.

OMB Control Number: 0596–0078.

Summary of Collection: The Forest and Rangeland Renewable Resources Planning Act of 1974 (Pub. L. 93–278 Sec. 3) and the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 307 Sec. 3) are the legal authorities for conducting the National Woodland Owner Survey. In the United States, there are an estimated 816 million acres of forests and other wooded land. Over half of this land is privately owned by an estimated 11.5 million private ownerships that control over half of the nation's forests and other wooded land. The remaining forestland is managed by over a thousand federal, state, and local government agencies. The National Woodland Owner Survey (NWOS) collects information to help answer questions related to the characteristics of the landholdings and landowners, ownership objectives, the supply of timber and non-timber products, forest management practices, climate change, wildfires, invasive species, and delivery of the concerns/constraints perceived by the landowners.

Need and Use of the Information: The NWOS will utilize a mixed-mode survey technique involving cognitive interviews, focus groups, self-administered questionnaires, and telephone interviews. The Forest Service (FS) will use several, interrelated forms: Long, short, state-specific, science modules, corporate, public and urban versions to collect information. Data collected will help FS to determine the opportunities and constraints that private woodland owners typically face; and facilitate planning and implementing forest policies and programs. If the information is not collected the knowledge and understanding of private woodland ownerships and their concerns and activities will be severely limited.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 4,188.

Frequency of Responses: Reporting: Other (every 5 years).

Total Burden Hours: 2,198.

Forest Service

Title: The Stewardship Mapping and Assessment Project (STEW–MAP).

OMB Control Number: 0596–0240.

Summary of Collection: The Cooperative Forestry Assistance Act of 1978 (Pub. L. 113–79) Section 9(a); (b)(8); (c) and (d); The Forest and Rangeland Renewable Resources Research Act of 1978 and the National Environmental Policy act of 1969 authorize the Forest Service to expand and strengthen existing research, education, technical assistance and public information and participation in tree planting and maintenance programs through stewardship. Civic environmental stewards are involved in a range of activities like planting trees, organizing community gardens, offering environment-themed classes, leading local conservation efforts, monitoring plants and animals, and cleaning up nearby parks or natural areas. These stewards may be nonprofit organizations, formal or informal community groups, faith-based organizations, or academic institutions. STEW–MAP will create a publicly available database and map of stewardship groups, their activities, and where they work.

Need and Use of the Information: Information will be gathered on civic stewardship groups and their efforts such as where they work, the types of projects they focus on, and how they are organized. There are three phases to a STEW–MAP project: (1) A census to put together a master list of known stewardship groups and their contact information in the target city or region; (2) a survey distributed to all of the organizations identified in phase one to collect information about what they work on, structure of the group and what other groups they collaborate with; and (3) follow-up interviews with key longstanding organizations identified during phase two, to collect more detailed information about organizational histories. Without this information collection, FS would be unable to understand the current state of civic natural resource stewardship and would be unable to identify the organizations that may provide assistance to a given geographical area.

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

Number of Respondents: 6,050.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,642.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–18586 Filed 8–27–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Pesticide-Use Proposal

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, Pesticide-Use Proposal.

DATES: Comments must be received in writing on or before October 29, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: Stephen A. Covell, Mail Stop 1110, USDA Forest Service, Forest Health Protection, 1400 Independence Avenue SW, Washington, DC 20250. Comments also may be submitted by email to *scovell@fs.fed.us.* Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice. The public may inspect comments received at 201 14th Street SW, Washington, DC 20250 Monday through Friday, 9:00 a.m. to 3:00 p.m. Visitors are encouraged to call ahead to 703–605–5342 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Covell, State and Private Forestry, Forest Health Protection, telephone 703–605–5342, email *scovell@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Pesticide-Use Proposal.

OMB Number: 0596–0241.

Expiration Date of Approval: 12/31/2018.

Type of Request: Renewal with no revisions.

Abstract: USDA Forest Service (FS) has Federal land stewardship responsibilities for approximately 193 million acres. Forest Service land management responsibilities require use of integrated pest management, which in certain circumstances includes use of pesticides. The Forest Service currently uses form FS–2100–2, Pesticide-Use Proposal (PUP) internally to collect and review pesticide-applications intended to control pests of grasslands and forests under its administrative responsibility (under FSM 2150, and FSH 2109.14). The Forest Service anticipates requests from outside entities for application of pesticides upon Forest Service administered lands within rights-of-way easements, permitted lands, and under similar circumstances.

The Forest Service proposes to use the PUP form to collect pesticide project information from those outside entities to facilitate authorization of selected activities. Completion of the PUP form includes identification of pests to be controlled, pesticide to be applied, and other regulatory compliance information such as use of certified applicators. Because diverse pesticide-use projects are designed for local conditions, it is appropriate for the PUP form to be used to ensure that essential details are uniformly assembled for review.

Proposals will be evaluated by Forest Service pesticide use coordinators and other administrative personnel to safeguard human health and ecological protection consistent with Forest Service land use management programs. Form and instructions will be posted on a Forest Service website for ready public availability.

Affected Public: Individuals and Households, Businesses and Organizations, and State, Local or Tribal Governments responsible for vegetation management along rights-of-way across lands administered by the Forest Service.

Estimate of Burden per response: 12 hours.

Estimated Annual Number of Respondents: 36.

Estimated Annual Number of Responses: 50.

Estimated Total Annual Burden on Respondents: 600 hours.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: August 8, 2018.

Glenn P. Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–18557 Filed 8–27–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Region Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice; solicitation of nominees to the Southern Region Recreation Resource Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), the United States Department of Agriculture (USDA) announces solicitation for nominations to fill four vacancies on the Southern Region Recreation Resource Advisory Committee (RRAC). Members will be appointed by the Secretary of Agriculture and serve a three-year term.

DATES: Applications must be received on or before October 1, 2018. This timeframe may be extended if officials do not receive applications for needed positions. Nominations must contain a completed application packet that includes the nominee's name, a narrative statement on each Nominee Evaluation Criteria, and completed Form AD–755, Advisory Committee or

Research and Promotion Background Information. The package must be sent to the address below.

ADDRESSES: Interested persons may submit applications to the Southern Region Recreation RAC by U.S. Mail: C. Mitchell, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902, or Express Delivery: C. Mitchell, Ouachita National Forest, 100 Reserve Street, Hot Springs, AR 71901.

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information regarding this request for nominations may contact the Recreation Resource Advisory Committee Coordinator Tiffany Williams, Southern Region, USDA Forest Service, 1720 Peachtree Road NW, Atlanta, GA 30309; by phone at (404) 347–2769, or by email at *r8_rrac@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Lands Recreation Enhancement Act (REA), directs the Secretary of Agriculture, the Secretary of the Interior, or both to establish Recreation RACs, or use existing advisory committees to perform the duties of Recreation RACs, in each State or region for Federal recreation lands and waters managed by the Forest Service or the Bureau of Land Management (BLM). These committees make recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

Recreation Resource Advisory Committee Membership Recruitment

Potential nominees must represent the following forest-related interests:

- *Category One:* Five people who represent recreation users, one in each position: Camping, summer motorized, summer non-motorized, wildlife and nature viewing/viewing of interpretive sites and hunting and fishing. The target for recruitment for 2018 is for one committee member to represent camping and one to represent non-motorized recreation.
- *Category Two:* Three people who represent interest groups that include: Outfitter and guides (two positions), and local environmental groups (one position). The target for recruitment for 2018 is for one committee member to represent local environmental groups.
- *Category Three:* Three people, one in each position: State tourism official, a person who represents affected local government interests, and a person who represents affected Indian tribes' issues. The target for recruitment for 2018 is for one committee member to represent local government.

Completed nomination forms are due by Monday, October 1, 2018.

Members will be appointed for three-year terms based on the following criteria: Which interest groups they represent and how well they are qualified to represent that group; Why they want to serve on the committee and what they can contribute; Their past experience in working successfully as part of a collaborative group.

Nominees' demonstrated ability to represent minorities, women and persons with disabilities will be considered in membership selections. U.S. Department of Agriculture policies regarding equal opportunity will be followed.

Committee members will receive travel and per diem expenses for regularly scheduled meetings; however, they will not receive compensation.

Nominations and Application Information for the Southern Region Recreation RAC

The appointment of members to the Southern Region Recreation RAC will be made by the Secretary of Agriculture. Any individual or organization may nominate one or more qualified persons to represent the vacancies listed above. To be considered for membership, nominees must—

1. Identify what interest group they would represent and how they are qualified to represent that group;
2. State why they want to serve on the committee and what they can contribute;
3. Show their past experience in working successfully as part of a collaborative group;
4. Complete Form AD–755.

Application packets are being accepted at this time for the vacant positions on the RRAC. Application packets, including evaluation criteria and the AD–755 form, are available at *http://www.fs.usda.gov/detail/r8/workingtogether/advisorycommittees/?cid=stelprdb5358339* or by contacting the persons identified in this notice. Nominees must submit all documents to the appropriate regional contact. All nominations will be vetted by the Agency.

Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Southern Region Recreation RACs. To ensure that the recommendations of the Recreation RACs have taken into account the needs of the diverse groups served by the Departments, membership should include, to the extent practicable, individuals with demonstrated ability to represent all racial and ethnic groups, women and men, and persons with disabilities.

Recreation RAC members serve without pay but are reimbursed for travel and per diem expenses for regularly scheduled committee meetings. All Recreation RAC meetings are open to the public and an open public forum is part of each meeting. Meeting dates and times will be determined by agency officials in consultation with the Recreation RAC members.

Dated: August 8, 2018.

Glenn P. Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–18553 Filed 8–27–18; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Connecticut Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on: Wednesday, September 12, 2018. The purpose of the meeting is for project and roundtable planning.

DATES: Wednesday, September 12, 2018 at 12:00 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION:

Public Call-In Information: Conference call-in number: 1–877–260–1479 and conference call 7670135.

Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–260–1479 and conference call 7670135. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will

not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–877–260–1479 and conference call 7670135.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://facadatabase.gov/committee/meetings.aspx?cid=2394*; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Wednesday, September 12, 2018 at 12 p.m. (EDT)

- Open—Roll Call
- Project Planning
- Open Comment
- Adjourn

Dated: August 22, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–18543 Filed 8–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Construction Progress Reporting Surveys

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before October 29, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *docpra@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica M. Filipek, U.S. Census Bureau, EID, CENHQ Room 7K057, 4600 Silver Hill Road, Washington, DC 20233–6900, telephone (301) 763–5161 (or via email at *erica.mary.filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of a currently approved collection for forms C–700, C–700(R), C–700(SL), and C–700(F). These forms are used to conduct the Construction Progress Reporting Surveys (CPRS) and collect information on the dollar value of construction put in place. Form C–700 is for nonresidential projects owned by private companies or individuals. Form C–700(R) is for private multifamily residential buildings. Form C–700(SL) is for state and local government projects. Form C–700(F) is for federal government projects.

The Census Bureau uses the information from these surveys to publish the value of construction put in place for the monthly 'Construction Spending' principal economic indicator. Published estimates are used by a variety of private businesses and trade associations to estimate the demand for building materials and to schedule production, distribution, and sales efforts. They also provide various government agencies with a tool to evaluate economic policy. For example, Bureau of Economic Analysis staff use data to develop the construction components of gross private domestic investment in the gross domestic product. The Federal Reserve Board and the Department of the Treasury use the value in place data to predict the gross domestic product, which is presented to the Board of Governors and has an impact on monetary policy.

There are currently no planned content changes to the questionnaires. However, beginning with the September 2018 reference period, the Census Bureau will begin mailing redesigned survey forms. They were previously printed on a single legal page, and will now be in booklet form. Additionally, the contact information will now be requested on the front page of the booklet rather than on the back page, and the numbering scheme will reflect this rearrangement of questions.

II. Method of Collection

An independent systematic sample of construction projects is selected each month according to predetermined sample rates. Once a project is selected, it remains in the sample until completion. The Census Bureau mails preprinted survey forms monthly to respondents to fill in current month data and any revisions to previous months. Respondents have the option to report online or mail the forms back. If respondents do not return the form or respond online, Census interviewers will contact them by phone to schedule a phone interview to collect the data. Interviews are scheduled at the convenience of the respondent. We request that respondents have their information available from an internal database at the time of the interview, which greatly reduces the time they spend on the phone during these interviews. After the preliminary mailing, if a respondent consistently reports electronically, the respondent will begin receiving email notifications and reminders to complete the online survey, and the Census Bureau will cease mailing them paper forms.

III. Data

OMB Control Number: 0607–0153.

Form Number(s): C–700, C–700(R), C–700(SL), C–700(F).

Type of Review: Regular submission.

Affected Public: Individuals, Businesses or Other for Profit, Not-for-Profit Institutions, Small Businesses or Organizations, State and Local Governments and the Federal Government.

Estimated Number of Respondents:

C–700 = 8,500

C–700(R) = 3,900

C–700(SL) = 11,000

C–700(F) = 1,600

Total = 25,000

Estimated Time per Response: 30 min for the first month; and 10 min for the subsequent months. We estimate that, on average, projects remain in sample for 12 months.

Estimated Total Annual Burden Hours: 58,333.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18623 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983, C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on drawn stainless steel sinks from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable August 28, 2018.

FOR FURTHER INFORMATION CONTACT: Joshua Tucker at (202) 482–2044, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In March 2018, Commerce [1] and the ITC instituted [2] five-year (sunset) reviews of the AD and CVD orders on drawn stainless steel sinks from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the AD order on drawn stainless steel sinks from China would likely lead to the continuation or recurrence of dumping,[3] and that revocation of the CVD order would likely lead to the continuation or recurrence of countervailable subsidies.[4] Commerce, therefore, notified the ITC of the magnitude of the margins of dumping and net countervailable subsidy rates likely to prevail were the AD and CVD orders revoked.[5]

On August 20, 2018, the ITC published its determinations, pursuant to sections 751(c) and 752 of the Act, that revocation of the AD and CVD orders on drawn stainless steel sinks from China would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Orders

The merchandise covered by the orders includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.[7] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the orders whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the orders are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius''

[1] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 9279 (March 5, 2018).

[2] *See Drawn Stainless Steel Sinks from China; Institution of Five-Year Reviews,* 83 FR 8887 (March 1, 2018).

[3] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 83 FR 34544 (July 20, 2018) (*Dumping Final*).

[4] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 83 FR 35212 (July 25, 2018).

[5] *Id.* and *Dumping Final.*

[6] *See Drawn Stainless Steel Sinks from China; Determination,* 83 FR 42140 (August 20, 2018).

[7] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

sinks. The products covered by these orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the AD and CVD orders would likely lead to a continuation or a recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD and CVD orders on drawn stainless steel sinks from China. U.S. Customs and Border Protection (CBP) will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These five-year (sunset) reviews and notice are in accordance with sections 751(c) and published pursuant to section 777(i) the Act and 19 CFR 351.218(f)(4).

Dated: August 22, 2018.

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.

[FR Doc. 2018–18612 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–084]

Certain Quartz Surface Products From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

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

DATES: Applicable August 28, 2018.

FOR FURTHER INFORMATION CONTACT: Andrew Medley, Blaine Wiltse, or Whitley Herndon at (202) 482–4987, (202) 482–6345, or (202) 482–6274, respectively; AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2018, the Department of Commerce (Commerce) initiated a less-than-fair value (LTFV) investigation of imports of certain quartz surface products from the People's Republic of China.[1] Currently, the preliminary determination is due no later than September 24, 2018.

Postponement of the Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, and determines that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On July 24, 2018, Cambria Company LLC (the petitioner) submitted a timely request that we postpone the preliminary determination in this LTFV investigation.[2] In its request, the petitioner cited its need to review and identify any deficiencies in the respondents' initial questionnaire responses and Commerce's need to issue and receive supplemental questionnaires prior to the preliminary determination. Thus, in accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 733(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary to no later than 190 days after the date on which this investigation was initiated, *i.e.,* November 13, 2018. Pursuant to section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: August 22, 2018.

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.

[FR Doc. 2018–18613 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–089]

Countervailing Duty Investigation of Steel Racks From the People's Republic of China: Postponement of Preliminary Determination

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

DATES: Applicable August 28, 2018.

FOR FURTHER INFORMATION CONTACT: Eli Lovely at (202) 482–1593 or Robert Galantucci at (202) 482–2923, AD/CVD Operations, Enforcement and

[1] *See Certain Quartz Surface Products from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 22613 (May 16, 2018).

[2] *See* Petitioner's Letter, ''Quartz Surface Products from the People's Republic of China: Request to Extend the Preliminary Determination,'' dated July 24, 2018.

Compliance, Office IV, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2018, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of steel racks from the People's Republic of China.[1] Currently, the preliminary determination is due no later than September 13, 2018.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, and determines that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On August 9, 2018, the petitioner submitted a timely request that Commerce postpone the preliminary determination.[3] The petitioner states that it requests postponement of the preliminary determination because the scope of the investigation does not coincide exactly with any particular HTS category, it has been time-consuming for Commerce to identify the largest producers of subject imports, and, at the time of the petitioner's request, Commerce had not yet been able to designate mandatory respondents.[4] The petitioner states that the postponement would allow sufficient time for Commerce to conduct a full investigation regarding the subsidy benefits received by Chinese producers and exporters of subject racks.

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which the investigation was initiated, *i.e.,* November 19, 2018.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 22, 2018.

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.

[FR Doc. 2018–18611 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Steel Racks from the People's Republic: Initiation of Countervailing Duty Investigation,* 83 FR 33201 (July 17, 2018) (*Initiation Notice*).

[2] The petitioner is the Coalition of Fair Rack Imports and its individual members are Bulldog Rack Company, Hannibal Industries, Inc., Husky Rack and Wire, Ridg-U-Rak, Inc., SpaceRAK, a Division of Heartland Steel Products, Inc., Speedrack Products Group, Ltd., Steel King Industries, Inc., Tri-Boro Shelving & Partition Corp., and UNARCO Material Handling, Inc.

[3] Letter from the petitioner, ''Re: Certain Steel Racks from the People's Republic of China: Request to Postpone Preliminary Determination,'' dated August 9, 2018.

[4] *Id.*

[5] Postponing the preliminary determination to 130 days after initiation would place the deadline on Saturday, November 17, 2018. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Change of Publication Manner for Invention Licenses

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: Currently, the National Institute of Standards and Technology (NIST) publishes notices of prospective exclusive, co-exclusive or partially exclusive domestic or foreign licenses of Government owned inventions in the **Federal Register**. NIST is announcing that it will begin publishing such notices at *FEDBIZOPPS.GOV* (*https://www.fbo.gov/*), providing opportunity for filing written objections within at least a 15-day period.

ADDRESSES: Questions related to this notice may be submitted to NIST, Technology Partnerships Office, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, or emailed to *donald.archer@nist.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Zielinski, NIST Technology Partnerships Office, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899; by email at *paul.zielinski@nist.gov,* or by phone at 301–975–2573.

SUPPLEMENTARY INFORMATION: Pursuant to 37 CFR 404.7(a)(1)(i), an exclusive, co-exclusive or partially exclusive domestic license, and, pursuant to 37 CFR 404.7(b)(1)(i), an exclusive, co-exclusive or partially exclusive foreign license, may be granted on Government owned inventions only if notice of a prospective license has been published in the **Federal Register** or other appropriate manner, providing opportunity for filing written objections within at least a 15-day period.

NIST provides notice that it will publish future notices of prospective exclusive, co-exclusive or partially exclusive domestic or foreign licenses in *FEDBIZOPPS.GOV* (*https://www.fbo.gov/*), providing opportunity for filing written objections within at least a 15-day period.

Authority: 35 U.S.C. 200 *et seq.*

Phillip Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2018–18551 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG205

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Mukilteo Multimodal Project—Season 3

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

ACTION: Notice; issuance of 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 the Washington Department of Transportation (WSDOT) Ferries Division (WSF) to incidentally take, by Level A and B harassment, marine mammals during construction activities associated with the Mukilteo Multimodal Project, Puget Sound, Washington.

DATES: This Authorization is effective from October 1, 2018, through September 30, 2019.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application, IHA, and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/node/23111.* 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).

Summary of Request

On April 7, 2016, WSDOT submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of marine mammals incidental to construction associated with Phase 2 of the Mukilteo Multimodal Project in Mukilteo, Washington, between August 1, 2017, and July 31, 2018. NMFS issued the requested IHA on August 3, 2017, which covered Phase 2 of the project in its entirety; the IHA expired on July 31, 2018 (82 FR 44164; September 21, 2017). On January 9, 2018, we received a request from WSDOT for a subsequent authorization to take marine mammals incidental to the project because all of the Phase 2 work would not be able to be completed under the existing IHA. A final version of the application, which we deemed adequate and complete, was submitted on March 1, 2018.

On June 28, 2018, NMFS published its proposed IHA in the **Federal Register** for public comment (83 FR 30421). NMFS has issued an IHA to WSDOT for the take, by Level A and B harassment, of 12 species of marine mammals incidental to pile driving and removal associated with the Mukilteo Multimodal Project.

Description of the Specified Activity and Anticipated Impacts

WSDOT operates and maintains 19 ferry terminals and one maintenance facility, all of which are located in Puget Sound or the San Juan Islands (Georgia Basin) (Figure 1–1 in WSDOT's application). The Mukilteo Multimodal Project is a multi-year construction project designed to improve the operations and facilities serving the mainland terminus of the Mukilteo-Clinton ferry route in Washington State. The 2017 IHA covered the installation of 661 piles of various sizes over an estimated 175 days of pile driving and removal (Table 1). WSDOT did not complete all the work; therefore the issued IHA covers take incidental to the installation of the remaining piles (Table 1). The 2017 IHA authorized Level A and B harassment of two species of marine mammals and Level B harassment of seven species of marine mammals. NMFS has issued an IHA to harass these same species and an additional three species based on recent marine mammal monitoring near the project area (Table 2).

We refer to the notice of proposed IHA (83 FR 30421, June 28, 2018) and documents related to the previously issued 2017 IHA and discuss any new or changed information here. Previous documents include the **Federal Register** notice of the proposed 2017 IHA (82 FR 29713; May 10, 2017), **Federal Register** notice of issuance of the 2017 IHA (82 FR 44164, September 21, 2017), and all associated references and documents. We also refer the reader to WSDOT's previous and current applications and monitoring reports. All of these documents may be found at *https://www.fisheries.noaa.gov/node/23111.*

Detailed Description of the Action—A detailed description of the vibratory and impact pile driving and removal activities at the Mukilteo Terminal is found in the aforementioned documents. The location, timing, and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those described in the previous notices, except that only a subset of the type and number of piles are to be driven because some of the work was completed under the 2017 IHA. Under the issued IHA (2018–2019), 116 piles would be installed with a vibratory hammer. Of those, sixty-five 24-inch (in) piles would also be proofed with an impact hammer and then removed.

WSDOT anticipates piles equal to or less than 36-in would be installed at a rate of 3 per day for a total of 38 days. Removing the 65 24-in temporary piles may also occur at a rate of 3 pile per day for a total of 22 days. An additional two days is needed to install the 78-in piles and 120-in pile. In total, up to 62 days of pile driving and removal may occur. WSDOT anticipates pile driving and removal could occur over a seven month in-water work window (July 15–February 15).

TABLE 1—DESCRIPTION OF WORK PLANNED, ANALYZED, AND COMPLETED UNDER THE 2017 IHA AND REMAINING WORK PLANNED FOR 2018–2019

Method	Pile size (in)	Season 2 planned (2017 IHA)	Season 2 completed	Season 3 planned (2018 IHA)	Number of days	Comment
Vibratory Driving	12	139	134	0	0	Fewer needed, complete.
	24	69	4	[1] 65	22	Up to 69 temporary.
	24	48	0	26	9	Fewer needed, permanent.
	30	40	25	16	5	Permanent.
	36	6	0	6	2	Permanent.
	78	2	0	2	1	Permanent.
	120	1	0	1	1	Permanent.
	sheet	90	0	0	0	Design change, not needed.
Vibratory Removal	24	69	4	[1] 65	22	Temporary.
	30	9	0	0	0	Delayed.
	sheet	90	0	0	0	Design change, not needed.
Impact Driving	24	69	4	[1] 65	[2] 22	Proofed for load-bearing.
	30	30	25	0	0	Fewer needed, complete.

[1] These 65 piles represent the same 65 temporary 24″ piles driven with a vibratory hammer. The temporary piles would be installed, proofed, and removed.
[2] Impact hammering would be conducted on same day as vibratory pile driving so these are not additional days.

Description of Marine Mammals—A description of the marine mammals in the area of the activities is found in the notice of proposed IHA (83 FR 30421, June 28, 2018). This information remains valid so we do not repeat it here but provide a summary table with marine mammal species and stock details.

TABLE 2—SPECIES AND STOCKS EXPECTED TO OCCUR IN PROJECT AREA

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	20,990 (0.05, 20,125, 2014)	624	132
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	Y	1,918 (0.03, 1,876, 2017)	11.0	9.2
Minke whale *	*Balaenoptera acutorostrata*	California/Oregon/Washington	N	636 (0.72, 369, 2016)	3.5	1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	Y	76 (n/a, 76, 2017) [4]	0	0.14
		West coast transient	N	unk (unk, 243 2013)	2.4	0
Bottlenose dolphin *	*Tursiops truncatus*	California coastal	N	453 (0.06, 346, 2016)	2.7	≥2
Long-beaked common dolphin *.	*Delphinus delphis bairdii*	California	N	101,305 (0.49, 68,432, 2016)	657	35.4
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena*	Washington inland waters	N	11,233 (0.37, 8,308, 2016)	66	7.2
Dall's porpoise	*Phocoenoides dalli*	California/Oregon/Washington	N	25,750 (0.45, 17,954, 2016)	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	N	296,750 (n/a, 153,337, 2014)	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	N	52,139 (n/a, 41,638, 2015)	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Washington northern inland waters.	N	11,036 (0.15, 1999)	1,641	43
Elephant seal	*Mirounga angustirostris*	California breeding	N	179,000 (n/a, 81,368, 2014)	2,882	8.8

[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; Nmin is the minimum estimate of stock abundance.
[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.
[4] SRWK population abundance as of December 31, 2017 according to the Center for Whale Research.

[5] Harbor seal estimate is based on data that are greater than 8 years old, but this is the best available information for use here.
* Indicates species added.

Harassment Zones—The harassment threshold distances and areas provided in the **Federal Register** notice of proposed IHA (83 FR 30421, June 28, 2018) remain unchanged. Please refer to that document documents for details; we provide a summary tables here (Table 3 and 4).

TABLE 3—LEVEL A HARASSMENT DISTANCES CONSIDERING PILE DRIVING DURATION PER 24 HOURS

Method	Pile size	Source level (dB)	Level A (meters)					Level B (m)
			LF [1]	MF [1]	HF [1]	PH [1]	OT [1]	
Vibratory	24	166 rms [2]	30.6	2.7	45.3	18.6	1.3	[6] 8,000
	30	174 rms [3]	104.5	9.3	154.5	63.5	4.5	[6] 8,000
	36	177 rms [3]	165.6	14.7	244.9	100.7	7.1	[7] 8,700
	78	180 rms [4]	200.3	17.8	296.2	121.8	8.5	[8] 20,000
	120	180 rms [4]	126.2	11.2	186.6	76.7	5.4	
Impact	24	178 SEL (single strike)/193 rms [5]	432.1	15.4	514.7	231.2	16.8	1,585

[1] The abbreviatation mean: LF = low frequency cetacean, MF = mid-frequency cetacean, HF = high-frequency cetacean, PH = phocid, OT = otariid.
[2] We assume vibratory removal and vibratory driving the same size pile would result in equal sound levels. Source level for 24″ piles is based on direct measurements during the Manette Bridge project (Loughlin, 2010a).
[3] Source levels for 30-in and 36-in piles is based on direct measurements during the Port Townsend Project (Loughlin, 2010b).
[4] WSDOT does not have noise data for 78 and 120-in piles; therefore, we used data from Caltrans (2015).
[5] Single strike SEL and rms values for impact driving 24-in piles is based on direct measurements during pile driving using a bubble curtain (*i.e.,* source levels are attenuated) at the Coupeville Terminal (WSDOT, 2017).
[6] Measurements during 30″ vibratory pile driving at Mukilteo in 2017 indicate pile driving was not detected at range of 7.9 km (Laughlin, 2017a). This equates to 66 km^2.
[7] At the Coleman Terminal, vibratory installation of two 36″ piles driven simultaneously was not detectable at 8.69 km (5.4 miles) (Laughlin 2017b). This equates to 69 km^2.
[8] The calculated Level B zone using a practical spreading loss model is 100,000 m; however, land is reached at a maximum of 20,000 m (Lowell Point on Camano Island). This equates to 107 km^2.

TABLE 4—CORRESPONDING HARASSMENT THRESHOLD ENSONIFIED AREAS

Method	Pile size	Level A (km^2) [1]			Level B (km^2) [2]
		HF	PH	OT	
Vibratory	24	<0.01	<0.01	<0.01	66
	30	<0.01	<0.01	.....	66
	36	0.06	0.06	.....	69
	78	0.01	0.01	.....	107
	120	0.01	0.01	.....	.....
Impact	24	0.4	0.4	.....	4

[1] Level A harassment areas are provided for species hearing groups for which Level A take is authorized.
[2] Level B harassment areas are germane to all species.

Estimated Take—A description of the methods used to estimate take anticipated to occur from the project is found in the project's aforementioned documents. The methods (*i.e.,* equations) and rational for estimating take in the proposed IHA (83 FR 30421, June 28, 2018) for all species remains unchanged; however, we adjusted the number of days of pile driving factored into the takes estimates in the issued IHA. For harbor porpoise and harbor seals, as described below, we also made additional small adjustments to the final take estimates based on other factors, as recommended in comments made by the Commission (see *Comments and Responses*). Densities presented in the proposed IHA (83 FR 30421, June 28, 2018) remain unchanged (Table 5). For density based estimates, the equation used is *density* × *area ensonified above the threshold* × *number of pile driving days* summed across all piles types. For harbor porpoise, we calculated take using the density identified in Table 5. For 24-in and 30-in piles: 0.75×66 $km^2 \times 58$ days (vibratory installation and removal) equals 2,871 animals. For 36-in piles: 0.75×69 $km^2 \times 2$ days equals 104 animals. For 78-in and 120-in piles: 0.75×107 $km^2 \times 2$ days = 161 animals. In total, we calculated 3,136 harbor porpoise could be taken. However, marine mammal monitoring conducted under the 2017 IHA yielded only 85 harbor porpoise sightings of which 28 were taken by harassment. In the notice of proposed IHA (83 FR 30421, June 28, 2018), we proposed authorizing 10 percent of the calculated take (which incorrectly considered an additional two days of pile driving) as the raw calculated take greatly exceeded expected take based on previous marine mammal monitoring efforts around the terminal (*e.g.,* WSDOT, 2018). However, the Commission was concerned this approach may yield an underestimate of potential take. Therefore, we increased the number of takes to 25 percent of the total calculated take for a total of 784 Level B harassment takes. The Commission was also concerned the calculated number of Level A harassment takes using the full density provided in Smultea *et al.* (2017) (n=7) would also be an underestimate. Based on the Commission's recommendation to assume one group of three harbor porpoise could be within the Level A harassment area on half of the pile driving days where the potential for Level A harassment exists, (13 of the 26 days) we issued 39 Level A harassment takes for harbor porpoise.

We repeated these calculations using the approach above for Dall's porpoise, minke whales, humpback whales, gray whales, and Steller sea lions; however, we are not authorizing Level A harassment take for the latter three species as the potential for Level A harassment of these species is discountable due to high visibility of these species, small Level A harassment zones, and implementation of mitigation measures (*e.g.,* shut downs). We

considered Dall's porpoise to have the same potential to be taken by Level A harassment as harbor porpoise due to similar size and sightibility; therefore, we issued the same amount of Level A take for both species (n=39).

We also used the same method and rational for estimates utilizing direct counts instead of density estimates as in the proposed IHA (83 FR 30421, June 28, 2018), but again, adjusted the number of days considered. Over 51 days of marine mammal monitoring during the 2017/18 Mukilteo project, 1,525 harbor seals were observed or 30 harbor seals per day. Using the equation *# of animals/day * # of days,* we authorized 1860 Level B harassment takes (30 animals/day * 62 days). As described in the notice of proposed IHA (83 FR 30421, June 28, 2018), we consider five percent of that amount could be animals taken by Level A harassment (n=93). Based on previous marine mammal monitoring data (WSDOT, 2018), we estimated 14 California sea lions per day could be taken on the 62 days of pile driving for a total of 868 Level B harassment takes. As described in the notice of proposed IHA (83 FR 30421, June 28, 2018), we did not authorize Level A harassment because the Level A harassment zones are very small based on one to three hours of pile driving and no California sea lions were taken by Level A harassment under the 2017 IHA. The method used to estimate take for transient killer whales also remained unchanged from the proposed IHA (83 FR 30421, June 28, 2018); however, we adjusted the number of days in the equation and authorized 19 takes of transient killer whales (0.3 whales/km^2 $\times$ 62 days). No change was necessary to the methods, rational, and amount of take identified in the proposed IHA (83 FR 30421, June 28, 2018) for humpback whales, gray whales, Northern elephant seals, bottlenose dolphins, and long-beaked common dolphins because number of days was not a component of the take estimation process. See Table 6 for all authorized take numbers, by species, and the respective amount of the population that take represents.

TABLE 6—AUTHORIZED TAKE AMOUNT, PER SPECIES, RELATIVE TO POPULATION SIZE

	Level A	Level B	Total take	% Population
Harbor seal	93	1,860	1953	18
California sea lion	0	868	868	0.3
N. elephant seal	0	7	7	>0.1
Killer whale-transient	0	19	19	8
SSL	0	154	154	0.2
Gray whale	0	2	2	0.02
Humpback whale	0	6	6	0.3
Dall's porpoise	39	163	202	0.8
Harbor porpoise	39	784	823	7.3
Minke whale	0	7	7	1.3
Bottlenose dolphin	0	49	49	10.8
Long-beaked common dolphin	0	49	49	0.04

Description of Mitigation, Monitoring and Reporting Measures—A description of mitigation, monitoring, and reporting measures is found in the previous documents, and we have included additional details based on the Commission's comments (see Comments and Responses section). In summary, mitigation includes use of an unconfined bubble curtain (with operational standards set by the U.S. Fish and Wildlife Service), soft start techniques during impact pile driving in greater than 2 ft of water, a minimum 10 m shut down zone, and species-dependent shut down zones as described in Table 7. Some of these shut down zones fully encompass the Level A harassment zone; however, for species where we propose Level A take, this might not always be the case.

TABLE 7—SHUT-DOWN ZONES

Method	Pile size	Level A (meters)					Level B [1] (m)
		LF	MF	HF	PH	OT	
Vibratory	24	35	10	50	20	10	8,000
	30	105	10	150	60	.....	8,000
	36	170	20	200	.....	.....	8,690
	78	205	.....	.....	.....	.....	20,000
	120	130	.....	.....	.....	.....	.....
Impact	24	435	.....	.....	.....	20	1,585

[1] The Level B harassment shutdown zone applies to only those species for which take is not authorized (*e.g.,* southern resident killer whales) or when take for a given species is exceeded.

Monitoring requirements would be similar to the 2017 IHA requirements (see an updated Marine Mammal Monitoring Plan available at *https://www.fisheries.noaa.gov/node/23111*); however, we have added additional reporting requirements (see Comments and Responses section). The number and location of Protected Species Observers (PSOs) is dependent upon activity and weather conditions and are as follows:

(i) Three land-based PSOs during impact driving of 24-in piles;

(ii) four land-based and one ferry-based PSOs during 24-, 30-, 36-in steel vibratory driving/removal;

(iii) five land-based and one ferry-based PSOs during 78- and 120 in steel vibratory driving/removal; and

(iv) two ferry-based PSOs in addition to land-based PSOs when weather conditions are poor.

In April, 2018, WSDOT submitted a monitoring report for construction that had been completed under the 2017

IHA. WSDOT complied with all mitigation, monitoring, and reporting protocols. Recorded takes were below the number authorized for the corresponding amount of work. The monitoring report can be viewed on NMFS's website at *https://www.fisheries.noaa.gov/node/23111.*

WSDOT will conduct acoustic monitoring during impact pile driving of 24-in piles per the acoustic monitoring plan submitted for the previous IHA. WSDOT will also conduct acoustic monitoring during vibratory driving 78-in and 120-in piles. Both the impact and vibratory acoustic monitoring plans are available at *https://www.fisheries.noaa.gov/node/23111.*

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on June 28, 2018 (83 FR 30421). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter, providing comments as described below.

Comment 1: The Commission recommends that NMFS issue the IHA, subject to inclusion of modified mitigation, monitoring and reporting measures. Specifically, the Commission recommended WSDOT submit more detailed marine mammal monitoring reports that include observer location, the extent of zones for each activity, the distances/bearing from the PSO to the animal and from the animal to the source for each sighting, whether mitigation was implemented. The Commission also suggested the acoustic monitoring report should include both medians and means for peak and root-mean-square sound pressure levels and single-strike and cumulative sound exposure levels.

NMFS Response: NMFS has included the Commission's recommended marine mammal monitoring and acoustic monitoring data in the IHA.

Comment 2: The Commission recommends increasing the amount of take authorized for harbor porpoises to 39 Level A takes and 3,135 Level B takes. The premise for this comment is that the estimated density of harbor porpoise of 0.75 (Smultea *et al.,* 2017) should be used to calculate Level B harassment takes in absence of considering the amount of harbor porpoise takes identified during marine mammal monitoring the previous work year. During informal discussion prior to submitting their letter, the Commission indicated that previous monitoring should not be considered because the Level B harassment area is large and some harbor porpoise could have been missed during monitoring. In contrast, the Commission recommended the estimated harbor porpoise density (Smultea *et al.,* 2017) not be used to estimate Level A harassment take but should be increased to consider a group of three harbor porpoise entering the Level A harassment zone on half of the days pile driving would occur (*i.e.,* 31 out of 62 days).

NMFS Response: As described in the notice of proposed IHA (83 FR 30421, June 28, 2018), marine mammal monitoring conducted under the 2017 IHA yielded 85 harbor porpoise sightings of which 28 were taken by harassment (*i.e.,* observed within the harassment zones during pile work). Further, during informal correspondence with the Commission on this matter, NMFS indicated WSDOT employed no fewer than five PSOs during pile driving with additional PSOs placed on vessels under various circumstances (*e.g.,* inclement weather, impact pile driving). The PSOs were stationed, per the IHA, in various locations at and around the harassment zones. Therefore, there was good observer coverage of the harassment area and the likelihood of harbor porpoise being undetected was low. Considering the number of piles driven under this IHA is less than last year's IHA, to use the density of harbor porpoise reported in Smultea *et al.* (2017) without consideration of these monitoring data would be a gross overestimate of take.

In the proposed IHA (83 FR 30421, June 28, 2018), NMFS calculated the number of harbor porpoise potentially taken by Level B harassment using the Smultea *et al.* (2017) density (*i.e.,* 0.75 harbor porpoise) but then reduced the resulting take to 10 percent of that number in consideration of the previous marine mammal monitoring results. While NMFS continues to believe a reduction factor is appropriate, we have modified it to 25 percent of the original calculation given the concerns of the Commission. As a result, and in consideration of the corrected number of pile driving days (reduced from 65 days to 62 days for Level B harassment), NMFS has issued 784 Level B harassment takes (see *Estimated Take* section for more details on these calculations). In the proposed IHA (83 FR 30421, June 28, 2018), we also used density to estimate the number of harbor porpoise potentially taken by Level A harassment but did not apply a correction factor due to the low results (n=7). Although the potential for Level A harassment of harbor porpoise is low, we accepted the Commission's recommendation and adjusted take numbers to reflect group size in lieu of using density, authorizing 39 Level A harassment takes (see *Estimated Take* section).

Comment 3: The Commission recommended NMFS modify the number of takes of marine mammals based on agreements made during informal correspondence. Specially, the Commission reiterated NMFS commitment to not use a reduction factor for harbor seals and correct the number of pile driving days used in the take estimates.

NMFS Response: As indicated during informal correspondence with the Commission, NMFS has revised the number of takes in a manner consistent with the methods identified in the Commission's letter.

Comment 4: The Commission requested clarification regarding certain issues associated with NMFS' notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA. The Commission also noted that NMFS had recently begun utilizing abbreviated notices, referencing relevant documents, to solicit public input and suggested that NMFS use these notices and solicit review in lieu of the renewal process.

NMFS Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA (83 FR 30421, June 28, 2018) expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Additional reference to this solicitation of public comment has recently been added at the beginning of the FR notices that consider renewals, requesting input specifically on the possible renewal itself. NMFS appreciates the streamlining achieved by the use of abbreviated FR notices and intends to

continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. However, we believe our method for issuing renewals meets statutory requirements and maximizes efficiency.

Importantly, such renewals would be limited to circumstances where: The activities are identical or nearly identical to those analyzed in the proposed IHA; monitoring does not indicate impacts that were not previously analyzed and authorized; and, the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as they are for all IHAs. The option for issuing renewal IHAs has been in NMFS's incidental take regulations since 1996. We will provide any additional information to the Commission and consider posting a description of the renewal process on our website before any renewal is issued utilizing this process.

Negligible Impact Analysis and Determination

WSDOT proposes to conduct a subset of activities identical to those covered in the previous 2017 IHA. We have included take for three new species noting these are precautionary as these species are not common in the action area and these species were not observed during previous construction. We also believe the potential behavioral reactions and effects on the cetacean species previously analyzed is applicable to these species, if not to some lesser extent due to lower probability of occurrence.

When issuing the 2017 IHA, NMFS found Phase 2 of the Mukilteo Multimodal Project, in its entirety, would have a negligible impact to species or stocks' rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stock (less than 15 percent). As described above, the number of estimated takes of the same stocks are less than takes authorized in the 2017 IHA and the anticipated impacts from the project are similar to those previously analyzed. The amount of take for the additional three species is also small (less than 11 percent of each stock). In conclusion, there is no new information suggesting that our analysis or findings should change.

In this year's IHA, we have also included more mitigation with respect to operating the bubble curtains (to ensure effectiveness; thereby, potentially reducing impact pile driving received levels), and required WSDOT to report more details pertaining to monitoring (*see Mitigation, Monitoring, and Reporting section*). WSDOT will also conduct vibratory pile driving acoustic monitoring which will allow for verification of estimated source levels.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) WSDOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act

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. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

The only species listed under the ESA with the potential to be present in the action area is the Mexico Distinct Population Segment (DPS) of humpback whales. The effects of this proposed Federal action were adequately analyzed in NMFS' Biological Opinion for the Mukilteo Multimodal Project, Snohomish, Washington, dated August 1, 2017, which concluded that issuance of an IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. NMFS West Coast Region has confirmed the Incidental Take Statement (ITS) issued in 2017 is applicable for the IHA. That ITS authorizes the take of six humpback whales from the Mexico DPS.

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 must review 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 Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) 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 issuance of the IHA qualifies to be categorically excluded from further NEPA review. We have reviewed all comments submitted in response to the proposed IHA **Federal Register** notice (83 FR 30421, June 28, 2018) prior to concluding our NEPA process and making a final decision on the IHA request.

Authorization

As a result of these determinations, NMFS has issued an IHA to WSDOT for the harassment of small numbers of marine mammals incidental to construction activities related to the Mukilteo Multimodal Project, Puget Sound, Washington, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 23, 2018.

Cathryn E. Tortorici,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–18609 Filed 8–27–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before September 27, 2018.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the notice's publication by either of the following methods. Please identify the comments by ''OMB Control No. 3038–0093.''

- *By email addressed to: OIRAsubmissions@omb.eop.gov* or
- *By mail addressed to:* The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (the ''Commission'') by any of the following methods. The copies should refer to ''OMB Control No. 3038–0093.''

- *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission's website at *http://comments.cftc.gov.* Please follow the instructions for submitting comments through the website.

A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

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.

FOR FURTHER INFORMATION CONTACT: Lois Gregory, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5569, email: *lgregory@cftc.gov,* and refer to OMB Control No. 3038–0093.

SUPPLEMENTARY INFORMATION:

Title: Part 40—Provisions Common to Registered Entities (OMB Control No. 3038–0093). This is a request for extension of a currently approved information collection.

Abstract: This collection of information involves the collection and submission to the Commission of information from registered entities concerning new products, rules, and rule amendments pursuant to the procedures outlined in §§ 40.2, 40.3, 40.5, 40.6, and 40.10 found in 17 CFR part 40.

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. On June 7, 2018, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 83 FR 26436 (''60-Day Notice''). The Commission received public comments regarding its burden estimates on the 60-Day Notice, and accordingly, has adjusted the burden.

Burden Statement: Registered entities must comply with certification and approval requirements which include an explanation and analysis when seeking to implement new products, rules, and rule amendments, including changes to product terms and conditions. The Commission's regulations §§ 40.2, 40.3, 40.5, 40.6 and 40.10 provide procedures for the submission of rules and rule amendments by designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. They establish the procedures for submitting the ''written certification'' required by Section 5c of the Act. In connection with a product or rule certification, the registered entity must provide a concise explanation and analysis of the submission and its compliance with statutory provisions of the Act. Accordingly, new rules or rule amendments must be accompanied by concise explanations and analyses of the purposes, operations, and effects of the submissions. This information may be submitted as part of the same submission containing the required ''written certification.''

Respondents/Affected Entities: Designated Contract Markets, Swap Execution Facilities, Derivatives Clearing Organizations, and Swap Data Repositories.

- Rules 40.2 and 40.3

Estimated Number of Respondents: 70.

Annual Responses by each Respondent: 50.

Estimated Hours per Response: 21.

Estimated Total Hours per Year: 73,500.

- Rules 40.5 and 40.6

Estimated Number of Respondents: 70.

Annual Responses by each Respondent: 50.

Estimated Hours per Response: 2.

Estimated Total Hours per Year: 7,000.

- Rule 40.10

Estimated Number of Respondents: 2.

Annual Responses by each Respondent: 2.

Estimated Hours per Response: 50.

Estimated Total Hours per Year: 200.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 22, 2018.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2018–18533 Filed 8–27–18; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Fiscal Year (FY) 2019 Continued Health Care Benefit Program (CHCBP) Quarterly Premium Update

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of CHCBP Quarterly Premiums for FY19.

SUMMARY: This notice provides the CHCBP quarterly premiums for FY19.

DATES: The FY19 rates contained in this notice are effective for services on or after October 1, 2018.

ADDRESSES: Defense Health Agency (DHA), TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Mark A. Ellis, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 30, 1994 (59 FR 49818) sets forth rules to implement the CHCBP required by Title 10, United States Code, Section 1078a. Included in this final rule were provisions for updating the CHCBP premiums for each Federal FY. As stated in the final rule, the premiums are based on Federal Employee Health Benefit Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. Premiums may be revised annually and shall be published when the premium amount is changed.

The DHA has updated the quarterly premiums for FY19 as shown below:

Quarterly CHCBP Premiums for FY19

Individual $1,453.00
Family $3,273.00

The above premiums are effective for services rendered on or after October 1, 2018.

Dated: August 22, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–18531 Filed 8–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0061]

Proposed Collection; Comment Request

AGENCY: National Guard Bureau (NGB), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the National Guard Bureau (NGB) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 29, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Guard, Manpower and Personnel Division (NG–J1), ATTN: LTC Tasleen Panton, 111 S George Mason Drive, Arlington, VA 22204, or call (703) 663–0193.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Services Support (JSS) System; OMB Control Number 0704–0537.

Needs and Uses: The information collection requirement is necessary for the agency, its programs, and stakeholders, to ensure key activities may be associated with system-registrants for program management, accountability, reporting, and support purposes. Examples of use of such information include: Validating program-specific and congressionally-mandated event registration and attendance; enabling users to login to system to facilitate outreach and communication activities; supporting Civilian Employer Information (CEI) collection; and enabling leadership across the participating programs with oversight and reporting.

Affected Public: Individuals or households.

Annual Burden Hours: 4,690.

Number of Respondents: 281,400.

Responses per Respondent: 1.

Annual Responses: 281,400.

Average Burden per Response: 1 minute.

Frequency: On occasion.

Dated: August 23, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–18584 Filed 8–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2018–OS–0013]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice of a modified system of records.

SUMMARY: The Department of the Navy proposes to modify a system of records notice: Data Warehouse Business Intelligence System (DWBIS), N05220–1, to be compliant with the OMB Circular A–108; by updating contact information for the system manager; by expanding the categories of individuals covered by the system to include the Space and Naval Warfare Systems Command (SPAWAR) and its two systems centers; by updating the categories of records for these individuals, and by providing routine uses that are consistent within the Federal Government. This is necessary to allow a single system to be used for all of SPAWAR to manage workforce education, training, skills, and experience required for the development of its Acquisition Workforce, Cyber Security, and Information Warfare workforce.

DATES: Comments will be accepted on or before September 27, 2018. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Head, PA/FOIA Office (DNS–36), Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: In addition to the formatting changes required by OMB Circular A–108, this modification updates contact information for the system manager; expands the categories of individuals covered by the system to include the Space and Naval Warfare Systems Command (SPAWAR) and its two systems centers; updates the categories of records for these individuals, and provides routine uses that are consistent within the Federal Government. This is necessary to allow a single system to be used for all of SPAWAR under the same authorities used previously to manage workforce education, training, skills, and experience required for the development of its Acquisition Workforce, Cyber Security, and Information Warfare workforce.

The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *http://dpcld.defense.gov/privacy*.

The proposed systems reports, as required by the Privacy Act, as amended, were submitted on June 28, 2018, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: August 23, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Data Warehouse Business Intelligence System (DWBIS), N05220–1.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

SPAWAR Systems Center Atlantic, Building 3148, 1 Innovation Drive, Hanahan, SC 29410–4200.

SYSTEM MANAGER(S):

Commanding Officer, ATTN: Code 80E, SPAWARSYSCEN Atlantic, 1837 Morris Street, Suite 3109B, Norfolk, VA 23511–3498, *Spawar_info@navy.mil*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. Chapter 87, Defense Acquisition Workforce; DoD Instruction 5000.66, Defense Acquisition Workforce Education, Training, Experience, and Career Development Program; DoD Manual (DoDM) 5200.02, Procedures for the DoD Personnel Security Program (PSP); DoDM 8570.1, Information Assurance Workforce Improvement Program; SECNAV Manual (SECNAV M) 5239.2, DoN Cyberspace Information Technology and Cybersecurity Workforce Management and Qualification Manual; and SECNAV M–5510.30, Department of Navy Personnel Security Program.

PURPOSE(S) OF THE SYSTEM:

This system is used to help SPAWAR manage its workforce education, training, and career development programs needed to support the design, development and deployment of key information warfare, business information technology and space systems for Naval and DoD programs as assigned to this system command. The system will also help SPAWAR document and manage the skills and experience necessary in its Acquisition, Cyber Security, and Information Warfare workforce to staff current and future programs and projects in its primary roles as a technical authority and an acquisition command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and Reserve Naval personnel, DoN Civilians, and contractors currently employed by SPAWAR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, work and alternate work address(es), DoD ID Number, billet number, ID number from the source system, Navy Enterprise Resource Planning (ERP) employee ID number, military rank or government series and grade, military occupation specialty (MOS) employee series and grade, date reported to command, duty station, work location, organizational code, organizational group, supervisor and their contact numbers, position title and pay plan, scheduling (hours per project), defense acquisition workforce coursework planned or completed, position level and continuous learning points required, Cyber Security Workforce membership including credentials, certifications held, and expiration date; contracting officer's representative status, certifications achieved, demonstrated proficiency levels earned under internal competency development model, projects or portfolio work assigned, credentials held on entry to the mid-career leadership program, security clearance held, award(s); education information including college courses applied for, college degrees held and institutions attended, professional certifications held; employee promotion(s), overseas tour begin and end date, number of years at current position or current tour end.

Contractor's information, including user account information in Navy ERP by name and unique ID, government sponsor, and whether they are a current member of the command's Cyber Security Workforce for reporting purposes.

RECORD SOURCE CATEGORIES:

SPAWAR Personnel Officers and Administrators, Navy Enterprise Resource Planning (Navy ERP), SPAWAR Directory Services (LDAP), Total Workforce Management Services (TWMS), Total Force Manpower Management System (TFMMS), DoN Director, Acquisition Career Management (eDACM), DoD Defense Civilian Personnel Data System (DCPDS)/Human Resources Link (HRLink), the Navy Enlisted System (NES), Officer Personnel Information System (OPINS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others

performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

b. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

c. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms there is a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic storage media, in accordance with the safeguards mentioned below.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved primarily by name, work and/or (for former employees and contractors) home address, DoD ID Number, employee ID number, and/or unique ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained for 1 year after termination of employment or duty station, or when abstracted, or consolidated, whichever is earlier. Per guidance from the Secretary of the Navy M–5210.1 DON Records Management Manual, DoD ID will be retained for the purpose of trend analysis and will be destroyed when no longer needed for reference.

ADMINISTRATIVE, PHYSICAL, AND TECHNICAL SAFEGUARDS:

Administrative safeguards: All persons who apply to access to this system are required to have completed annual cybersecurity training and hold an unexpired DoD Common Access Card (CAC) issued by the command. All users must provide a digitally signed OPNAV 5239/14 System Authorization Access Request Navy (SAAR–N) form digitally countersigned by the user's Supervisor or the assigned Contracting Officer's Representative (COR), stating the duty-related justification for access. Users requiring privileged access to maintain the system must complete Command Privacy Act Training and provide a SECNAV 5239/1—Information System Privileged Access Agreement and Acknowledgement (PAA) of Responsibilities form which identifies their credentials and training certifications as a member of the Cyber Security Workforce. All requests for access are independently reviewed by the Command Security Manager; persons requesting non-privileged access must complete a favorably adjudicated Tier 1 (T1) investigation National Agency Check with Written Inquiries (formerly NACI). Privileged access users must complete a favorably adjudicated Tier 3 (T3) investigation (formerly National Agency Check with Law and Credit (formerly ANACI/NACLC)) and be U.S. citizens. Technical safeguards employed for electronic records have data at rest encryption and access is restricted to authorized users holding specific electronic credentials and having a need to know. Physical access to terminals, terminal rooms, buildings, and surroundings are controlled by locked terminals and rooms, guards, personnel screening, and visitor registers.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written and signed inquiries to Commanding Officer, ATTN: Code 80E, SPAWARSYSCEN Atlantic, 1837 Morris Street, Suite 3109B, Norfolk, VA 23511–3498.

The requester must provide their full name, mailing/home address, DoD ID Number, and/or employee ID number.

The system manager may require a DoD Public Key Infrastructure (PKI) signed email as a means of proving the identity of the individual requesting access to the records.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The Navy's rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written and signed inquiries to Commanding Officer, ATTN: Code 80E, SPAWARSYSCEN Atlantic, 1837 Morris Street Suite 3109B, Norfolk, VA 23511–3498.

The requester must provide their full name, mailing/home address, DoD ID Number, and/or employee ID number.

The system manager may require a DoD Public Key Infrastructure (PKI) signed email as a means of proving the identity of the individual requesting access to the records.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

December 23, 2015, 80 FR 79869

[FR Doc. 2018–18587 Filed 8–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0090]

Agency Information Collection Activities; Comment Request; Income Based Repayment Notifications

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 29, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0090. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9088, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Income Based Repayment Notifications.

OMB Control Number: 1845–0114.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 958,240.

Total Estimated Number of Annual Burden Hours: 76,665.

Abstract: The Higher Education Act of 1965, as amended (HEA), established the Federal Family Education Loan (FFEL) Program under Title IV, Part B. Section 493C [20 U.S.C. 1098e] of the HEA authorizes income based repayment for Part B borrowers who have a partial financial hardship. The regulations in 34 CFR 682.215(e)(2) require notifications to borrowers from the loan holders once a borrower establishes a partial financial hardship and is placed in an income based repayment (IBR) plan by the loan holder. The regulations identify information the loan holder must provide to the borrower to continue to participate in an IBR plan. This is a request for extension of the current information collection 1845–0114.

Dated: August 23, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–18590 Filed 8–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0089

Agency Information Collection Activities; Comment Request; Health Education Assistance Loan (HEAL) Program: Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 29, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0089. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9088, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department

assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Health Education Assistance Loan (HEAL) Program: Forms.

OMB Control Number: 1845–0128.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 69.

Total Estimated Number of Annual Burden Hours: 11.

Abstract: The HEAL forms are required for lenders to apply to the HEAL insurance program, to report accurately and timely on loan actions, including transfer of loans to a secondary agent, and to establish the repayment status of borrowers who qualify for deferment of payments using form 508. The reports assist in the diligent administration of the HEAL program, protecting the financial interest of the federal government.

Dated: August 23, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–18591 Filed 8–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 12, 2018, 6:00 p.m.

ADDRESSES: Kume Japanese Restaurant Meeting Room, 100 Wilson Street, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone: (865) 241–3315; Fax: (865) 241–6932; Email: *Melyssa.Noe@orem.doe.gov*. Or visit the website at *https://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board*.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer (DDFO)
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation: Overview of Vision 2020—Planning for the Future of the East Tennessee Technology Park, including Reuse, Historic Preservation and Stewardship
- Motions/Approval of August 25, 2018 Meeting Minutes
- Status of Outstanding Recommendations
- Alternate DDFO Report
- Committee Reports
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings*.

Signed in Washington, DC, on August 23, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–18607 Filed 8–27–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–194–000]

Nebraska Public Power District v. Tri-State Generation Transmission Association, Inc. Southwest Power Pool, Inc.; Notice of Complaint

Take notice that on August 21, 2018, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Nebraska Public Power District (Complainant) filed a formal complaint against Tri-State Generation Transmission Association, Inc. (Tri-State) and Southwest Power Pool, Inc. (SPP) (collectively, Respondents) alleging that the inclusion of certain cost in Tri-State's annual Transmission Revenue Requirement cause rates for transmission service under SPP's, Inc. Open Access Transmission Tariff to be unjust and unreasonable, as more fully explained in the complaint.

Complainant certifies that copies of the complaint were served on the contacts for Respondents on the Commission's list of Corporate Officials.

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 and 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

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 website 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.

Comment Date: 5:00 p.m. Eastern Time on September 10, 2018.

Dated: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18597 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14885–000]

Midwest Energy Recycling, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 17, 2018, Midwest Energy Recycling, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Chippewa County Pumped Storage Project to be located near the Minnesota River and the city of Granite Falls, in Chippewa County, Minnesota. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new circular 100-acre rockfill embankment (upper reservoir) having a total storage capacity of 3,000 acre-feet with a maximum pond elevation level of 1080 feet mean sea level; (2) a new 2,400-foot by 1,425-foot rectangular lower reservoir with a total storage capacity of 3,300 acre-feet; (3) a new 100-foot-diameter, reinforced concrete (morning glory type) intake connected to a vertical 2,500-foot-long by 18-foot-diameter steel penstock; (4) a new 200-foot-long by 70-foot-wide by 40-foot-high reinforced concrete powerhouse containing two new 333-megawatt (MW) reversible pump turbine units with a total plant rating of 666 MW; (5) a new 50-foot-wide, 240-foot-long, 40-foot-high transformer gallery; (6); a new 200 to 1,000-foot-long, 230-kilovolt transmission line extending from the transformer gallery to an existing substation (the point of interconnection); and (7) appurtenant facilities. The estimated annual generation of the Chippewa County Pumped Storage Project would be 1,450 gigawatt-hours.

Applicant Contact: Mr. Douglas A. Spaulding, Nelson Energy, LLC, 8441 Wayzata Boulevard, Suite 101 Golden Valley, MN 55426; phone: (952) 544–8133.

FERC Contact: Tyrone Williams; phone: (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14885–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14885) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18605 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–1066–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: TCO MXP August Agreement Filing to be effective 9/18/2018.

Filed Date: 8/20/18.

Accession Number: 20180820–5000.

Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: RP18–1067–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) Rate Filing: 2018 Negotiated Rate Filing SA IT–836 to be effective 9/1/2018.

Filed Date: 8/21/18.

Accession Number: 20180821–5030.

Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: RP18–1068–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: 2018 Penalties Assessed Compliance Filing.

Filed Date: 8/20/18.

Accession Number: 20180820–5186.

Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: RP18–1069–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—PAL Agreements to be effective 8/1/2018.

Filed Date: 8/21/18.

Accession Number: 20180821–5089.

Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: RP18–1070–000.

Applicants: ANR Pipeline Company.

Description: Compliance filing Request for Waiver Grand Chenier.

Filed Date: 8/21/18.

Accession Number: 20180821–5111.

Comments Due: 5 p.m. ET 8/28/18.

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: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18603 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–140–000.

Applicants: Pine River Wind Energy LLC, DTE Electric Company.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Pine River Wind Energy LLC, et al.

Filed Date: 8/22/18.

Accession Number: 20180822–5076.

Comments Due: 5 p.m. ET 9/12/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2137–021; ER10–2124–019; ER10–2125–020; ER10–2127–018; ER10–2128–019; ER10–2130–020; ER10–2131–021; ER10–2132–019; ER10–2133–020; ER10–2138–021; ER10–2139–021; ER10–2140–021; ER10–2141–021; ER10–2764–019; ER11–3872–021; ER11–4044–021; ER11–4046–020; ER12–164–020; ER14–2187–015; ER14–2798–013; ER14–2799–013; ER15–1041–009; ER15–1873–009; ER15–2205–009; ER18–1197–002; ER18–1470–002; ER18–471–003; ER18–472–003; ER18–491–002; ER18–492–002; ER18–494–002; ER18–784–003.

Applicants: Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy II Holdings LLC, Beech Ridge Energy Storage LLC, Bishop Hill Energy III LLC, Buckeye Wind Energy LLC, Camilla Solar Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Hardin Wind Energy, LLC, Hardin Wind Energy Holdings LLC, Invenergy TN LLC, Judith Gap Energy LLC, Pine River Wind Energy LLC, Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC, Sheldon Energy LLC, Spring Canyon Energy LLC, States Edge Wind I LLC, States Edge Wind I Holdings LLC, Stony Creek Energy LLC, Upstream Wind Energy LLC, Vantage Wind Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC.

Description: Notice of Change in Facts Under Market-Based Rate Authority of Beech Ridge Energy LLC, et al.

Filed Date: 8/22/18.

Accession Number: 20180822–5089.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2273–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Request for Waiver of Midcontinent Independent System Operator, Inc.

Filed Date: 8/21/18.

Accession Number: 20180821–5115.

Comments Due: 5 p.m. ET 9/11/18.

Docket Numbers: ER18–2274–000.

Applicants: Public Service Company of New Mexico.

Description: Notice of cancellation of Interconnection Service Agreement No. 208 of Public Service Company of New Mexico.

Filed Date: 8/22/18.

Accession Number: 20180822–5048.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2275–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–22_SA 3159 ATC–WEPCo Project Commitment Agreement (Berryville) to be effective 10/22/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5052.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2276–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–22_SA 3160 ATC–WEPCo Project Commitment Agreement (Somers) to be effective 10/22/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5065.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2277–000.

Applicants: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., AEP West Virginia Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP et al submits revisions to OATT, Att. H–14B and H–20B re Depreciation Rate to be effective 10/22/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5079.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2278–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: Joint Rate Sched FERC No. 509 IMEA Meter Installation Agmt to be effective 8/23/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5083.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2279–000.

Applicants: Kentucky Utilities Company.

Description: § 205(d) Rate Filing: LGE and KU Joint Rate Schedule FERC No. 509 IMEA Meter Install Agmt to be effective 8/23/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5088.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2280–000.

Applicants: Alliant Energy Corporate Services, Inc.

Description: § 205(d) Rate Filing: AECS Updated Rate Schedule 2 to be effective 10/22/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5101.

Comments Due: 5 p.m. ET 9/12/18.

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: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18599 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13318–003]

Swan Lake North Hydro LLC; Notice of Availability of the Draft Environmental Impact Statement for the Swan Lake North Pumped Storage Project and Intention To Hold Public Meeting

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Swan Lake North Pumped Storage Hydroelectric Project, located about 11 miles northeast of Klamath Falls in Klamath County, Oregon, and has prepared a draft Environmental Impact Statement (EIS) for the project. The project would occupy 730 acres of federal lands administered by the U.S. Bureau of Land Management and the U.S. Bureau of Reclamation, state lands, and private lands.

The draft EIS contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EIS is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

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.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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–13318–003.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1]

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the draft EIS. The time and location of the meeting is as follows:

Date: September 26, 2018.

Time: 7:00–9:00 p.m.

Place: Mt. Mazama Room, College Union, Oregon Institute of Technology.

Address: 3201 Campus Drive, Klamath Falls, OR 97601.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, contact Dianne Rodman at (202) 502–6077 or *dianne.rodman@ferc.gov.*

[1] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

Dated: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18598 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2212–051]

Domtar Paper Company, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission (Commission) and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and water.

b. *Project No:* 2212–051.

c. *Date Filed:* July 20, 2018 and supplemented August 16, 2018.

d. *Applicant:* Domtar Paper Company, LLC (licensee).

e. *Name of Project:* Rothschild Hydroelectric Project.

f. *Location:* Wisconsin River and Big Rib River, Marathon County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Steve Lewens, Environmental Health & Safety Manager, Domtar Paper Company, 200 North Grand Ave., Rothschild, WI 54474; phone (715) 359–3101.

i. *FERC Contact:* Ms. Andrea Claros at 202–502–8171, or *andrea.claros@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2212–051.

k. *Description of Request:* The licensee requests Commission approval to grant Granite Peak Corporation permission to install and operate a water withdraw intake on the Big Rib River for snow-making purposes. The intake is designed to withdraw up to 17.2 million gallons per day, within the project boundary, however Granite Peak estimates withdrawing a daily maximum of 12 million gallons per day during the winter months, typically in November and December. Construction activities within the project boundary would include installation of a coffer dam, and installation of an intake pipe no further than five-feet from the river bank.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the non-project use application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18601 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2337–077]

PacifiCorp; Notice of Teleconference

a. *Project Name and Number:* Prospect No. 3 Hydroelectric Project No. 2337.

b. *Applicant:* PacifiCorp.

c. *Date and Time of Teleconference:* September 5, 2018 at 11:00 EDT.

d. *FERC Contact:* Dianne Rodman, (202) 502–6077, *dianne.rodman@ferc.gov*.

e. *Purpose of Meeting:* Commission staff will hold a teleconference with Oregon State Historic Preservation Office (SHPO) staff and PacifiCorp to discuss the Programmatic Agreement and Historic Properties Management Plan for the relicense of the Prospect No. 3 Project.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend by phone; however, participation will be limited to representation of the Oregon SHPO, PacifiCorp, and the Commission's representatives. Please call or email Dianne Rodman at (202) 502–6077 or *dianne.rodman@ferc.gov* by September 3, 2018 at 4:30 EDT, to RSVP and to receive specific instructions on how to participate.

Dated: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18602 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–538–000]

Sendero Carlsbad Gateway, LLC; Notice of Application

On August 9, 2018, Sendero Carlsbad Gateway, LLC (Sendero), 1000 Louisiana Street, Suite 6900, Houston, Texas 77002, filed an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations requesting authorization to construct, install, own, operate and maintain a new 23.28 mile, 24-inch-diameter, interstate natural gas pipeline and appurtenant facilities to be located in Eddy County, New Mexico and Culberson County, Texas, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding Sendero's application should be directed to Brad Boister, Chief Commercial Officer, Sendero Carlsbad Gateway, LLC, 1000 Louisiana Street, Suite 6900, Houston, Texas 77002, or phone (832) 917–6952, or by email *bboister@senderomidstream.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is

issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on September 12, 2018.

Dated: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18604 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14880–001]

ECOsponsible, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 15, 2018, ECOsponsible, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the Mount Morris Power Dam located on the Genesee River, near the town of Leicester, Livingston County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 30-foot-high, 334-foot-long concrete gravity dam; (2) an existing reservoir with a storage capacity of 250 acre-feet at a normal maximum surface elevation of 579.1 feet mean sea level; (3) an existing 16-foot-wide by 30-foot-long concrete masonry powerhouse containing two new submersible turbines each with a rated capacity of 394 kilowatts (kW) (4) a new Hydrodynamic Screw turbine with a rated capacity of 62 kW to be located on the 18-foot-long concrete spillway next to the powerhouse; (5) a new 75-foot-long transmission line connecting the powerhouse to a nearby 15-kilovolt grid interconnection point; and (6) appurtenant facilities. The proposed project would have an average annual generation of 5,700 megawatt-hours.

Applicant Contact: Mr. Dennis Ryan, Manager, ECOsponsible, LLC, P.O. Box 114, West Falls, NY 14170; phone: (716) 222–2188.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14880–001.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14880) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18600 Filed 8–27–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0408; FRL–9982–91—OW]

Proposed Information Collection Request; Comment Request; EPA's WaterSense Program (Renewal); EPA ICR No. 2233.06, OMB Control No. 2040–0272

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''EPA's WaterSense Program (Renewal)'' (EPA ICR No. 2233.06, OMB Control No. 2040–0272) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. 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.

DATES: Comments must be submitted on or before October 29, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2006–0408 online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Tara O'Hare, WaterSense Branch, Water Infrastructure Division, Office of Wastewater Management, Office of Water (Mail Code 4204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8836; email address: *ohare.tara@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: WaterSense is a voluntary program designed to create self-sustaining markets for water-efficient products and services via a common label. The program provides incentives for manufacturers and builders to design, produce, and market water-efficient products and homes. The program also encourages consumers and commercial and institutional purchasers of water-using products and systems to choose water-efficient products and use water-efficient practices.

As part of strategic planning efforts, EPA encourages programs to develop meaningful performance measures, set ambitious targets, and link budget expenditures to results. Data collected under this ICR will assist WaterSense in demonstrating results and carrying out evaluation efforts to ensure continual program improvement. In addition, the data will help EPA estimate water and energy savings and inform future product categories and specifications. All shipment and sales data submitted by WaterSense manufacturer and retailer/distributor partners are collected as confidential business information (CBI) using the procedures outlined in the WaterSense CBI security plan under the Clean Water Act.

Form Numbers: * Forms not yet finalized in *italics.*

Partnership Agreement

- Builders—6100–19
- Licensed Certification Providers—6100–20
- Manufacturers—6100–13
- Professional Certifying Organizations—6100–07
- Promotional partners—6100–06
- Retailers/distributors—6100–12

Application for Professional Certifying Organization Approval

- *Professional Certifying Organizations—6100–X3*

Annual Reporting Form

- Builders—6100–09
- Professional Certifying Organizations—6100–09
- Promotional partners—6100–09

Annual Reporting Form—Online and Hard-Copy Confidential Business Information (CBI) Forms

- Plumbing Manufacturers—6100–09
- Non-plumbing Manufacturers—6100–09
- Retailers/Distributors—6100–09

Provider Quarterly Reporting Form

- Licensed Certification Providers—6100–09

Award Application Form

- Builders—6100–17
- Licensed Certification Providers—6100–17
- Manufacturers—6100–17
- Professional Certifying Organizations—6100–17
- Promotional Partners—6100–17
- Retailers/Distributors—6100–17

Consumer Awareness Survey

- *Survey form—6100–X2*

Respondents/affected entities: Respondents will consist of WaterSense partners and participants in the consumer survey. WaterSense partners include product manufacturers; professional certifying organizations; retailers; distributors; utilities; federal, state, and local governments; home builders; licensed certification providers; and non-governmental organizations (NGOs).

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: EPA estimates the total number of respondents (over 3 years) to be 2,561.

Frequency of response: Once a prospective partner organization reviews WaterSense materials and decides to join the program, it will submit the appropriate Partnership Agreement for its partnership category (this form is only submitted once). Professional Certifying Organizations must include additional documentation to begin their partnership by completing an Application for Professional Certifying Organization Approval (this form is only submitted once). Each year, EPA also asks partners to submit an Annual Reporting Form and Awards Application (voluntarily at the partner's discretion). Licensed certification providers for WaterSense-labeled new homes are asked to submit a Provider Quarterly Reporting Form four times each year. EPA also may conduct two Consumer Awareness Surveys over the three-year period of the ICR.

Total estimated burden: 6,830 hours (per year for both respondents and EPA). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $598,527 (per year for both respondents and EPA), includes $1,578 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 2,096 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to changes in program requirements including using online forms for all non-CBI related data, discontinuing the individual irrigation partner category, and simplifying the quarterly provider reporting requirements, which have reduced operation & maintenance costs and lowered the estimated burden. EPA also better understands how long it takes partners to complete program forms and has better historical data to project new partners/forms over the next three years.

Dated: August 17, 2018.

Andrew D. Sawyers,

Director, Office of Wastewater Management.

[FR Doc. 2018–18641 Filed 8–27–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft of a Proposed Federal Financial Accounting Technical Release (TR), Rescission of Technical Release 8

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released an exposure draft of a proposed Federal Financial Accounting Technical Release (TR), *Rescission of Technical Release 8,* for public comment.

The proposed TR is available on the FASAB website at *http://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft and to provide the reasons for their positions. Written comments are requested by October 5, 2018, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: August 21, 2018.

Wendy M. Payne,

Executive Director.

[FR Doc. 2018–18564 Filed 8–27–18; 8:45 am]

BILLING CODE 1610–02–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, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with the Home Mortgage Disclosure Act (HMDA) and Loan/Application Register (LAR) required by Regulation C (FR HMDA LAR, OMB No. 7100–0247).

DATES: Comments must be submitted on or before October 29, 2018.

ADDRESSES: You may submit comments, identified by *FR HMDA LAR,* by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *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 website 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 NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

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 Board's public website 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 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 Board's functions, including whether the information has practical utility;

b. The accuracy of the Board'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 Board should modify the proposal prior to giving final approval.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Reporting, Recordkeeping, and Disclosure Requirements Associated with the Home Mortgage Disclosure Act (HMDA) and Loan/Application Register (LAR) required by Regulation C.

Agency form number: FR HMDA LAR.

OMB control number: 7100–0247.

Frequency: Annually and quarterly.

Respondents: State member banks (SMBs), their subsidiaries, subsidiaries of bank holding companies, U.S. 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: Update policies, procedures, and systems (one-time), 505 respondents; Reporting—Tier 1 (annual reporter), 2 respondents; Tier 1 (quarterly reporter), 1 respondent; Tier 2, 148 respondents; Tier 2 (Crapo), 300 respondents; and Tier 3 (Crapo), 54 respondents; Recordkeeping—Tier 1 (annual reporter), 2 respondents; Tier 1 (quarterly reporter), 1 respondent; Tier 2, 448 respondents; and Tier 3, 54 respondents; and Disclosure—Tier 1 (annual reporter), 2 respondents; and Tier 1 (quarterly reporter), 1 respondent.

Estimated average hours per response: Update policies, procedures, and systems (one-time), 176 hours; Reporting—Tier 1 (annual reporter), 5,969 hours; Tier 1 (quarterly reporter), 6,903 hours; Tier 2, 1,232 hours; Tier 2 (Crapo), 986 hours; and Tier 3 (Crapo), 64 hours; Recordkeeping—Tier 1 (annual reporter), 4,130 hours; Tier 1 (quarterly reporter), 4,130 hours; Tier 2, 83 hours; and Tier 3, 27 hours; and Disclosure—Tier 1 (annual reporter), 5 hours; and Tier 1 (quarterly reporter), 5 hours.

Estimated annual burden hours: Update policies, procedures, and systems (one-time), 88,880 hours; Reporting—Tier 1 (annual reporter), 11,938 hours; Tier 1 (quarterly reporter), 27,612 hours; Tier 2, 182,336 hours; Tier 2: Crapo, 295,800 hours; and Tier 3: Crapo, 3,456 hours; Recordkeeping—Tier 1 (annual reporter), 8,260 hours; Tier 1 (quarterly reporter), 16,520 hours; Tier 2, 37,184 hours; and Tier 3, 1,458 hours; and Disclosure—Tier 1 (annual reporter), 10 hours; and Tier 1 (quarterly reporter), 20 hours.

General description of report: HMDA was enacted in 1975 and is implemented by Regulation C. Generally, HMDA requires certain depository and non-depository institutions that make certain mortgage loans to collect, report, and disclose data about originations and purchases of mortgage loans, as well as loan applications that do not result in originations (for example, applications that are denied or withdrawn). HMDA was enacted to provide regulators and the public with loan data that can be used to: (1) Help determine whether financial institutions are serving the housing needs of their communities, (2) assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed, and (3) assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.[1] Supervisory agencies, state and local public officials, and members of the public use the data to aid in the enforcement of the Community Reinvestment Act, the Equal Credit Opportunity Act, and the Fair Housing Act and to aid in identifying areas for residential redevelopment and rehabilitation.

Proposed revisions: Consistent with the Bureau of Consumer Financial Protection's (Bureau) final rules amending Regulation C, effective January 1, 2018, as well as recent statutory amendments to HMDA that were enacted on May 24, 2018,[2] the Board proposes to revise the FR HMDA–LAR by expanding the data reported and by modifying the types of institutions required to report and the types of loans required to be reported. Beginning January 1, 2018, an institution that is otherwise not eligible for a partial exemption under section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), as discussed further below, is required to collect and report all required data points required under HMDA if it *either* originates 25 or more[3] closed-end mortgage loans *or* 500 or more open-end lines of credit[4] secured by a dwelling in each of the two preceding years, in addition to meeting other applicable coverage criteria.[5] For these institutions, the final rules standardize the loan volume threshold used to determine coverage of both depository and non-depository institutions. An institution will only

[1] 12 CFR 1003.1(b).

[2] On May 24, 2018, the President signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). In relevant part, section 104(a) of EGRRCPA amends HMDA to exempt certain insured depository institutions and insured credit unions from collecting and reporting those data fields that were required by HMDA sections 304(b)(5) and (6), as implemented by the Bureau's final rules.

[3] Small depository institutions that originated fewer than 25 closed-end mortgage loans in either 2015 or 2016 ceased HMDA data collection on January 1, 2017.

[4] Under the 2015 final rules, financial institutions would have been required to report home-equity lines of credit if they made 100 or more such loans in each of the last two years. On August 24, 2017, the Bureau amended the final rules to increase the institutional coverage and loan threshold from 100 to 500 or more loans through calendar years 2018 and 2019. *See* 82 FR 43088 (Sept. 13, 2017). This temporary increase in the threshold will provide time for the Bureau to consider whether to initiate another rulemaking to address the appropriate level for the threshold for data collected beginning January 1, 2020.

[5] Asset size and geographic location coverage tests also apply. *See* 12 CFR FR 1003.2(g).

report a covered loan if it has met the loan origination threshold for that loan category (open-end or closed-end).

The final rules generally will require covered institutions to collect and report any mortgage loan secured by a dwelling, including open-end lines of credit, regardless of the loan's purpose. However, the final rules exclude unsecured home-improvement loans (which historically were required to be reported), dwelling-secured loans that are made principally for a commercial or business purpose, agricultural–purpose loans, and other specifically excluded loans.[6]

The final rules also will require collection of additional data points. For covered institutions that are otherwise not eligible for the partial exemption under section 104(a) of EGRRCPA, as discussed further below, these additional data points will be reported in 2019.

These new fields include

- additional information about the applicant or borrower, such as age and credit score
- information about the loan pricing, such as the borrower's total cost to obtain a mortgage, temporary introductory rates, and borrower-paid origination charges
- information about loan features, such as the loan term, prepayment penalties, or non-amortizing features (such as interest only or balloon payments)
- additional information about property securing the loan, such as property value and property type

In addition, the Bureau's final rules amend several existing requirements, including the requirements for collection and reporting of information regarding an applicant's or borrower's ethnicity, race and sex.[7]

Effective May 24, 2018, an institution that is eligible for the partial exemption under section 104(a) of EGRRCPA will only need to report a subset of the data points required under HMDA if it originates fewer than 500 closed-end mortgage loans in each of the two preceding calendar years.[8] Consistent with section 104(a) of EGRRCPA and the Bureau's recent statement addressing the applicability of this statutory amendment to HMDA,[9] the Board estimates that institutions eligible for the partial exemption will report approximately half the data points currently required by the Bureau's final rules on the loans described above.[10]

The Bureau will collect the HMDA/LAR data on behalf of the applicable Federal supervisory agency, and the data will be combined and aggregated for each Metropolitan Statistical Area (MSA). Certain aggregated data will continue to be publicly available, though the Bureau has yet to determine what the information collected in the new data fields will be disclosed once the final rules are fully effective.

Legal authorization and confidentiality: The FR HMDA–LAR is authorized pursuant to section 304(j) of HMDA (12 U.S.C. 2803(j)), which requires that the Bureau prescribe by regulation the form of loan application register information that must be reported by covered financial institutions. Section 1003.5 of Regulation C implements this statutory provision, and requires covered financial institutions to submit reports to their appropriate federal agency. Section 304(h)(2)(A) of HMDA (12 U.S.C. 2803(h)(2)(A)) designates the Board as the appropriate agency with respect to the entities described above. The FR HMDA–LAR is mandatory. HMDA requires the information collected on the FR HMDA–LAR to be made available to the general public in the form proscribed by the Bureau. The Bureau is authorized to redact or modify the scope of the information before it is publicly disclosed to protect the privacy of loan applicants and to protect depository institutions from liability under any federal or state privacy law (12 U.S.C. 2803(j)(2)(B)). The redacted information may be kept confidential under exemption 6 of the Freedom and Information Act, which protects from release information that, if disclosed, would ''constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)).

Consultation outside the agency: The Board consulted with Bureau staff regarding the estimated burden of this information collection.

Board of Governors of the Federal Reserve System, August 22, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–18542 Filed 8–27–18; 8:45 am]

BILLING CODE 6210–01–P

[6] 12 CFR 1003.2(e).

[7] For the complete list of data points, *see* 12 CFR 1003.4.

[8] Section 104(a) of EGRRCPA also provides a partial exemption to the data collection and reporting requirements under HMDA for institutions that originate fewer than 500 open-end lines of credit in each of the two preceding calendar years and otherwise meet the applicable performance evaluation rating standards under CRA. However, institutions eligible for this partial exemption are already completely exempt from *all* data collection and reporting requirements under the temporary exemption provided by the Bureau's final rules until January 1, 2020.

[9] See *Bureau Statement,* which provides that for loans subject to the partial exemption, ''the requirements of [HMDA section 304(b)(5) and (6)] shall not apply . . . [therefore,] institutions are exempt from the collection, recording, and reporting requirements for some, but not all, of the data points specified in current Regulation C.''

[10] Section 104(a) of EGRRCPA does not define the terms ''closed-end loan'' or ''open-end line of credit.'' However, for purposes of estimating burden, the Board is making the assumption that these terms will be used consistent with how they are currently defined in Regulation C. *See* 12 CFR 1002.2(d) and (o), which defines the term ''closed-end loan'' and ''open-end line of credit,'' respectively. Further, for purposes of estimating burden, the Board is making the assumption that the loan volume thresholds for closed-end loans will be determined consistent with how such loan thresholds are currently used under Regulation C to determine if a transaction must be reported. See 12 CFR 1003.3(c)(11) and (12), which provides how to determine the loan threshold volume for closed-end loan reporters and open-end line of credit reporters, respectively.

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 Supervisory and Regulatory Survey (FR 3052; OMB No. 7100–0322).

DATES: Comments must be submitted on or before October 29, 2018.

ADDRESSES: You may submit comments, identified by *FR 3052,* by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *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 website 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 NW, Washington, DC 20006, between

9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

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, if approved. These documents will also be made available on the Federal Reserve Board's public website 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 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 Board's functions; including whether the information has practical utility;

b. The accuracy of the Board'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 Board should modify the proposal prior to giving final approval.

Proposal to Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Supervisory and Regulatory Survey.

Agency form number: FR 3052.

OMB control number: 7100–0322.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs), state member banks (SMBs), savings and loan holding companies (SLHCs), intermediate holding companies (IHCs), U.S branches and agencies of foreign banking organizations (FBOs), Edge and agreement corporations, nonbank financial companies that the Financial Stability Oversight Council (FSOC) has determined should be supervised by the Board, or the combined domestic operations of FBOs.

Estimated number of respondents: 5,000.

Estimated average hours per response: 0.5 hours.

Estimated annual burden hours: 60,000 hours.

General description of report: The FR 3052 collects information from financial institutions specifically tailored to the Federal Reserve's supervisory, regulatory, and operational responsibilities. Examples of past surveys include collected information related to regulatory capital, operational risk loss event history, and transactions by securities dealers. The frequency and content of the questions depend on changing economic, regulatory, supervisory, or legislative developments.

The Board utilizes the survey process, as needed, to collect information on specific issues that affect its decision-making. The principal value of the FR 3052 is the flexibility it provides the Federal Reserve to respond quickly to the need for data due to unanticipated economic, financial, supervisory, or regulatory developments. The Board cannot predict what specific information will be needed, but such needs are generally very time sensitive. Because the relevant questions may change with each survey, there is no fixed reporting form.

Written qualitative questions or questionnaires may include categorical questions, yes-no questions, ordinal questions, and open-ended questions. Written quantitative surveys may include dollar amounts, percentages, numbers of items, interest rates, and other such information. Institutions may also be required to provide copies of existing documents (for example, pertaining to practices and performances for a particular business activity). Before conducting a survey, the Board reviews any information to be collected to determine if the information is available by other means.

Legal authorization and confidentiality: The FR 3052 is authorized pursuant to section 9 of the Federal Reserve Act (FRA) (12 U.S.C. 324) for SMBs; section 5 of the Bank Holding Company Act (12 U.S.C. 1844(c)(1)(A)) for BHCs and their subsidiaries; section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(1)) for SLHCs and their subsidiaries; section 7(c)(2) of International Banking Act (IBA) (12 U.S.C. 3105(c)(2)) for the U.S. branches and agencies of foreign banks; section 8 of the IBA (12 U.S.C. 3106) for foreign banking organizations; sections 25 and 25A of the FRA (12 U.S.C. 602 and 625) for Edge and agreement corporations; and section 161 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5361) for nonbank financial companies designated by FSOC for supervision by the Board.

The surveys would be conducted on a voluntary basis. The questions asked on each survey would vary, so the ability of the Board to maintain the confidentiality of information collected would be determined on a case by case basis. It is possible that the information collected would constitute confidential commercial or financial information, which may be kept confidential under exemption 4 to the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). In circumstances where the Board collects information related to individuals, exemption 6 to FOIA

would protect information ''the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)). To the extent the information collected relates to examination, operating, or condition reports prepared for the use of an agency supervising financial institutions, such information may be kept confidential under exemption 8 to FOIA (5 U.S.C. 552(b)(8)).

Board of Governors of the Federal Reserve System, August 23, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–18550 Filed 8–27–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of General Amendment to Federal Reserve Board of Governors Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) is amending its General Routine Uses of Board Systems of Records (General Routine Uses) that apply to the Board's systems of records, by revising an existing routine use and adding a new routine use, both related to breach response. The changes are necessary in order to comply with Office of Management and Budget (OMB) Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information'' (January 3, 2017), which sets forth the two required routine uses. Accordingly, the Board is revising Routine Use I, as prescribed by OMB, which allows the Board to disclose records as necessary to respond to a suspected or confirmed breach of the system of records where the Board has determined the breach poses a risk of harm to individuals, the Board, the Federal Government, or national security, and the disclosure is reasonably necessary to assist the Board in its efforts to respond to the breach or to prevent, minimize or remedy such harm. The Board is also adding Routine Use J as prescribed by OMB to allow the Board to assist another federal agency or federal entity in that agency's or entity's response to a suspected or confirmed breach or efforts to prevent, minimize, or remedy the risk of harm to individuals, the agency or entity, the Federal Government, or national security, resulting from a suspected or confirmed breach.

These breach-response related uses are relevant and apply to all of the Board's systems of records. Accordingly, the Board is revising its list of General Routine Uses and is amending all of the Board's systems of records to include the revised Routine Use I and the new Routine Use J. These uses will ensure that the Board is able to respond as necessary in the event of a breach of personally identifiable information involving a Board system of records and assist other federal agencies or federal entities in their response. Breaches pose a risk of harm to individuals, and thus the revised and new routine uses will further enhance the Board's ability to protect the privacy of individuals by allowing the Board to respond to the suspected or confirmed breach and prevent, minimize, or remedy the resulting harm posed by the breach. In order that the Board's General Routine Uses will be contained in a single notice readily accessible by the public, the Board is republishing the General Routine Uses previously published on May 6, 2008 (73 FR 24985) which were not revised under this notice.

DATES: Comments must be received on or before September 27, 2018. The revised systems of records notices and General Routine Uses will become effective September 27, 2018, without further notice, unless comments dictate otherwise. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the **Federal Register** in which to review the system and to provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11). The routine uses below were submitted to OMB on July 16, 2018.

ADDRESSES: You may submit comments, identified by *Board General Routine Uses and SORN Amendment,* by any of the following methods:

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

All public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. 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. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: David B. Husband, Senior Attorney, Legal Division, (202) 530–6270, or *david.b.husband@frb.gov;* Alye S. Foster, Assistant General Counsel, Legal Division, or (202) 452–5289, or *alye.s.foster@frb.gov.* Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a(r), a report of these systems of records is being filed with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

SYSTEM NAME AND NUMBER:

BGFRS–1 Recruiting and Placement Records
BGFRS–2 Personnel Security Systems
BGFRS–3 Medical Records
BGFRS–4 General Personnel Records
BGFRS–5 EEO Discrimination Complaint File
BGFRS–6 Disciplinary and Adverse Action Records
BGFRS–7 Payroll and Leave Records
BGFRS–8 Travel Records
BGFRS–9 Supplier Files
BGFRS–10 General Files on Board Members
BGFRS–11 Official General Files
BGFRS–12 Bank Officers Personnel System

BGFRS–13 Federal Reserve System Bank Supervision Staff Qualifications
BGFRS–14 General File of Federal Reserve Bank and Branch Directors
BGFRS–16 Regulation U Reports of NonBank Lenders
BGFRS–17 Municipal or Government Securities Principals and Representatives
BGFRS–18 Consumer Complaint Information
BGFRS–20 Survey of Consumer Finances
BGFRS–21 Supervisory Enforcement Actions and Special Examinations Tracking System
BGFRS–23 Freedom of Information Act and Privacy Act Case Tracking and Reporting System
BGFRS–24 EEO General Files
BGFRS–25 Multi-Rater Feedback Records
BGFRS–26 Employee Relations Records
BGFRS–27 Performance Management Program Records
BGFRS–28 Employee Assistance Program Records
BGFRS–29 Benefits Records
BGFRS–30 Academic Assistance Program Files
BGFRS–31 Protective Information Systems
BGFRS–32 Visitor Registration System
BGFRS–34 ESS Staff Identification Card File
BGFRS–35 Staff Parking Permit File
BGFRS–36 Federal Reserve Application Name Check System
BGFRS–37 Electronic Applications
BGFRS–38 Transportation Subsidy Records
BGFRS–39 General File of the Community Advisory Council
OIG–1 OIG Investigative Records
OIG–2 OIG Personnel Records

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Board maintains its systems of records at the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Some sub-categories of certain systems may also be maintained by various third-parties, which are described in the corresponding SORNs located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

SYSTEM MANAGER(S):

The system manager for each system is described in the system's corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for each system is described in the system's corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

PURPOSE(S) OF THE SYSTEM:

The purpose for each system is described in the system's corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by each system are described in the system's corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records covered by each system are described in the system's corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

RECORD SOURCE CATEGORIES:

The categories of sources of records for each system is described in the system's corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Board is amending its General Routine Uses by revising Routine Use I and adding Routine Use J. The Board is also revising all of the SORNs listed above [1] to include the revised Routine Use I and the new Routine Use J. The Board is revising Routine Use I of its General Routine Uses to read as follows:

''*I. Disclosure to Facilitate a Response to a Breach of the Board.* Information may be disclosed to appropriate agencies, entities, and persons when: (1) The Board suspects or has confirmed that there has been a breach of the system of records; (2) the Board has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Board (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Board's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

The Board is also adding Routine Use J to its General Routine Uses to read as follows:

''*J. Disclosure to Assist another Federal Agency or Federal Entity in Responding to a Breach.* Information may be disclosed to another federal agency or federal entity, when the Board determines that the information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.''

The complete list of General Routine Uses now reads as follows:

General Routine Uses of Board Systems of Records

A. *Disclosure for Enforcement, Statutory and Regulatory Purposes.* Information may be disclosed to the appropriate federal, state, local, foreign, or self-regulatory organization or agency responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

B. *Disclosure to Another Agency or a Federal Reserve Bank.* Information may be disclosed to a federal agency in the executive, legislative, or judicial branch of government, or to a Federal Reserve Bank, in connection with the hiring, retaining, or assigning of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the receiving entity, or the lawful statutory, administrative, or investigative purpose of the receiving entity to the extent that the information is relevant and necessary to the receiving entity's decision on the matter.

C. *Disclosure to a Member of Congress.* Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

D. *Disclosure to the Department of Justice, a Court, an Adjudicative Body or Administrative Tribunal, or a Party in Litigation.* Information may be disclosed

[1] BGFRS–40, ''FRB—Board Subscription Services'' is not included in the list because the Board's April 11, 2018 publication of that SORN included the substance of the new Routine Uses I and J. 83 FR 15569 (April 11, 2018).

to the Department of Justice, a court, an adjudicative body or administrative tribunal, a party in litigation, or a witness if the Board (or in the case of an Office of Inspector General system, the Office of Inspector General) determines, in its sole discretion, that the information is relevant and necessary to the matter.

E. *Disclosure to Federal, State, Local, and Professional Licensing Boards.* Information may be disclosed to federal, state, local, foreign, and professional licensing boards, including a bar association, a Board of Medical Examiners, a state board of accountancy, or a similar governmental or non-government entity that maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registrations relevant to practicing an occupation, profession, or specialty.

F. *Disclosure to the EEOC, MSPB, OGE and OSC.* Information may be disclosed to the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Office of Government Ethics, or the Office of Special Counsel to the extent determined to be relevant and necessary to carrying out their authorized functions.

G. *Disclosure to Contractors, Agents, and Others.* Information may be disclosed to contractors, agents, or others performing work on a contract, service, cooperative agreement, job, or other activity for the Board and who have a need to access the information in the performance of their duties or activities for the Board.

H. *Disclosure to Labor Relations Panels.* Information may be disclosed to the Federal Reserve Board Labor Relations Panel or the Federal Reserve Banks Labor Relations Panel in connection with the investigation and resolution of allegations of unfair labor practices or other matters within the jurisdiction of the relevant panel when requested.

I. *Disclosure to Facilitate a Response to a Breach of the Board.* Information may be disclosed to appropriate agencies, entities, and persons when: (1) The Board suspects or has confirmed that there has been a breach of the system of records; (2) the Board has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals or the Board (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Board's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

J. *Disclosure to Assist another Federal Agency or Federal Entity in Responding to a Breach.* Information may be disclosed to another federal agency or federal entity, when the Board determines that the information from the system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The storage practices for each system are set out in the corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Depending on the particular system, paper and electronic records may be retrieved by name or other identifying aspects.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention period for each system is set out in the corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.* Records will be disposed of at the end of their retention periods, subject to an annual close-out.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records is limited to those whose official duties require it. Electronic records are password protected.

RECORD ACCESS PROCEDURES:

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) Contain a statement that it is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record for which you are requesting access.

Current or former Board employees may make a request for access by contacting the Board office that maintains the record. The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the—Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington DC 20551.

If your request is for records maintained by the Board's Office of Inspector General, submit your request to the—Inspector General, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

You may also submit your Privacy Act request electronically through the Board's FOIA ''Electronic Request Form'' located here: *https://www.federalreserve.gov/secure/forms/efoiaform.aspx.*

CONTESTING RECORD PROCEDURES:

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records about you. To request an amendment to your record, you should clearly mark the request as a ''Privacy Act Amendment Request.'' You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) Provide the name of the specific Board system of records containing the record you seek to amend; (2) Identify the specific portion of the record you seek to amend; (3) Describe the nature of and reasons for each requested amendment; (4) Explain why you believe the record is not accurate, relevant, timely, or complete; and (5) Unless you have already done so in a Privacy Act request for access, provide the necessary information to verify your identity.

NOTIFICATION PROCEDURES:

Same as ''Access procedures'' above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Any exemptions claimed for each specific system is described in the system's corresponding SORN located here: *https://www.federalreserve.gov/system-of-records-notices.htm.*

HISTORY:

The history of the Board's various systems can be located at: *https://www.federalreserve.gov/system-of-records-notices.htm* by clicking on the **Federal Register** Notice associated with the SORN for each system. In order that the Board's General Routine Uses will be contained in a single notice readily accessible by the public, the Board is taking the opportunity to republish the General Routine Uses previously published on May 6, 2008 (73 FR 24985) which were not revised under this notice.

Board of Governors of the Federal Reserve System, August 23, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–18627 Filed 8–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–1102]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Information Collection for Tuberculosis Data from Panel Physicians to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 29, 2018 to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Information Collection for Tuberculosis Data from Panel Physicians—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention's (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), Immigrant, Refugee, and Migrant Health Branch (IRMH), requests approval for a revision of an existing information collection. This project pertains to collecting annual reports on certain tuberculosis data from U.S. panel physicians.

The respondents are panel physicians. More than 760 panel physicians from 336 panel sites perform overseas pre-departure medical examinations in accordance with requirements, referred to as technical instructions, provided by DGMQs Quality Assessment Program (QAP). The role of QAP is to assist and guide panel physicians in the implementation of the Technical Instructions; evaluate the quality of the overseas medical examination for U.S.-bound immigrants and refugees; assess potential panel physician sites; and provide recommendations to the U.S. Department of State in matters of immigrant medical screening.

To achieve DGMQ's mission, the Immigrant, Refugee and Migrant Health branch (IRMH) works with domestic and international programs to improve the health of U.S.-bound immigrants and refugees to protect the U.S. public by preventing the importation of infectious disease. These goals are accomplished through IRMH's oversight of medical exams required for all U.S.—bound immigrants and refugees who seek permanent residence in the U.S. IRMH is responsible for assisting and training the international panel physicians with the implementation of medical exam Technical Instructions (TI). Technical Instructions are detailed requirements and national policies regarding the medical screening and treatment of all U.S.-bound immigrants and refugees.

Screening for tuberculosis (TB) is a particularly important component of the immigration medical exam and allows panel physicians to diagnose active TB disease prior to arrival in the United States. As part of the Technical Instructions requirements, panel physicians perform chest x-rays and laboratory tests that aid in the identification of tuberculosis infection (Class B1 applicants) and diagnosis of active tuberculosis disease (Class A, inadmissible applicants). CDC uses these classifications to report new immigrant and refugee arrivals with a higher risk of developing TB disease to U.S. state and local health departments for further follow-up. Some information that panel physicians collect as part of the medical exam is not reported on the standard Department of State forms (DS-forms), thereby preventing CDC from evaluating TB trends in globally mobile populations and monitoring program effectiveness.

Currently, CDC is requesting this data be sent by panel physicians once per year. The consequences of reducing this frequency would be the loss of monitoring program impact and TB burdens in mobile populations and immigrants and refugees coming to the United States on an annual basis. Estimated annual burden is being reduced by 1,640 hours per year. The number of respondents is being reduced by 17. Reductions are due to revised estimates on burden time per response, and the removal of four variables from the data collection form and improved IT capacity at most panel sites. The total hours requested is 1,008. There is no cost to the 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)
International panel physicians	TB Indicators Excel Spreadsheet	336	1	3

Jeffrey M. Zirger,

Acting 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. 2018–18588 Filed 8–27–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0600; Docket No. CDC–CDC–2008–0079]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled CDC Model Performance Evaluation Program (MPEP) for Mycobacterium tuberculosis Susceptibility Testing information collection. CDC is requesting a three-year approval for revision to the previously approved project used to monitor and evaluate performances and practices among national laboratories M. tuberculosis susceptibility testing.

DATES: CDC must receive written comments on or before October 29, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2008–00791 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

CDC Model Performance Evaluation Program (MPEP) for Mycobacterium tuberculosis Susceptibility testing (OMB #0920–0600, expiration 3/31/2019)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting a revision to the approved information collection, CDC Model Performance for Mycobacterium tuberculosis Drug Susceptibility Testing (OMB Control Number 0920–0600). Clearance is requested for a period of three years. Revision of this information collection will not require changes in the scope of the study. This revision includes (a) modification of the Participant Biosafety Compliance Letter of Agreement; (b) modification of the Instructions to Participants Letter; (c) modification of the MPEP Mycobacterium Results Worksheet; (d) Request for approval of a MPEP Mycobacterium tuberculosis Minimum Inhibitory Concentration (MIC) Results Form for laboratories that perform Sensititre Drug Susceptibility Testing (DST) to record MIC results; and (e) reduction in request for burden hours.

While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. To reach the goal of eliminating TB, the Model Performance Evaluation Program for Mycobacterium tuberculosis Susceptibility Testing is used to monitor and evaluate performance and practices among national laboratories performing M. tuberculosis susceptibility testing. Participation in this program is one way

laboratories can ensure high-quality laboratory testing, resulting in accurate and reliable testing results.

By providing an evaluation program to assess the ability of the laboratories to test for drug resistant M. tuberculosis strains, laboratories also have a self-assessment tool to aid in optimizing their skills in susceptibility testing. The information obtained from the laboratories on susceptibility practices and procedures is used to establish variables related to good performance, assessing training needs, and aid with the development of practice standards.

Participants in this program include domestic clinical and public health laboratories. Data collection from laboratory participants occurs twice per year. The data collected in this program will include the susceptibility test results of primary and secondary drugs, drug concentrations, and test methods performed by laboratories on a set of performance evaluation (PE) samples. The PE samples are sent to participants twice a year. Participants also report demographic data such as laboratory type and the number of tests performed annually. The total estimated annual burden hours are 129. There is no cost to respondents to participate 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)
Domestic Laboratory	Participant Biosafety Compliance Letter of Agreement.	80	1	5/60	7
	MPEP Mycobacterium tuberculosis Results Worksheet.	80	2	30/60	80
	Online Survey Instrument	80	2	15/60	40
	MPEP Mycobacterium tuberculosis Minimum Inhibitory Concentration Results Form.	4	2	15/60	2
Total					129

Jeffrey M. Zirger,

Acting 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. 2018–18589 Filed 8–27–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3240]

List of Bulk Drug Substances for Which There is a Clinical Need Under Section 503B of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is developing a list of bulk drug substances (active pharmaceutical ingredients) for which there is a clinical need (the 503B Bulks List). Drug products that outsourcing facilities compound using bulk drug substances on the 503B Bulks List qualify for certain exemptions from the Federal Food, Drug, and Cosmetic Act (FD&C Act) provided certain conditions are met. This notice identifies three bulk drug substances that FDA has considered and is proposing not to include on the list: Bumetanide, nicardipine hydrochloride, and vasopressin. Additional bulk drug substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of future notices.

DATES: Submit either electronic or written comments on the notice by October 29, 2018 to ensure that the Agency considers your comment on this notice before it begins work on a notice reflecting the Agency's final decision about whether to include these substances on the 503B Bulks List.

ADDRESSES: You may submit comments at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2018–N–3240 for ''List of Bulk Drug Substances For Which There Is a Clinical Need Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' 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.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hankla, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5216, Silver Spring, MD 20993, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

A. Drug Compounding

Compounded drug products can serve an important role for patients whose clinical needs cannot be met by FDA-approved drug products, such as patients who have an allergy and need a medication to be made without a certain inactive ingredient (*e.g.,* a dye) or hospital inpatients who need infusions of a drug combined with a particular diluent. However, they also pose a higher risk to patients than FDA-approved drugs. In 2012, contaminated injectable drug products that a State-licensed compounding pharmacy shipped to patients and healthcare practitioners across the country caused a fungal meningitis outbreak that resulted in more than 60 deaths and 750 cases of infection.[1] This was the most serious of a long history of outbreaks and other serious adverse events, including overdoses, associated with contaminated, superpotent, or otherwise poor quality compounded drugs.

In response to this outbreak, Congress enacted the Drug Quality and Security Act (Pub. L. 113–54), which, among other things, added new section 503B to the FD&C Act (21 U.S.C. 353b) and created a new category of compounders known as outsourcing facilities.[2] Drug products compounded by outsourcing facilities in accordance with the conditions of section 503B are exempt from FDA drug approval requirements and the requirement that they be labeled with adequate directions for use. Because compounded drug products are not FDA-approved, they have not undergone FDA premarket review for safety, effectiveness, and quality. Although outsourcing facilities must comply with current good manufacturing practice (CGMP) requirements and are inspected by FDA according to a risk-based schedule, their drug products have not been determined to be safe or effective for conditions of use reflected in drug product labeling and lack a premarket inspection and finding of manufacturing quality, all of which are part of the drug approval process. Because compounded drug products are subject to a lower regulatory standard than FDA-approved drug products, they should only be used by patients whose medical needs cannot be met by an FDA-approved drug product.

Outsourcing facilities sometimes compound drug products using bulk drug substances and other times using finished drug products as the starting materials. In general, compounding using bulk drug substances presents a greater risk to patients than compounding using FDA-approved drug products. FDA-approved drug products provide certain assurances not provided by bulk drug substances, including assurances associated with premarket review by FDA for safety, effectiveness, and quality. Further, using a bulk drug substance in compounding when an FDA-approved drug product would be suitable would undermine the premarket approval process by reducing the incentive for applicants to invest in and seek FDA approval of drug products. The drug approval process is critical to ensure patient access to pharmaceuticals whose quality, safety, and effectiveness have been established.

The conditions that section 503B of the FD&C Act places on compounding by outsourcing facilities, including conditions on compounding using bulk drug substances, help to mitigate the risks associated with compounded drug products and protect patient health. Among these is the condition that directs FDA to place a bulk drug substance on the list of bulk drug substances that outsourcing facilities can use in compounding (503B Bulks List) only if there is a clinical need for outsourcing facilities to compound drug products using the bulk drug substance.

B. Statutory and Regulatory Background

Section 503B of the FD&C Act describes the conditions that must be satisfied for drug products compounded by an outsourcing facility to be exempt from section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)); section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and section 582 (21 U.S.C. 360eee–1) (concerning drug supply chain security requirements).[3]

Drug products compounded under the conditions in section 503B are not exempt from CGMP requirements in section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)).[4] Outsourcing facilities are also subject to FDA

[1] See *https://www.cdc.gov/HAI/outbreaks/meningitis.html.*

[2] See Public Law 113–54, section 102(a), 127 Stat. 587, 587–588 (2013). Other compounders, which are not the subject of this notice, are regulated under section 503A of the FD&C Act (21 U.S.C. 353a). These include licensed pharmacists in State-licensed pharmacies or Federal facilities, and licensed physicians, who have not registered an outsourcing facility with FDA. Drug products compounded by section 503A compounders are exempt from sections 505 (new drug approval requirements), 502(f)(1) (labeling with adequate directions for use), and 501(a)(2)(B) (CGMP requirements) if the conditions of section 503A are met, including that compounding is based on the receipt of valid prescriptions for identified individual patients (section 503A(a)). In general, section 503A compounders do not register with and are not routinely inspected by FDA, and they are primarily overseen by the States.

[3] Section 503B(a) of the FD&C Act.

[4] Compare section 503A(a) of the FD&C Act (exempting drugs compounded in accordance with that section) with section 503B(a) of the FD&C Act (not providing the exemption from CGMP requirements).

inspections according to a risk-based schedule, specific adverse event reporting requirements, and other conditions that help to mitigate the risks of the drug products they compound.[5] Outsourcing facilities may or may not obtain prescriptions for identified individual patients and can, therefore, distribute compounded drugs to healthcare practitioners for ''office stock,'' to hold in their offices in advance of patient need.[6]

One of the conditions that must be met for a drug product compounded by an outsourcing facility to qualify for exemptions under section 503B is that the outsourcing facility may not compound a drug using a bulk drug substance unless (a) the bulk drug substance appears on a list established by the Secretary identifying bulk drug substances for which there is a clinical need (the 503B Bulks List); or (b) the drug compounded from such bulk drug substances appears on the drug shortage list in effect under section 506E of the FD&C Act (FDA's drug shortage list) (21 U.S.C. 356e) at the time of compounding, distribution, and dispensing.[7]

For purposes of section 503B, *bulk drug substance* means an active pharmaceutical ingredient as defined in 21 CFR 207.1(b).[8] *Active pharmaceutical ingredient* means any substance that is intended for incorporation into a finished drug product and is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body, but the term does not include intermediates used in the synthesis of the substance.[9] [10]

II. Methodology for Developing the 503B Bulks List

A. Process for Developing the List

In the **Federal Register** of December 4, 2013 (78 FR 72838), FDA requested nominations for specific bulk drug substances for the Agency to consider for inclusion on the 503B Bulks List. In response to that request, interested groups and individuals nominated a wide variety of substances. However, many of those nominations were not for substances used in compounding as active pharmaceutical ingredients or did not include sufficient information to allow FDA to evaluate the nominated substance. To improve the efficiency of the process for the development of the list of bulk drug substances, FDA reopened the nomination process in the **Federal Register** of July 2, 2014 (79 FR 37750), and provided more detailed information on what it needs to evaluate nominations for the list. On October 27, 2015 (80 FR 65770), the Agency opened a new docket, FDA–2015–N–3469, to provide an opportunity for interested persons to submit new nominations of bulk drug substances or to re-nominate substances with sufficient information.

As FDA evaluates bulk drug substances, it intends to publish notices for public comment in the **Federal Register** that describe its proposed position on each substance along with the rationale for that position.[11] After considering any comments on FDA's proposals regarding whether to include nominated substances on the 503B Bulks List, FDA intends to consider whether input from the Pharmacy Compounding Advisory Committee (PCAC) on the nominations would be helpful to the Agency in making its determination, and if so, it will seek PCAC input.[12] Depending on its review of the docket comments and other relevant information before the Agency, FDA may finalize its proposed determination without change, or it may finalize a modification to its proposal to reflect new evidence or analysis regarding clinical need. FDA will then publish in the **Federal Register** a list identifying the bulk drug substances for which it has determined there is a clinical need and FDA's rationale in making that final determination. FDA will also publish in the **Federal Register** a list of those substances it considered but found that there is no clinical need to use in compounding and FDA's rationale in making this decision.

FDA intends to maintain a current list of all bulk drug substances it has evaluated on its website, with separate lists for bulk drug substances it has placed on the 503B Bulks List and those it has decided not to place on the 503B Bulks List. FDA will only place a bulk drug substance on the 503B Bulks List where it has determined there is a clinical need for outsourcing facilities to compound drug products using the bulk drug substance. If a clinical need to compound drug products using the bulk drug substance has not been demonstrated, based on the information submitted by the nominator and any other information considered by the Agency, FDA will not place a bulk drug substance on the 503B Bulks List.

FDA intends to evaluate the bulk drug substances nominated for the 503B Bulks List on a rolling basis. FDA will evaluate and publish in the **Federal Register** its proposed and final determinations in groups of bulk drug substances until all nominated substances that were sufficiently supported have been evaluated and either placed on the 503B Bulks List or identified as bulk drug substances that were considered but determined not to be appropriate for inclusion on the 503B Bulks List.[13]

B. Analysis of Substances Nominated for the List

As noted above, the 503B Bulks List will include bulk drug substances for which there is a clinical need. The Agency is beginning its evaluation of some of the bulk drug substances that were nominated for inclusion on the 503B Bulks List, proceeding case by case, under the standard provided by the statute.[14] In applying this standard to develop the proposals in this notice, FDA is interpreting the phrase ''bulk drug substances for which there is a clinical need'' to mean that the 503B Bulks List may include a bulk drug substance if: (1) There is a clinical need for an outsourcing facility to compound

[5] Section 503B(b)(4) and (5) of the FD&C Act.

[6] Section 503B(d)(4)(C) of the FD&C Act.

[7] Section 503B(a)(2)(A) of the FD&C Act.

[8] 21 CFR 207.3.

[9] Section 503B(a)(2) of the FD&C Act and 21 CFR 207.1.

[10] Inactive ingredients are not subject to section 503B(a)(2) of the FD&C Act and will not be included in the 503B Bulks List because they are not included within the definition of a bulk drug substance. Pursuant to section 503B(a)(3), inactive ingredients used in compounding must comply with the standards of an applicable United States Pharmacopeia or National Formulary monograph, if a monograph exists.

[11] This is consistent with procedure set forth in section 503B(a)(2)(A)(i). Although the statute only directs FDA to issue a **Federal Register** notice and seek public comment when it proposes to include bulk drug substances on the 503B Bulks List, we intend to seek comment when the Agency has evaluated a nominated substance and proposes either to include or not to include the substance on the list.

[12] Section 503B does not require FDA to consult the PCAC before developing a 503B Bulks List.

[13] On June 10, 2016, FDA announced the availability of a guidance for industry that provides additional information regarding FDA's policies for bulk drug substances nominated for the 503B Bulks List pending our review of nominated substances under the ''clinical need'' standard entitled ''Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (81 FR 37502); available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM469122.pdf.*

[14] On March 26, 2018, FDA announced the availability of a draft guidance entitled ''Evaluation of Bulk Drug Substances Nominated for Use in Compounding Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (503B Bulks Evaluation Guidance) (83 FR 12952); available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM602276.pdf.* The draft guidance proposes policies for developing the 503B Bulks List, including the interpretation of the phrase ''bulk drug substances for which there is a clinical need,'' as it is used in section 503B. The Agency is considering comments it received on this draft guidance and is working to finalize the guidance.

the drug product and (2) the drug product must be compounded using the bulk drug substance. FDA is not interpreting supply issues, such as backorders, to be within the meaning of ''clinical need'' for compounding with a bulk drug substance. Section 503B separately provides for compounding from bulk drug substances under the exemptions from the FD&C Act discussed above if the drug product compounded from the bulk drug substance is on the FDA drug shortage list at the time of compounding, distribution, and dispensing. Additionally, we are not considering cost of the compounded drug product as compared with an FDA-approved drug product to be within the meaning of ''clinical need.''

The bulk drug substances that we are addressing in this notice are components of FDA-approved drug products, and we therefore began our evaluation by asking the following questions:

(a) Is there a basis to conclude, for each FDA-approved product that includes the nominated bulk drug substance, that (i) an attribute of the FDA-approved drug product makes it medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation, and (ii) the drug product proposed to be compounded is intended to address that attribute?

(b) Is there a basis to conclude that the drug product proposed to be compounded must be produced from a bulk drug substance rather than from an FDA-approved drug product?

The reason for question (a) is that unless an attribute of the FDA-approved drug is medically unsuitable for certain patients, and a drug product compounded using a bulk drug substance that is a component of the approved drug is intended to address that attribute, there is no clinical need to compound a drug product using that bulk drug substance. Rather, such compounding would unnecessarily expose patients to the risks associated with drug products that do not meet the standards applicable to FDA-approved drug products for safety, effectiveness, quality, and labeling and would undermine the drug approval process. The reason for question (b) is that to place a bulk drug substance on the 503B Bulks List, FDA must determine that there is a clinical need for outsourcing facilities to compound a drug product *using the bulk drug substance* rather than starting with an FDA-approved drug product.

If the answer to both of these questions is ''yes,'' there may be clinical need for outsourcing facilities to compound using the bulk drug substance, and we would analyze the question further.[15] If the answer to either of these questions is ''no,'' we generally would not include the bulk drug substance on the 503B Bulks List, because there would not be a basis to conclude that there may be a clinical need to compound drug products using the bulk drug substance instead of administering or starting with an approved drug product.

III. Substances Proposed for the 503B Bulks List

The three bulk drug substances that have been evaluated to date and that FDA is proposing not to place on the list, and the reasons for those proposals, are as follows:

1. Bumetanide

Bumetanide has been nominated for inclusion on the 503B Bulks List to compound a drug product that manages edema associated with congestive heart failure, cirrhosis, and renal disease.[16] The proposed route of administration is intravenous infusion, the proposed dosage form is injection, and the proposed strength is 0.1 milligrams per milliliter (mg/mL). The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* ANDAs 074332 and 079196). FDA-approved bumetanide is available as a 0.25 mg/mL injection that may be administered parenterally (intravenously or intramuscularly) to patients in whom gastrointestinal absorption may be impaired or in whom oral administration is not practical.[17] [18]

Because bumetanide is a component of an FDA-approved drug product, we considered whether there is a basis to conclude that the drug product proposed to be compounded must be compounded using a bulk drug substance. The nomination does not provide a basis to conclude that a bulk drug substance must be used to prepare a drug product containing bumetanide at concentrations below the concentration of the FDA-approved drug product (0.25 mg/mL). The nomination states that it may not be safer to prepare a drug product at such concentrations by starting with the approved drug; however, the nomination also recognizes that doing so would only require a dilution. It does not take the position or provide support for a position that a bulk drug substance must be used to prepare these concentrations of bumetanide.[19] [20]

Accordingly, FDA finds no basis to conclude that the drug products proposed to be compounded at a lower concentration than FDA-approved bumetanide must be compounded using a bulk drug substance rather than the approved drug product. We also find no basis to conclude that there is a clinical need for an outsourcing facility to compound a drug product using the bulk drug substance bumetanide and, therefore, we propose to not include bumetanide on the 503B Bulks List.

Because we are proposing not to include bumetanide on the 503B Bulks List for this reason, we do not consider question (a) in the analysis described above—whether an attribute of the FDA-approved drug product makes it medically unsuitable to treat certain patients and whether the drug product proposed to be compounded is intended to address that attribute.

2. Nicardipine Hydrochloride

Nicardipine hydrochloride has been nominated for inclusion on the 503B Bulks List.[21] The proposed route of administration is intravenous, the proposed dosage form is injection, and the proposed strength is 0.1–2.5 mg/mL. This nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* NDAs 022276 and 019734). FDA has approved nicardipine hydrochloride drug products as 0.1 mg/mL and 0.2 mg/mL ready-to-use solutions for intravenous administration

[15] According to FDA's proposal in its 503B Bulks Evaluation Guidance, the additional analysis would consist of the application of four additional factors. We did not answer ''yes'' to both of the threshold questions for bumetanide, nicardipine hydrochloride, or vasopressin, and we did not consider these four additional factors in our proposal not to include bumetanide, nicardipine hydrochloride, or vasopressin on the 503B Bulks List.

[16] See Docket No. FDA–2015–N–3469, document no. FDA–2015–N–3469–0013.

[17] See, *e.g.,* labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/f983b4df-996d-4558-adf7-ee4be1b3a03a/f983b4df-996d-4558-adf7-ee4be1b3a03a.xml.*

[18] Bumetanide is also approved as an oral tablet. See, *e.g.,* ANDA 074225.

[19] For example, the nomination does not take the position or provide support for a position that a drug product prepared by starting with the approved drug would be unsuitable for administration.

[20] The nomination also states that bumetanide should be added to the 503B Bulks List because compounding from the bulk drug substance could allow outsourcing facilities to address issues such as drug shortages, product accessibility, and/or affordability. As noted above, section 503B contains a separate provision for compounding from bulk drug substances to address a drug shortage, and we do not interpret the other price- and supply-related reasons advanced by the nomination to fall within the statutory definition of ''clinical need.''

[21] See Docket No. FDA–2015–N–3469, document no. FDA–2015–N–3469–0002.

and as a 2.5 mg/mL single-dose vial that must be diluted prior to infusion.[22] [23]

Because nicardipine hydrochloride is a component of an FDA-approved drug product, we considered whether there is a basis to conclude that the drug product proposed to be compounded must be compounded using a bulk drug substance. The nomination does not provide a basis to conclude that a bulk drug substance must be used to prepare drug products containing nicardipine hydrochloride at concentrations at or below the concentrations of the FDA-approved products (0.1, 0.2, and 2.5 mg/mL) and for the same route of administration (intravenous) as that described in the approved drug product labeling. Initially, we note that two nicardipine drug products are approved in ready-to-administer form (*e.g.,* no further dilutions needed) at concentrations within the range described in the nominations. The nomination does not present a reason to compound a drug product from a bulk drug substance at these concentrations. With respect to other concentrations, the nomination asserts, without support, that it would be safer to use a bulk drug substance than to start with the approved drug product. However, the nomination does not take the position or provide support for the position that a bulk drug substance must be used to prepare these concentrations of nicardipine hydrochloride.[24] In fact, the approved labeling of another nicardipine hydrochloride drug product directs the drug product to be diluted to a concentration within that range.[25]

Accordingly, FDA finds no basis to conclude that the drug products proposed to be compounded at a concentration at or lower than FDA-approved nicardipine hydrochloride must be compounded using a bulk drug substance rather than the approved drug product. We also find no basis to conclude that there is clinical need for an outsourcing facility to compound using the bulk drug substance nicardipine hydrochloride and, therefore, we propose to not include nicardipine hydrochloride on the 503B Bulks List. Because we are proposing not to include nicardipine hydrochloride on the 503B Bulks List for this reason, we do not consider question (a) in the analysis described above—whether an attribute of the FDA-approved drug product makes it medically unsuitable to treat certain patients and whether the drug product proposed to be compounded is intended to address that attribute.

3. Vasopressin

Vasopressin was nominated for inclusion on the 503B Bulks List to compound a drug product that treats septic shock, post-cardiotomy shock, diabetes insipidus, and hypotension.[26] The proposed route of administration is intravenous; the proposed dosage form is injection. The nominators proposed a range of specific concentrations (0.1, 0.2, 0.4, and 1 units/mL (U/mL)), and also concentrations above that of the approved drug product without identifying any specific concentration. This nominated bulk drug substance is the active ingredient of the FDA-approved drug VASOSTRICT (NDA 204485). VASOSTRICT is approved as a 20 U/mL intravenous infusion that, per its labeling, should be diluted with normal saline or 5 percent dextrose in water to either 0.1 U/mL or 1 U/mL for intravenous administration.[27]

Because vasopressin is a component of an FDA-approved drug product, we considered the nominations under questions (a) and (b) of the analysis described previously.

One of the nominations proposes vasopressin for the 503B Bulks List so that it can be used to compound a drug product whose concentration of vasopressin is higher than undiluted VASOSTRICT. The nomination does not identify an attribute of VASOSTRICT that makes it medically unsuitable for patients and that such high-concentration products are intended to address. The nomination does not identify any data or information as to the need for a higher concentration than the approved product, nor does the nomination identify specific higher concentrations it proposes to compound. In addition, the information provided in the nomination does not identify patients for whom a concentration at or below 20 U/mL is medically unsuitable and who would therefore require a higher concentration, and FDA is not aware of patients who would need concentrations above 20 U/mL.

Both nominations propose vasopressin for the 503B Bulks List so that it can be used to compound drug products whose concentrations of vasopressin are lower than undiluted VASOSTRICT. The nominations do not provide a basis to conclude that a bulk drug substance must be used to prepare a drug product that contains vasopressin at concentrations below the concentration of VASOSTRICT (20 U/mL) and uses the same diluents (dextrose and sodium chloride) and the same route of administration (intravenous) as that described in the approved product labeling. The nominations do not take the position or provide support for the position that a bulk drug substance rather than the FDA-approved drug product must be used to prepare these lower concentrations of vasopressin.[28] In fact, VASOSTRICT's approved labeling directs VASOSTRICT to be diluted using the diluents described in the nominations to concentrations within which the drug products proposed to be compounded fall.[29]

Accordingly, FDA finds no basis to conclude that an attribute of VASOSTRICT makes it medically unsuitable to treat patients such that patients would need a higher concentration higher than that of VASOSTRICT. FDA also finds no basis to conclude that the drug products proposed to be compounded at a lower concentration than VASOSTRICT must be compounded using a bulk drug substance rather than the approved drug. Further, we find no basis to conclude that there is a clinical need for an outsourcing facility to compound

[22] See, *e.g.,* labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/32756b4e-a977-47ac-9620-0c1ed74d7606/32756b4e-a977-47ac-9620-0c1ed74d7606.xml* (ready-to-administer) and *https://www.accessdata.fda.gov/spl/data/5444784f-fefe-4352-afd1-b4c487165f3a/5444784f-fefe-4352-afd1-b4c487165f3a.xml* (for dilution).

[23] Nicardipine hydrochloride is also approved as an oral capsule. See, *e.g.,* ANDA 074642.

[24] For example, the nomination does not take the position or provide support for a position that a drug product prepared by starting with the approved drug product would be unsuitable for patient administration.

[25] The nomination also states that nicardipine hydrochloride should be added to the 503B Bulks List because compounding from bulk could help outsourcing facilities to address drug shortages and inconsistencies in supply of generic injections. As noted in section II., section 503B of the FD&C Act already provides for compounding from bulk drug substances to address a drug shortage, and we do not interpret the other price- and supply-related reasons stated in the nomination to constitute clinical need.

[26] See Docket No. FDA–2015–N–3469, documents nos. FDA–2015–N–3469–0012 and –0023.

[27] The labeling as of the date of this notice is available at *https://www.accessdata.fda.gov/spl/data/4166e423-659e-4fe4-8a3c-2394434d00dd/4166e423-659e-4fe4-8a3c-2394434d00dd.xml.*

[28] For example, the nomination does not take the position or provide support for a position that a drug product prepared by starting with the approved drug product would be unsuitable for patient administration.

[29] One of the nominations also states that vasopressin should be added to the 503B Bulks List because compounding from the bulk drug substance could allow outsourcing facilities to address issues such as drug shortages, product accessibility, and/or affordability. As noted above, section 503B contains a separate provision for compounding from bulk drug substances to address a drug shortage, and we do not interpret the other price- and supply-related reasons advanced by the nomination to fall within the statutory definition of ''clinical need.''

using the bulk drug substance vasopressin and, therefore, we propose to not include vasopressin on the 503B Bulks List.

Dated: August 23, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–18614 Filed 8–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10¼%, as fixed by the Secretary of the Treasury, is certified for the quarter ended June 30, 2018. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

Dated: August 23, 2018.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2018–18648 Filed 8–27–18; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990—New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 29, 2018.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New—60D and project title for reference., to *Sherrette.funn@hhs.gov,* or call 202–795–7714, Sherrette Funn, the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Cross-Site Evaluation on the Women's Health College Sexual Assault Policy and Prevention Initiative.

Type of Collection: New.

OMB No. 0990–XXXX: Office of Women's Health within OS.

Abstract: The Office of Women's Health is seeking an approval by OMB on a new information collection, Cross-Site Evaluation on the Women's Health College Sexual Assault. The purpose of this data collection is to gather qualitative data across the nine grantee organizations and partners via interviews to gain a full understanding of grantee and partner perceived success over the course of the three-year project; grantee and partner experiences with the initiative; barriers and facilitators to project implementation; sustainability of grantee efforts; and anecdotal or other evidence of reductions in campus sexual violence. Interviews conducted with individuals representing the grantee organizations and campus partners, and will occur once per respondent in the spring of 2019.

The CDC estimates that 23 million women have experienced completed or attempted rape in their lifetimes. (National Intimate Partner and Sexual Violence Survey, *https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm*). A September 2015 Association of American Universities (AAU) survey of 150,000 students across 27 colleges and universities indicated that 23% of female undergraduate students reported experiencing sexual assault since enrolling in college (AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct, *https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/Executive%20Summary%2012-14-15.pdf*).

The College Sexual Assault Policy, and Prevention Initiative of the Department of Health and Human Services, Office of Women's Health, has three main goals: (1) Disseminate sexual assault policy and prevention information to organizations in a position to influence and implement policies and practices at post-secondary schools; (2) provide technical assistance to post-secondary schools to establish policies and practices that prevent sexual assault; and (3) assess the success of policy establishment and sustained prevention strategies enacted by partnering organizations and post-secondary schools.

ANNUALIZED BURDEN HOUR TABLE

Forms	Respondents	Number of respondents	Number of responses per respondents	Average burden per response (within hours)	Total burden hours
Grantee key informant interview guides.	Grantee organization representative	9	1	1	9
Partner campus key informant interview guides.	Partner campus representative	36	1	1	36
Total	.....	.....	.....	.....	45

Terry Clark,

Asst Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2018–18544 Filed 8–27–18; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council for Complementary and Integrative Health.

Date: October 5, 2018.

Closed: 8:30 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Open: 10:00 a.m. to 4:00 p.m.

Agenda: A report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Partap Singh Khalsa, Ph.D., DC, Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, NIH, National Institutes of Health, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–3462, *khalsap@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: August 22, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18548 Filed 8–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: November 16, 2018.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: Presentations and Discussion of Programs.

Place: National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, 9th Floor, Room 9100/9104, Bethesda, MD 20892.

Contact Person: W. Keith Hoots, MD, Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 9030, Bethesda, MD 20892, 301–435–0080, *hootswk@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 22, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18549 Filed 8–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such

as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 7, 2018.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 6 and 7, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 22, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18545 Filed 8–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: September 24–26, 2018.

Time: September 24, 2018, 1:40 p.m. to 6:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Time: September 25, 2018, 9:10 a.m. to 4:50 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Time: September 26, 2018, 8:05 a.m. to 12:15 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: August 22, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18547 Filed 8–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: September 21, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Minki Chatterji, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121D, Bethesda, MD 20892–7501, 301–827–5435, *minki.chatterji@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 22, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18546 Filed 8–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0491]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0060

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0060, Vapor Control Systems for Facilities and Tank Vessels; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before September 27, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0491] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0491], and must be received by September 27, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0060.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 24484, May 29, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Summary: The information is needed to ensure compliance with U.S. regulations for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Need: Section 1225 of 33 U.S.C. and 46 U.S.C. 3703 authorizes the Coast Guard to established regulations to promote the safety of life and property of facilities and vessels. Title 33 CFR part 154 subpart P and 46 CFR part 39 contains the Coast Guard regulations for VCS and certifying entities.

Forms: None.

Respondents: Owners and operators of facilities and tank vessels, and certifying entities.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 9,923 hours to 8,870 hours a year due to a decrease in the number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 22, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–18580 Filed 8–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3398–EM; Docket ID FEMA–2018–0001]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3398–EM), dated July 28, 2018, and related determinations.

DATES: The declaration was issued July 28, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 28, 2018, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of California resulting from a wildfire beginning on July 23, 2018, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, William Roche, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of California have been designated as adversely affected by this declared emergency:

Shasta County for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18562 Filed 8–27–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0020; OMB No. 1660–0030]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Manufactured Housing Operations Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This notice seeks comments concerning the collection of information related to FEMA's temporary housing assistance, which provides temporary housing to eligible survivors of federally declared disasters. This information is required to determine whether a potential site supports the installation of a temporary housing unit, to obtain permission to place the temporary housing unit on the property, to allow ingress and egress to the property where the temporary housing unit is placed, and to document the installation and maintenance of the unit.

DATES: Comments must be submitted on or before September 27, 2018.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Elizabeth McDowell, Supervisory Program Specialist, FEMA, Recovery Directorate, at (540) 686–3630.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on April 4, 2018 at 83 FR 14472 with a 60 day public comment period. FEMA received one comment requesting copies of the Manufactured Housing Operations Forms. Copies of each form was sent to the requester. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Manufactured Housing Operations Forms.

Type of Information Collection: Extension without change of a currently approved information collection.

OMB Number: 1660–0030.

Form Titles and Numbers: FEMA Form 010–0–9, Request for the Site Inspection; FEMA Form 010–0–10, Landowner's Authorization Ingress-Egress Agreement and FEMA Form 010–0–10S, Autorización del Propietario/Acuerdo de Entrada y Salida; FEMA Form 009–0–130, Manufactured Housing Unit Maintenance Work Order; FEMA Form 009–0–136, Manufactured Housing Unit Installation Work Order; FEMA Form 009–0–138, Manufactured Housing Unit Inspection Report.

Abstract: The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the President to provide temporary housing units in the form of manufactured housing, recreational vehicles or other readily fabricated dwellings to eligible applicants who require direct temporary housing as a result of a major disaster. The information collected is necessary to determine the feasibility of the site for placement of temporary housing and to provide FEMA with access to place the temporary housing unit as well as retrieve it at the end of the use.

Affected Public: Individuals or households, Business or other for-profits.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses: 25,000.

Estimated Total Annual Burden Hours: 4,167.50.

Estimated Total Annual Respondent Cost: $193,221.97.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,165,310.

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.

Rachel Frier,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–18561 Filed 8–27–18; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0049]

Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, DHS

ACTION: Committee management; notice of open Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet in-person with the option to join via webinar on Thursday, September 13, 2018. The meeting will be open to the public.

DATES: The HSSTAC meeting will take place Thursday, September 13, 2018 from 9:30 a.m. to 5:30 p.m.

The meeting may close early if the committee has completed its business.

Due to security requirements, pre-registration is required for this event. Please see the ''REGISTRATION'' section below.

ADDRESSES: The in-person meeting will be held at 1120 Vermont Ave. NW, 8th Floor, Washington, DC 20005. To participate via webinar or for additional information on the webinar, please see the REGISTRATION section below.

You may send comments, identified by docket number DHS–2018–0049 by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: hsstac@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–254–6176.
- *Mail:* Michel Kareis, HSSTAC Designated Federal Official, S&T IAO, STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read the background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and enter the docket number into the search function: DHS–2018–0049.

For information on services for individuals with disabilities or to request special assistance at the meeting, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

FOR FURTHER INFORMATION CONTACT: Michel Kareis, HSSTAC Designated Federal Official, Science and Technology Directorate (S&T) Interagency Office (IAO), STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205, 202–254–8778 (Office), 202–254–6176 (Fax), *HSSTAC@hq.dhs.gov* (Email).

SUPPLEMENTARY INFORMATION:

I. Background

Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (Pub. L. 92–463). The committee addresses areas of interest and importance to the Senior Official Performing the Duties of the Under Secretary, such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other Federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

II. Registration

If you plan to attend the meeting in-person, you must RSVP by September 12, 2018. To register for the meeting, email *HSSTAC@hq.dhs.gov* with the following subject line: ''RSVP to HSSTAC Meeting.'' The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

To pre-register for the webinar, please send an email to *HSSTAC@hq.dhs.gov* with the following subject line: ''RSVP to HSSTAC Meeting.'' The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending. You must RSVP by September 12, 2018.

III. Public Comment

At the end of the open session, there will be a thirty minute period for oral statements. The public is limited to 2 minutes per speaker. Please note that the comments period may end before the time indicated, following the last call for oral statements. To register as a speaker, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the ''Agenda'' below. Anyone is permitted to submit comments at any time, including orally at the meeting. However, those who would like their comments reviewed by committee members prior to the meeting must submit them in written form no later than September 10, 2018 per the instructions in the **ADDRESSES** section above.

Agenda: Both of the in-person and webinar sessions will begin at 9:30 with remarks from the Designated Federal Official, Michel Kareis, and the Committee Chair, Dr. Vincent Chan. Next, the Senior Official Performing the Duties of the Under Secretary for Science and Technology, Bill Bryan will provide an overview of his priorities and new developments including updates on the Science and Technology Operating Model Blue Print and a discussion on proposed HSSTAC tasking.

The afternoon session will begin with an emerging technology discussion and subcommittee updates. Information will be provided by the Social Media Working Group for Emergency Services and Disaster Management

Subcommittee (SMWGESDM), Technology Scouting Partnerships Subcommittee, and the Commercialization Subcommittee.

There will be a discussion on new topics for the Social Media Working Group for Emergency Services and Disaster Management Subcommittee including future technology shifts and trends in using social media to support disaster management. The final session of the day will be on updates to the whitepapers from the Quadrennial Homeland Security Review Subcommittee along with discussions on technology trends and innovations that impact S&T and DHS mission space.

At the end of the open session, there will be a thirty minute period for oral statements. The public is limited to 2 minutes per speaker. Please note that the comments period may end before the time indicated, following the last call for oral statements.

Meeting materials and the final meeting agenda will be posted on the following website by September 4, 2018: *https://www.dhs.gov/science-and-technology/hsstac.*

Dated: August 15, 2018.

Michel Kareis,

Designated Federal Official for the HSSTAC.

[FR Doc. 2018–18559 Filed 8–27–18; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0017]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security, Transportation Security Administration.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''DHS/Transportation Security Administration-001 Transportation Security Enforcement Record System System of Records.'' This system of records allows DHS/Transportation Security Administration (TSA) to collect and maintain records related to the TSA's screening of passengers and property, as well as records related to the investigation or enforcement of transportation security laws, regulations, directives, or Federal, State, local, or international law. For example, records relating to an investigation of a security incident that occurred during passenger or property screening would be covered by this system. DHS is updating this system of records notice to cover records relating to the TSA Insider Threat program, modify the category of individuals and category of records, reflect an approved records retention schedule for records covered by this system, and modify two existing routine uses. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. The existing Privacy Act exemptions for this system of records will continue to apply.

This modified system will be included in DHS's inventory of record systems.

DATES: Submit comments on or before September 27, 2018. This modified system will be effective upon publication. New or modified routine uses for this modified system of records will be effective September 27, 2018.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0017 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Philip S. Kaplan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2018–0017. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Peter Pietra, *TSAPrivacy@tsa.dhs.gov,* Privacy Officer, Transportation Security Administration, 701 South 12th Street, Arlington, VA 20598–6036. For privacy questions, please contact: Philip S. Kaplan, *Privacy@hq.dhs.gov,* (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS/TSA proposes to modify and reissue a current DHS system of records notice (SORN) titled, ''DHS/TSA–001 Transportation Security Enforcement Record System System of Records.''

This modification more clearly identifies that this SORN contains records relating to the TSA Insider Threat program. In furtherance of TSA's responsibility for security in all modes of transportation and to ensure the adequacy of security measures at airports and other transportation facilities pursuant to its establishing legislation, the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 49 U.S.C. 114(d) and (f), provides authority for TSA to establish its Insider Threat program in order to deter, detect, and mitigate insider threats to TSA's personnel, operations, information, critical infrastructure, and transportation sectors subject to TSA authorities. For purposes of this TSA system of records, ''insider threats'' are, or present themselves to be, current or former transportation sector workers (including both TSA and private sector personnel) and individuals employed or otherwise engaged in providing services requiring authorized access to transportation facilities, assets, or infrastructure who intend to cause harm to the transportation domain.

This system of records is being modified to: Cover records relating to the TSA's Insider Threat program; include a new category of individuals and category of records; reflect an approved records retention schedules for records covered by this system; and change existing routine uses. The category of individuals covered under this SORN will be modified to reflect that the system may contain information on both current and former owners, operators, and employees in all modes of transportation for which DHS/TSA has security-related duties; and will also cover individuals who have access to Sensitive Security Information (SSI) and are ''covered persons'' under the Sensitive Security Information regulation, 49 CFR part 1520.7. The category of records in this SORN will be modified to include place of birth; Government-issued identification; citizenship; results of any law enforcement, criminal history record, or open source checks; employment information and work history; and security and access clearances and background investigation information. This SORN also reflects that the applicable records retention schedules are approved by the National Archives and Records Administration (NARA). This SORN modifies routine uses ''E'' and ''F'' to be in conformity with Office of Management and Budget Memorandum M–17–12. This SORN

also combines two previous routines uses into one routine use ''K'' regarding the sharing of information relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual or issuance of a credential or clearance. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information sharing mission, information covered by DHS/TSA–001 Transportation Security Enforcement Record System may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, TSA may share information with appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies consistent with any applicable laws, rules, regulations, and information sharing and access agreements or arrangements, and as permitted pursuant to an applicable Privacy Act authorized disclosure, including routine uses set forth in this system of records notice.

As stated above, this modified system of records will rely on an existing rule for exempting TSA from certain provisions of the Privacy Act pursuant to 5 U.S.C. secs. 552a(j)(2), (k)(1), and (k)(2). These exemptions are reflected in the final rule published on August 4, 2006, in 71 FR 44223. This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/TSA–001 Transportation Security Enforcement Record System System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER

Department of Homeland Security (DHS) Transportation Security Administration (TSA)-001 Transportation Security Enforcement Record System System of Records.

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at the TSA Headquarters offices, 601 South 12th Street, Arlington, Virginia, 20598 and at various TSA field offices.

SYSTEM MANAGER(S):

Information Systems Program Manager, *IT_System_owner@tsa.dhs.gov,* Office of Information Technology, TSA Headquarters, TSA–11, 601 South 12th Street, Arlington, VA 20598.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114(d), 44901, 44903, 44916, 46101, and 46301.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain an enforcement and inspections system for all modes of transportation for which TSA has security-related duties and to maintain records related to the investigation or prosecution of violations or potential violations of Federal, State, local, or international criminal law. They may be used, generally, to identify, review, analyze, investigate, and prosecute violations or potential violations of transportation security laws, regulations, and directives or other laws as well as to identify and address potential threats to transportation security. They may also be used to record the details of TSA security-related activity, such as passenger or property screening.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former owners, operators, and employees, including TSA personnel, in all modes of transportation for which DHS/TSA has security-related duties; individuals reported or investigated as insider threat risks (that is, individuals who are, or present themselves to be, current or former transportation sector workers (including both TSA and private sector personnel) and individuals employed or otherwise engaged in providing services requiring authorized access to transportation facilities, assets, or infrastructure who intend to cause harm to the transportation domain); individuals who have access to SSI and are ''covered persons'' under the Sensitive Security Information regulation, 49 CFR part 1520; witnesses and other third parties who provide information; individuals undergoing screening of their person (including identity verification) or property; individuals against whom investigative, administrative, or civil or criminal enforcement action has been initiated for violation of certain TSA regulations or security directives, relevant provisions of 49 U.S.C. 449, or other laws; and individuals who communicate security incidents, potential security incidents, or otherwise suspicious activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the screening of property and the security screening and identity verification of individuals, including identification media and identifying information such as:

- Individual's name;
- Address;
- Date and place of birth;
- Gender;
- Contact information (*e.g.,* email addresses, phone numbers);
- Social Security number;
- Government-issued identification (*e.g.,* Passport information, Driver's License number, Alien Registration number);
- Citizenship;
- Fingerprints or other biometric identifiers;
- Physical description, photographs or video;
- Travel information or boarding passes;
- Results of any law enforcement, criminal history record, intelligence, immigration, public records or open source checks;
- Military status (branch, traveling on orders);
- Employment information and work history;
- Security and access clearances and background investigations information.
- TSA Information technology network activity information; and
- Information from other agencies (*e.g.,* FBI, Financial Crimes Enforcement Network (FinCEN)).

Additionally, information related to the investigation or prosecution of any

alleged violation; place of violation; Enforcement Investigative Reports (EIR); security incident reports, screening reports, suspicious-activity reports, and other incident or investigative reports; statements of alleged violators, witnesses, and other third parties who provide information; proposed penalty; investigators' analyses and work papers; enforcement actions taken; findings; documentation of physical evidence; correspondence of TSA employees and others in enforcement cases; pleadings and other court filings; legal opinions and attorney work papers; and information obtained from various law enforcement or prosecuting authorities relating to the enforcement of laws or regulations.

RECORD SOURCE CATEGORIES:

Records are obtained from the alleged violator, TSA employees or contractors, witnesses to the alleged violation or events surrounding the alleged violation, other third parties who provided information regarding the alleged violation, State and local agencies, and other Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of this system of records; and (2) DHS has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, harm to DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity when DHS determines that information from this system of records is reasonably necessary to assist another Federal recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

H. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

I. To the United States Department of Transportation, its operating administrations, or the appropriate State or local agency, when relevant or necessary to:

1. Ensure safety and security in any mode of transportation;

2. Enforce safety- and security-related regulations and requirements;

3. Assess and distribute intelligence or law enforcement information related to transportation security;

4. Assess and respond to threats to transportation;

5. Oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities;

6. Plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or

7. Issue, maintain, or renew a license, certificate, contract, grant, or other benefit.

J. To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency, regarding individuals who pose, or are suspected of posing, a risk to transportation or national security.

K. To federal, state, local, tribal, territorial, foreign, or international agencies, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance, grant, renewal, suspension, or revocation of a security clearance, license, contract, grant, or other benefit; or to the extent necessary to obtain information relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

L. To international and foreign governmental authorities in accordance with law and formal or informal international agreement.

M. To third parties during the course of an investigation into any matter before DHS/TSA to the extent necessary to obtain information pertinent to the investigation.

N. To airport operators, aircraft operators, and maritime and surface transportation operators, indirect air carriers, and other facility operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, or the issuance of such credentials or clearances.

O. To any agency or instrumentality charged under applicable law with the protection of the public health or safety

under circumstances in which the public health or safety is at risk.

P. With respect to members of the armed forces who may have violated transportation security or safety requirements and laws, to disclose the individual's identifying information and details of their travel on the date of the incident in question to the appropriate branch of the armed forces to the extent necessary to determine whether the individual was performing official duties at the time of the incident. Members of the armed forces include active duty and reserve members, and members of the National Guard. This routine use is intended to permit TSA to determine whether the potential violation must be referred to the appropriate branch of the armed forces for action pursuant to 49 U.S.C. 46301(h).

Q. To the DOJ, U.S. Attorney's Office, or other Federal agencies for further collection action on any delinquent debt when circumstances warrant.

R. To a debt collection agency for the purpose of debt collection.

S. To airport operators, aircraft operators, air carriers, maritime, and surface transportation operators, indirect air carriers, or other facility operators when appropriate to address a threat or potential threat to transportation security or national security, or when required for administrative purposes related to the effective and efficient administration of transportation security laws.

T. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

U. To a court, magistrate, or administrative tribunal when a Federal agency is a party to the litigation or administrative proceeding in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings.

V. To the public, on the TSA website at *www.tsa.gov,* final agency and Administrative Law Judge decisions in criminal enforcement and other administrative matters, except that personal information about individuals will be deleted if release of that information would constitute an unwarranted invasion of privacy, including but not limited to medical information.

W. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

X. To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, license, or treaty, when DHS/TSA determines that the information would assist in the enforcement of a civil or criminal law.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/TSA stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/TSA retrieves records by name, address, Social Security number, administrative action or legal enforcement numbers, or other assigned identifier of the individual on whom the records are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposal varies depending on the type of record. Passenger, baggage, and cargo screening incident reports that are not referred for investigation are maintained for three years from the end of the fiscal year in which they were created, in accordance with NARA authority, N1–560–12–002. Security incident reports are cut off at the end of involvement and destroyed four years after cut-off (N1–560–03–6). Items that are referred for investigation within TSA or to an outside agency are destroyed 25 years after the case is closed (N1–560–03–6). Insider Threat information and inquiry records are destroyed no sooner than five years after an inquiry is opened and 25 years after a case is closed, in accordance with NARA authority DAA–GRS–2017–0006.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/TSA safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. TSA has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/TSA will consider individual requests to determine whether or not information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and the TSA Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under FOIA.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify your identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign his/her request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain

forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

• Explain why he or she believes the Department would have information on him/her;

• Identify which component(s) of the Department the individual believes may have the information about him/her;

• Specify when the individual believes the records would have been created; and

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted portions of this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(3), (e)(4)(G), (H), and (I); and (f). Portions of the system pertaining to investigations or prosecutions of violations of criminal law are exempt under 5 U.S.C. 552a(j)(2). Further, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), has exempted portions of this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (H), and (I); and (f).

HISTORY:

78 FR 73868 (Dec. 9, 2013); 75 FR 28042 (May 19, 2010); 71 FR 44223 (Aug. 4, 2006).

Philip S. Kaplan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2018–18558 Filed 8–27–18; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0184]

Agency information collection Activities; Bureau of Indian Affairs Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 29, 2018.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to Mr. Les Jensen, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240; or by email to *Leslie.Jensen@bia.gov.* Please reference OMB Control Number 1076–0184 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Les Jensen by email at *Leslie.Jensen@bia.gov,* or by telephone: (907) 586–7397.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

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 BIA (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

Abstract: Submission of this information allows BIA to determine applicant eligibility for housing services based upon the criteria referenced in 25 CFR 256.9 (repairs and renovation assistance) and 256.10 (replacement housing assistance). Enrolled members of federally recognized tribes, who live within a tribe's designated and approved service area, submit information on an application form. The information is collected on a BIA Form 6407, ''Housing Assistance Application,'' and includes:

A. *Applicant Information including:* Name, current address, telephone number, date of birth, social security number, tribe, roll number, reservation, marital status, name of spouse, date of birth of spouse, tribe of spouse, and roll number of spouse.

B. *Family Information including:* Name, date of birth, relationship to applicant, and tribe/roll number.

C. *Income Information:* Earned and unearned income.

D. *Housing Information including:* Location of the house to be repaired, constructed, or purchased; description of housing assistance for which applying; knowledge of receipt of prior Housing Improvement Program assistance, amount to whom and when; ownership or rental; availability of electricity and name of electric

company; type of sewer system; water source; number of bathroom facilities.

E. *Land Information including:* Landowner; legal status of land; or type of interest in land.

F. *General Information including:* Prior receipt of services under the Housing Improvement Program and description of such; ownership of other housing and description of such; identification of Housing and Urban Development-funded house and current status of project; identification of other sources of housing assistance for which the applicant has applied and been denied assistance, if applying for a new housing unit or purchase of an existing standard unit; and advisement and description of any severe health problem, handicap or permanent disability.

G. *Applicant Certification including:* Signature of applicant and date, and signature of spouse and date.

Title of Collection: Bureau of Indian Affairs Housing Improvement Program.

OMB Control Number: 1076–0184.

Form Number: BIA–6407.

Type of Review: Extension with change of currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 8,000 per year, on average.

Total Estimated Number of Annual Responses: 8,000 per year, on average.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 8,000 hours.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: $0.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–18615 Filed 8–27–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[PPWOIRADA1;PRCRFRFR6.XZ0000; PR.RIRAD1801.00.1; OMB Control Number 1093–0006]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Natural and Cultural Resources Agencies Customer Relationship Management

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Secretary, Department of the Interior are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before September 27, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Marta Kelly, National Park Service, U.S. Department of the Interior, 1849 C Street NW, MS 2266–MIB, Washington, DC 20240, fax 202–354–1815, or by email to *Marta_Kelly@nps.gov.* Please reference OMB Control Number 1093–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Marta Kelly, National Park Service, U.S. Department of the Interior, 1849 C Street NW, MS 2266–MIB, Washington, DC 20240, fax 202–354–2825, or by email to *Marta_Kelly@nps.gov.* You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We published a **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information on May 11, 2018 (83 FR 22097). We received one public comment in response to this notice. This public comment represented the consolidate feedback for 130 Service and Conservation Crops. Here are specific comments and our responses to the comments:

Comment: Is the collection necessary to the proper functions of the Office of the Secretary, Department of the Interior? While information on our partnerships is important, we believe data around project accomplishments, outcomes, funding, and number of Corpsmembers engaged etc. is already covered through reporting to one of the DOI units, states, regions, or national DOI bureau offices and could be compiled through existing information sources. If this is the level of information envisioned through the Partnerships Module, we encourage DOI to examine internal processes and existing information collection that could be streamlined or revised to provide this data. We hope other Federal land management agencies will adopt this same approach of a unified data collection system by utilizing this new system DOI is developing, and also examine existing internal data sources before requiring new information collection and reporting which may be duplicative.

Answer: This is a valid point and DOI does establish with this collection a single system of record as mandatory. Furthermore, modernization of portal technology will allow for importing, exporting and sharing by internal sources before validation and use by external partners. Additionally, DOI will offer this portal as a shared service to other federal agencies so end user/respondents input will be not duplicative and redundant for same purposes.

Comment: With respect to the Stewards Engagement Portal, we support an electronic and uniform system to collect information to determine eligibility for NCE. Presently, different DOI bureaus have different rules around qualifying for PLC NCE, making it confusing for our Corps and even more so for our Corpsmembers. The ability to upload information once, toward the end of a term of service, would be important to minimize the time burden.

As to the desire to collect from PLC Corpsmembers ''agency work for, partner organization, project dates, where the work was completed, and total hours worked on the specific project,'' it would be useful to have a profile for each partner organization and Corpsmember on the new system that

can be matched and sorted. NCE qualification can be organized that way as well as different Corpsmember contributions to different partner organizations. For example, Corpsmembers may serve with different Corps, on different projects, and with different project partners during their terms of service.

As to Corpsmembers providing ''qualifying factors and training'' when developing a profile, we would urge further clarification and standardization around what those may be, as unclear definitions could hurt recruitment and placement of individuals with the wrong opportunities. In addition, it may be challenging to leave it up to Corpsmembers or the public to determine their qualifying factors, training, and skill sets for certain projects or programs that Corps offer. Our Corps use their own recruiting, training, and screening processes to hire Corpsmembers and meet project partner's goals. Our Corps are liable for meeting the goals of a project agreement and for the safety of Corpsmembers and the public, so we should maintain an ability to screen and train Corpsmembers as necessary.

Answer: DOI youth program managers have met and agreed to standardize the collection for NEC data and opportunities across the bureaus. Additionally, we will provide a template to provide data files for uploading information into the system at the end of service terms. Initially, we will import, and update annually, all partner organization information. We will work with Corps Network to identify best methods to have project information validated and matched to work projects and individuals. We have made a commitment to use the Corps Network for testing imports and process before final launch of on portal.

Comments: (2) Will this information be processed and used in a timely manner?

Collection of information around accomplishments of partner organizations, and hours for NCE, housed electronically in one system will help with timeliness of compilation and utilization of this data. At the same time, if Corps are still required to report to the various DOI units, states, regions, and nationally and report through this new system, it will slow down the process and create an additional burden. Data is only as good as the inputs, so ensuring uniform definitions and categories for collection across DOI, and other federal partners utilizing this system, will be critical and will ease processing and use of data.

Answer: DOI will only have one system of record and all units will be required to use a single system upon deployment of the portal. This system will have a standard data dictionary and common data elements. We will publish a detail user manual for all using the system for ease processing and entering the data.

Comments: (3) Is the estimate of burden accurate?

Given the different features envisioned through the new online portal system it is difficult for us to estimate the hour's burden. If DOI internally utilizes such data, or Corps are able to utilize existing information already provided to various DOI bureaus, the hour's burden would be lower. Additionally, if Corpsmembers are able to enter their information for NCE one time toward the end of their term of service, and Corps themselves had the ability to upload Corpsmember information if necessary, that would be helpful in reducing the burden.

Answer: We will allow Corps with approved accounts or via upload service to enter and update Corpsmember information as necessary. The burden will depend on if members are just opting to enter just information for PLC or want to share their status with other employment programs like an apprenticeship that may require additional data for placement or benefits.

Comments: (4) How might the Office of the Secretary, Department of the Interior enhance the quality, utility, and clarity of the information to be collected?

Again, data is only as good as the inputs, so ensuring uniform definitions and categories for collection across DOI, and other federal partners utilizing this system, will be critical, and will ease processing and use of data. For example, when considering the Partnerships Module in the past, DOI defined ''partner hires'' based on the number of hours a Corpsmember worked through a partner organization for a DOI bureau. In order to ensure accurate data, definitions like this should be developed with input from partners, be uniform across DOI and projects should be tracked for example by partner organization, legal authority, dollar figure, and project type in order for DOI to accurately collect information. It should not be the burden of partner organizations to track the data though as these are DOI accomplishes these projects with DOI funding. A uniform system for tracking and reporting this information across DOI should streamline this information collection, and/or require a re-examination of existing data sources to be uniform across DOI.

On the Stewards Engagement Portal, one challenge with the utilization of PLC NCE is the inability to represent NCE electronically or search for NCE-approved jobs on USA Jobs. Developing the ability for Corpsmembers who qualify for NCE to have a PLC NCE designation on their profile on USA Jobs would be helpful, and adding a search term for job postings, or some kind of PLC NCE signifier or certification would also be helpful. An additional consideration is that the federal project supervisor must certify the hours, and sign off on the certificate for NCE. An electronic system where project sponsors are able to certify the hours, and sign a digital certificate would eliminate paperwork and delays.

Answer: Department of the Interior will establish a user guide with standard definitions so data can be accurate and uniform. While we can standardize the DOI definitions, we are only able to encourage non-DOI partners to consider a common data dictionary at this time. We agree with the Corps Network that recruitment is challenging and by expanding the portal to include all skill and special employment programs we can provide better exposure of opportunities to prospective candidates. We can also link existing employment resources and website to resources page on the portal. We are committed to working closely with Corps Network on recruitment strategies and to explore how to expand the use of veterans.

Comments: (5) How might the Office of the Secretary, Department of the Interior minimize the burden of this collection on the respondents, including using information technology?

Again, we believe that a large amount of data is already available through the annual reporting our Corps provide to individual DOI units, states, regions, or the national office and through internal DOI bureau data sets and project information systems. It may warrant an examination of those existing sources and their reporting mechanisms to see how they can be fed in to this new online portal. After an examination of existing data sources and collection requirements by DOI, if there needs to be a new collection of information, we encourage there to be some thoughtfulness around data compatibility, and for batch upload ability along with an examination of what information is truly necessary to demonstrate the impact and outcomes.

Corps also report outcomes and performance measures to the Corporation for National and Community Service, which administers

the AmeriCorps and National Civilian Community Corps (NCCC) programs. Often, this is duplicative data since the AmeriCorps and NCCC members are working on federal public lands. Having these systems be compatible would minimize the reporting burden and improve efficiency.

Answer: We agree that data exist in many systems so will continue to consolidate and reduce the burden by working closely with Corps Network to identify these data calls and eliminate them where possible or to incorporate the data via import and export features into one system of record.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Office of the Secretary (OS); (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the OS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the OS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information collection under OMB Control number 1093–0006 received approval from OMB on August 04, 2015. This approval will expire on August 31, 2018, and we are now requesting comments as part of the standard renew and update process. Previously, we titled this collection as ''Volunteer Partnership Management.'' We are changing the title with this revision to be ''Natural and Cultural Resource Agencies Customer Relationship Management'' to more accurately reflect the overall purpose of the information collection.

Federal natural and cultural resources management agencies are authorized to manage volunteers, youth programs, and partnerships to recruit, train, and accept the services of citizens to aid in disaster response, interpretive functions, visitor services, conservation measures and development, research and development, recreation, and or other activities as allowed by an agency's policy and regulations. Providing, collecting and exchanging written and electronic information is required from potential and selected program participants of all ages so they can access opportunities and benefits provided by agencies guidelines. Those under the age of 18 years must have written consent from a parent or guardian.

The customer relationship management web based portals are the agencies response to meeting citizens' requests for improved digital customer services to access and apply for engagement opportunities. Secure under one security platform parameter, the portals provide for prospective and current program participants to establish an account for electronic submission of program applications and to obtain status of applications, enrollments, benefits, and requirements. Additionally, citizens have the option of using self-service features to report hours, apply for opportunities, or register for program benefits such as America the Beautiful Pass, Public Land Corps register or Service Learning verification. This collection includes the modernization of electronic process so citizens maintain portal accounts with single program application that can be reused to apply for all interested opportunities verse requiring program participants to electronically complete the application anew for each opportunity they wish to be considered. This specifically minimizes the burden on this collection on the respondents. While electronic records provides a means to streamline data collection and allow citizen access to track benefits and control the sharing of their data, the participating agencies may also provide an accessible paper version of the volunteer forms.

Participating Agencies are:

Department of Agriculture: U.S. Forest Service, and Natural Resources Conservation Service;

Department of the Interior: All DOI offices and units including Office of the Secretary, National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs, Office of Surface Mining Reclamation and Enforcement, and U.S. Geological Survey.

Department of Defense: U.S. Army Corps of Engineers;

Department of Commerce: National Oceanic and Atmospheric Administration—Office of National Marine Sanctuaries.

Forms

OF–301 Volunteer Application: Individuals interested in volunteering may access the individual agency websites, and/or contact agencies to request a Volunteer Application (OF–301) or complete an on-line application submission on *volunteer.gov* on submission. Applicants provide name, address, telephone number, date of birth, preferred work categories, interests, citizenship status, available dates, preferred location, indication of physical limitations, and lodging preferences. Information collected using this form on *Volunteer.gov* assists agency volunteer coordinators and other personnel in matching volunteers with agency opportunities appropriate for an applicant's skills and physical condition and availability. A signature of a parent or guardian is mandatory for applicants under 18 years of age.

OF–301A Volunteer Service Agreement: This form is used by participating resource agencies to document agreements for volunteer services between a Federal agency and individual or group volunteers, including international volunteers. A signature of parent or guardian is mandatory for applicants under 18 years of age. The agreement form will now be available for processing on volunteer.gov for the first time, this on-line this form is generated from the application and position description to minimize impact to respondents. Paper forms and electronic PDF must however be completed for each opportunity.

OF–301B Volunteer Group Sign-up: This form is used by participating resource agencies to document awareness and understanding by individuals in groups about the volunteer activities between a Federal agency and a partner organization with group participants. Signature of parent or guardian is mandatory for applicants under 18 years of age.

Stewards Engagement Portal (this was formally known as the Youth Partnership Tracking Portal): This portal has a self-registration feature that allows program participants from volunteer, youth, and partnerships to register with information that would be used to automate matching stewardship opportunities such as apprenticeships, youth programs, veterans' events, and other special engagement programs. Information required to establish an account is preference for location, name, email, qualifying factors, and training. Once self-registered, the youth and young adult programs participants authorized under the 16 U.S.C. 1722 et. seq., Public Lands Corps (PLC) Act may

be required to report additional details for public land corps status such as the agency work for, partner organization, project dates, where the work was completed, and total hours worked on the specific project. This information is used by the system to match the individuals with most applicable opportunities. The steward engagement portal is under redesign and will incorporate a feedback loop for respondents to rate quality of customer service and opportunities.

The Partnerships Module collects information from various partnership and volunteer organizations which are under national agreements to manage services and programs on public lands for citizens and provides an annual summary of their activities.

The Cooperating Association Module collects information from not-for-profit public lands partners under national agreements to manage bookstores and sales items with federal agencies.

This request for comments on the information collection is being published by the Office of the Secretary, Department of the Interior and includes the use of common forms that can be leveraged by other Federal agencies. The burden estimates reflected in this notice is only for the Department of the Interior. Other Federal agencies wishing to use the common forms must submit their own burden estimates and provide notice to the public accordingly.

Title of Collection: Natural and Cultural Resources Agencies Customer Relationship Management.

OMB Control Number: 1093–0006.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Potential and selected volunteers; youth program participants, veterans, prospective job applicants, cooperating associations, and partner organizations.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Typically once per year but could be as frequently as 26 times per year for time and expense reporting.

Total Estimated Annual Nonhour Burden Cost: There are no non-hour cost burdens associated with this information collection.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (mins)	Estimated annual burden hours
Portal Account Management					
Create Individual or Group Account:					
Individuals	365,000	1	365,000	1	6,083
Volunteer Management Portal					
Submit Application:					
Individuals	783,000	1	783,000	10	130,500
Time Entry:					
Individuals	4,390	5	21,950	1	366
Training and Supporting Information:					
Individuals	6,000	4	24,000	3	1,200
Complete a Volunteer Agreement:					
Individuals	14,000	5	70,000	5	5,833
Registration for Volunteer Event:					
Individuals	10,000	1	10,000	1	167
Customer Service Survey:					
Individuals	1,000	5	5,000	1	83
Subtotals	818,390	.....	913,950	.....	138,149
Stewardship Engagement Module					
Create Application/Profile:					
Private Sector	18,000	1	18,000	1	300
Time Entry:					
Private Sector	7,200	3	21,600	1	360
Manage Partner:					
Private Sector	659	1	659	1	11
Manage Project:					
Private Sector	45,000	2	90,000	1	1,500
Manage Youth Participants:					
Private Sector	3,000	1	3,000	3	150
Customer Service Survey:					
Private Sector	600	5	3,000	1	50
Subtotals	74,459	.....	136,259	.....	2,371
Partnership and Cooperating Association Module					
Annual Updates:					
Private Sector	258	1	258	5	22
Customer Service Survey:					
Private Sector	70	5	350	1	6
Subtotals	328	.....	608	.....	28

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (mins)	Estimated annual burden hours
TOTALS	*1,258,177*	.....	*1,415,817*	.....	*146,631*

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–18554 Filed 8–27–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS61100000 DNINR0000.000000 DX61104]

Exxon Valdez Oil Spill Public Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Meeting notice.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill (EVOS) Trustee Council's Public Advisory Committee.

DATES: September 26, 2018, at 9:30 a.m. AKST.

ADDRESSES: Glenn Olds Hall Conference Room, 4210 University Drive, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Johnson, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The EVOS Public Advisory Committee was created pursuant to Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV.

The EVOS Public Advisory Committee meeting agenda will include discussion of outreach proposals and habitat parcels. An opportunity for public comments will be provided. The final agenda and materials for the meeting will be posted on the EVOS Trustee Council website at *www.evostc.state.ak.us.* All EVOS Public Advisory Committee meetings are open to the public.

Public Input

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Committee to consider during the public meeting. Written statements must be received by August 31, 2018, so that the information may be made available to the Committee for their consideration prior to this meeting. Written statements must be supplied to Dr. Philip Johnson (see **FOR FURTHER INFORMATION CONTACT** above) in the following formats: One hard copy with original signature and/or one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). They will be available for public inspection within 90 days of the meeting.

Philip Johnson,

Regional Environmental Officer, Office of Environmental Policy and Compliance.

[FR Doc. 2018–18537 Filed 8–27–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM006200 L99110000.EK0000 XXX L4053RV; OMB Control Number 1004–0179]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Helium Contracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 27, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; or by email to *jesonnem@blm.gov.* Please reference OMB Control Number 1004–0179 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Samuel R.M. Burton by email at *sburton@blm.gov,* or by telephone at 806–356–1002. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information

collection requirements and provide the requested data in the desired format. A **Federal Register** notice with a 60-day public comment period was published on March 13, 2018 (83 FR 10872). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This control number authorizes the BLM to collect information that enables in-kind sales of helium in accordance with the Helium Stewardship Act (50 U.S.C. 167–167q) and 43 CFR part 3195.

Title of Collection: Helium Contracts.

OMB Control Number: 1004–0179.

Form Numbers: 3195–1, 3195–2, 3195–3, and 3195–4.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Private helium merchants that sell a major helium requirement (*i.e.,* an amount of refined helium greater than 200,000 standard cubic feet of refined gaseous helium or 7,510 liters of liquid helium) to a Federal agency or to private helium purchasers for use in Federal Government contracts.

Total Estimated Number of Annual Respondents: 22.

Total Estimated Number of Annual Responses: 60.

Estimated Completion Time per Response: 4 hours.

Total Estimated Number of Annual Burden Hours: 240.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection:

- Quarterly for the Refined Helium Deliveries Detail;
- Annually for the Calculation of Excess Refining Capacity and Refiners' Annual Tolling Report; and
- On occasion for the Refiners' Tolling Occurrence Report.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2018–18620 Filed 8–27–18; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO600000 L18200000.XP0000–18X; OMB Control Number 1004–0204]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Bureau of Land Management Resource Advisory Council Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 27, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Mark Purdy; or by email to *mpurdy@blm.gov.* Please reference OMB Control Number 1004–0204 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Purdy by email at *mpurdy@blm.gov,* or by telephone at 202–912–7635. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format. A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 11, 2018. No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This control number consists of one information collection activity. In an application form, the BLM seeks to collect information to determine education, training, and experience related to possible service on advisory committees established under the authority of Section 309 of the Federal Land Policy and Management Act (43 U.S.C. 1739), the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 43 CFR subpart 1784. The BLM refers to such advisory committees as Resource Advisory Councils (RACs).

The information that the BLM collects is necessary to ensure that each RAC is structured to provide fair membership balance, as prescribed by each RAC's charter.

Title of Collection: Bureau of Land Management Resource Advisory Council Application.

OMB Control Number: 1004–0204.

Form Number: Form 1120–19.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Persons who apply for positions on Resource Advisory Councils.

Total Estimated Number of Annual Respondents: 200.

Total Estimated Number of Annual Responses: 200.

Estimated Completion Time per Response: 4 Hours.

Total Estimated Number of Annual Burden Hours: 800.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark Purdy,

Management Analyst, Bureau of Land Management.

[FR Doc. 2018–18619 Filed 8–27–18; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–583 and 731–TA–1381 (Final)]

Cast Iron Soil Pipe Fittings From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of cast iron soil pipe fittings, excluding drain bodies, from China, provided for in subheading 7307.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2] The Commission also determines that an industry in the United States is not materially injured or threatened with material injury by reason of imports of drain bodies from China that are sold in the United States at LTFV and subsidized by the government of China.

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective July 13, 2017, following receipt of a petition filed with the Commission and Commerce by the Cast Iron Soil Pipe Institute, Mundelein, Illinois. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of cast iron soil pipe fittings from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)).

Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 19, 2018 (83 FR 12024). The hearing was held in Washington, DC, on June 26, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on August 22, 2018. The views of the Commission are contained in USITC Publication 4812 (August 2018), entitled *Cast Iron Soil Pipe Fittings from China: Investigation Nos. 701–TA–583 and 731–TA–1381 (Final).*

By order of the Commission.

Issued: August 22, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–18563 Filed 8–27–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on cast iron soil pipe fittings from China.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1044]

Certain Graphics Systems, Components Thereof, and Consumer Products Containing the Same; Commission Final Determination Finding a Section 337 Violation; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Denial of Motion To Amend; and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 (''section 337''), as amended, in this investigation. The Commission has issued a limited exclusion order prohibiting the importation of certain graphics systems and televisions containing the same that infringe claim 1–5 and 8 of U.S. Patent No. 7,633,506 (''the '506 patent''). The Commission has also issued cease and desist orders directed to Respondents VIZIO, Inc. (''VIZIO'') and Sigma Designs, Inc. (''SDI''). The Commission has further determined to deny Complainants' motion for leave to amend the complaint and the notice of investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337–TA–1044 on March 22, 2017, based on a complaint filed by Complainants

Advanced Micro Devices, Inc. of Sunnyvale, California and ATI Technologies ULC of Canada (collectively, ''AMD'' or ''Complainants''). *See* 82 FR 14748 (Mar. 22, 2017). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics systems, components thereof, and consumer products containing the same, by reason of infringement of certain claims of the '506 patent; U.S. Patent No. 7,796,133 (''the '133 patent''); U.S. Patent No. 8,760,454 (''the '454 patent''); and U.S. Patent No. 9,582,846 (''the '846 patent''). *Id.* The notice of investigation identified LG Electronics, Inc. of Seoul, Republic of Korea, LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey, and LG Electronics MobileComm U.S.A. Inc. of San Diego, California (collectively, ''LG''), VIZIO of Irvine, California, MediaTek Inc. of Hsinchu City, Taiwan and Media Tek USA Inc. of San Jose, California (collectively, ''MediaTek''), and SDI of Fremont, California, as respondents in this investigation. *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation.

On October 20, 2017, the ALJ issued an initial determination terminating the investigation as to LG based on settlement. *See* Order No. 48 (Oct. 20, 2017), *unreviewed,* Comm'n Notice (Nov. 13, 2017). The remaining respondents in this investigation are VIZIO, MediaTek, and SDI (hereinafter, ''the Remaining Respondents''). The ALJ also terminated the investigation with respect to all asserted claims of the '454 and '846 patents; claims 6, 7, and 9 of the '506 patent; and claims 2, 4–13, and 40 of the '133 patent. *See* Order No. 33 (Aug. 15, 2017), *unreviewed,* Comm'n Notice (Sept. 5, 2017); Order No. 43 (Oct. 5, 2017), *unreviewed,* Comm'n Notice (Oct. 31, 2017); Order No. 49 (Oct. 20, 2017), *unreviewed,* Comm'n Notice (Nov. 13, 2017); Order No. 53 (Oct. 31, 2017), *unreviewed,* Comm'n Notice (Nov. 28, 2017). Claims 1–5 and 8 of the '506 patent and claims 1 and 3 of the '133 patent (hereinafter, ''the asserted claims'') remain pending in this investigation.

On April 13, 2018, the ALJ issued her final Initial Determination (''FID'') and Recommended Determination on Remedy and Bond (''RD'') finding a violation of section 337 with respect to the '506 patent but not the '133 patent. Specifically, the FID finds that: (1) Certain accused products infringe the asserted claims of the '506 patent but not the '133 patent; (2) the asserted claims are not invalid; and (3) Complainants satisfy the economic and technical prongs of the domestic industry requirement with respect to both asserted patents. In addition, the ALJ recommended that the Commission issue: (1) A Limited Exclusion Order against the infringing accused products; and (2) Cease and Desist Orders against Respondents VIZIO and SDI. The ALJ further recommended against setting a bond during Presidential review.

On June 14, 2018, the Commission issued a Notice determining to review the FID in part. *See* 83 FR 28660–62 (June 20, 2018). The Commission sought written submissions in response to certain questions relating to the claim construction of the terms ''unified shader'' (recited in the '506 and '133 patent claims), ''packet'' (recited in the '133 patent claims), and ''ALU/memory pair'' (recited in the '133 patent claims). *See id.* The Commission also solicited written submissions on the issues of remedy, the public interest, and bonding. *See id.* On June 28, 2018, the parties filed written submissions in response to the June 14, 2018 Notice, and on July 6, 2018, the parties filed responses to each other's submissions.

On June 26, 2018, Complainants filed a motion for leave to amend the complaint and notice of investigation to add V-Silicon Inc. and V-Silicon International, Inc. as respondents in this investigation (*Motion*). On July 5 and 6, 2018, OUII and Respondents, respectively, filed responses to Complainants' motion to amend. As explained in the Commission's Opinion issued concurrently herewith, the Commission has determined to deny Complainants' *Motion.*

In addition, having examined the record of this investigation, including the FID, the RD, and the parties' submissions, the Commission has determined to affirm the FID's ultimate conclusions of a section 337 violation with respect to the '506 patent and no section 337 violation with respect to the '133 patent. In addition, the Commission has determined to modify the FID in part with respect to: (1) The importation requirement as to Respondents MediaTek and SDI; and (2) the claim construction of the terms ''unified shader,'' ''packet,'' and ''ALU/memory pair'' as well as certain related FID findings on infringement, validity, and the technical prong of the domestic industry requirement. All findings in the FID that are not inconsistent with the Commission's determination are affirmed.

Accordingly, the Commission finds that there is a violation of section 337 with respect to the '506 patent. The Commission has determined that the appropriate remedy is a limited exclusion order against Respondents' infringing products, and cease and desist orders against Respondents VIZIO and SDI. The Commission has also determined that the public interest factors enumerated in subsections 337(d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude the issuance of the limited exclusion order and cease and desist orders. The Commission has further determined to set a bond at zero (0) percent of entered value during the Presidential review period (19 U.S.C. 1337(j)).

The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 22, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–18569 Filed 8–27–18; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 27, September 3, 10, 17, 24, October 1, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 27, 2018

There are no meetings scheduled for the week of August 27, 2018.

Week of September 3, 2018—Tentative

There are no meetings scheduled for the week of September 3, 2018.

Week of September 10, 2018—Tentative

Monday, September 10, 2018

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9).

Week of September 17, 2018—Tentative

There are no meetings scheduled for the week of September 17, 2018.

Week of September 24, 2018—Tentative

Thursday, September 27, 2018

10:00 a.m. Strategic Programmatic Overview of the Operating Reactors Business Line (Public), (Contact: Trent Wertz: 01–415–1568).

This meeting will be webcast live at the web address—*http://www.nrc.gov/*.

Week of October 1, 2018—Tentative

There are no meetings scheduled for the week of October 1, 2018.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: August 23, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–18660 Filed 8–24–18; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0181]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined; Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from July 31, 2018, to August 13, 2018. The last biweekly notice was published on August 14, 2018.

DATES: Comments must be filed by September 27, 2018. A request for a hearing must be filed by October 29, 2018.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0181. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, 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: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384; email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0181, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0181.
- *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 ''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.

B. Submitting Comments

Please include Docket ID NRC–2018–0181, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information

before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), 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. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 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 period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes 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.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *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 no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-

recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *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 (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *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 website 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 these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 31, 2018. A publicly-available version is in ADAMS under Accession No. ML18159A035.

Description of amendment request: The amendments would modify Technical Specification 3.1.7, ''Rod Position Indication,'' to add a new Condition for more than one inoperable digital rod position indication (DRPI) per rod group, and revise the Action Note and to clarify the wording of current Required Actions A.1 and B.1. This change is consistent with NRC-approved Technical Specification Task Force (TSTF) Traveler TSTF–234–A, ''Add Action for More Than One [D]RPI Inoperable,'' Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment provides a Condition and Required Actions for more than one inoperable digital rod position indications (DRPI) per rod group. The DRPIs are not an initiator of any accident previously evaluated. The DRPIs are one indication used by operators to verify control rod insertion following an accident; however other indications are available. Therefore, allowing a finite period of time to correct more than one inoperable DRPI prior to requiring a plant shutdown will not result in an increase in the consequences of any accident previously evaluated. The proposed amendment does not involve an increase in the probability or consequences of any 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 amendment does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed amendment does 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 the margin of safety?

Response: No.

The proposed amendment provides time to correct the condition of more than one DRPI inoperable in a rod group. Compensatory measures are required to verify that the rods monitored by the inoperable DRPIs are not moved to ensure that there is no effect on core reactivity. Requiring a plant shutdown with inoperable rod position indications introduces plant risk and should not be initiated unless the rod position indication cannot be repaired in a reasonable period. As a result, the safety benefit provided by the proposed Condition offsets the small decrease in safety resulting from continued operation with more than one inoperable DRPI. Therefore, the proposed amendment does not involve a 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC, 550 South Tryon Street, M/C DEC45A, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: May 17, 2018. A publicly-available version is in ADAMS under Accession No. ML18144A788.

Description of amendment request: The amendments would revise Technical Specification (TS) 3.8.1, ''AC [Alternating Current] Sources—Operating,'' by adding a surveillance requirement that verifies the ability of the Keowee Hydroelectric Unit auxiliary power system to automatically transfer from its normal auxiliary power source to its alternate auxiliary power source.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed TS change, which adds a Surveillance Requirement to TS 3.8.1 to test the automatic Keowee auxiliary power transfer circuitry, will allow ONS [Oconee Nuclear Station] to credit an existing design feature to facilitate mitigation of a postulated single failure. The proposed change does not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The proposed change is needed to eliminate a previously unrecognized single failure concern that resulted in a non-conservative TS. The proposed change does not affect the safety analyses thus dose consequences will remain within analyzed and acceptable limits. The probability of any design basis accident (DBA) is not increased by this change, nor are the consequences of any DBA increased by this change. The proposed change does not involve changes to any structures, systems, or components (SSCs) that can alter the probability for initiating a DBA event.

Therefore, the proposed TS change does not significantly increase 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?

No. The proposed new Surveillance Requirement to test the automatic Keowee auxiliary power transfer circuitry will allow ONS to credit an existing design feature to facilitate mitigation of a postulated single failure. The proposed change does not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. The automatic Keowee auxiliary power transfer circuitry is currently installed and in use but not credited for accident mitigation. No new failure modes are identified, nor are any SSCs required to be operated outside the design bases. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed new Surveillance Requirement to test the automatic Keowee auxiliary power transfer circuitry will allow ONS to credit an existing design feature to facilitate mitigation of a postulated single failure. The proposed change does not involve: (1) A physical alteration of the Oconee Units; (2) the installation of new or different equipment; (3) a change to any set points for parameters which initiate protective or mitigation action; or (4) any impact on the fission product barriers or safety limits. As long as the equipment continues to perform as expected and within the guidelines captured in the safety analyses, the change does not involve a significant reduction in the 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC, 550 South Tryon Street, M/C DEC45A, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Florida Power & Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 2, 2018. A publicly-available version is in ADAMS under Accession No. ML18218A075.

Description of amendment request: The amendments would revise the Technical Specifications (TS) by deleting Figure 5.1–1, ''Site Area Map,'' removing references in the TS to Figure 5.1–1, and adding a site description.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not modify any plant equipment or affect plant operation. The proposed change neither impacts any structures, systems, or components (SSCs), nor alters any plant processes or procedures. The proposed change is administrative in nature and cannot adversely impact safety.

Therefore, the proposed changes do 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 change has no impact on the design, function or operation of the plants. The proposed change is administrative in nature, and thereby cannot introduce new failure modes or unanticipated outcomes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. The proposed change is administrative in nature, and thereby cannot affect any safety analysis assumptions, safety limits or limiting safety system settings.

Therefore, the proposed change 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Debbie Hendell, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd. MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Booma Venkataraman.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: June 11, 2018. A publicly-available version is in ADAMS under Accession No. ML18164A033.

Description of amendment request: The proposed change would allow for deviation from National Fire Protection Association (NFPA) 805 requirements, to allow for the use of flexible metallic conduit in configurations other than to connect components, and also in lengths greater than short lengths.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The use of flexible metallic conduit to be used other than to connect components or to be used in greater than short lengths does not impact fire prevention. Flexible metallic conduit has been in use since original plant construction, is allowed by the National Electrical Code and is not expected to increase the potential for a fire to start.

The introduction of flexible metallic conduit does not create ignition sources and does not impact fire prevention. Cable installation procedures are utilized to ensure that the use of flexible metallic conduit is in accordance with the CNP design change process. Also, the use of flexible metallic conduit does not result in compromising automatic fire suppression functions, manual fire suppression functions, fire protection for systems and structures, or post-fire safe shutdown capability.

Therefore, the proposed changes do 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 do allow future physical changes to the facility that deviate from NFPA 805 requirements. However, the proposed changes do not alter any assumptions made in the safety analyses, nor do they involve any changes to plant procedures for ensuring that the plant is operated within analyzed limits. As such, no new failure modes or mechanisms that could cause a new or different kind of accident from any previously evaluated are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits or limiting safety system settings are determined. No changes to instrument/system actuation setpoints are involved. The safety analysis acceptance criteria are not affected by this change and the proposed changes will not permit plant operation in a configuration outside the design basis.

Therefore, the proposed changes do 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David J. Wrona.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 11, 2018. A publicly-available version is in ADAMS under Accession No. ML18169A147.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' by relocating the current stored diesel fuel oil and lube oil numerical volume requirements from the TSs to the TS Bases. The proposed changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–501, Revision 1, ''Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control.'' The amendment would also revise TS 3.8.1, ''AC [Alternating Current] Sources—Operating,'' by relocating the specific

diesel fuel oil day tank numerical volume requirement to the TS Bases and replacing it with the day tank time requirement. The availability of this TS improvement was announced in the **Federal Register** on May 26, 2010 (75 FR 29588), as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change removes the volume of diesel fuel oil and lube oil required to support 7-day operation of an onsite diesel generator, and the volume equivalent to a 6-day supply, to licensee control. The specific volume of fuel oil equivalent to a 7 and 6-day supply is calculated using the Nuclear Regulatory Commission (NRC) approved methodology described in Regulatory Guide 1.137, Revision 1, ''Fuel-Oil Systems for Standby Diesel Generators'' and ANSI [American National Standards Institute] N195 1976, ''Fuel Oil [S]ystems for Standby Diesel-Generators.'' The specific volume of lube oil equivalent to a 7-day and 6-day supply is based on a conservative consumption value of 3 gallons/hour for the run time of the diesel generator. Because the requirement to maintain a 7-day supply of diesel fuel oil and lube oil is not changed and is consistent with the assumptions in the accident analyses, and the actions taken when the volume of fuel oil and lube oil are less than a 6-day supply have not changed, neither the probability nor the consequences of any accident previously evaluated will be affected.

The proposed change also relocates the volume of diesel fuel oil required to support 3.9 hours of diesel generator operation at full load in the day tank. The specific volume and time is not changed and is consistent with the existing plant design basis to support the emergency diesel generator under accident loading conditions.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis but ensures that the diesel generator operates as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change relocates the volume of diesel fuel oil and lube oil required to support 7-day operation of an onsite diesel generator, the volume equivalent to a 6-day supply, and 3.9 hour day tank supply to licensee control. As the bases for the existing limits on diesel fuel oil, and lube oil are not changed, no change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change.

Therefore, the proposed change 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Robert J. Pascarelli.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: July 3, 2018. A publicly-available version is in ADAMS under Accession No. ML18187A400.

Description of amendment request: The proposed amendment would modify the MNGP technical specifications to adopt Technical Specification Task Force (TSTF) Traveler TSTF–551, Revision 3, ''Revise Secondary Containment Surveillance Requirements.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change addresses conditions during which the secondary containment SRs [surveillance requirements] are not met. The secondary containment is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not increased. The consequences of an accident previously evaluated while utilizing the proposed changes are no different than the consequences of an accident while utilizing the existing four hour Completion Time for an inoperable secondary containment. In addition, the proposed Note for SR 3.6.4.1.1 provides an alternative means to ensure the secondary containment safety function is met. As a result, the consequences of an accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not alter the protection system design, create new failure modes, or change any modes of operation. The proposed change does not involve a physical alteration of the plant and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change addresses conditions during which the secondary containment SR is not met. Conditions in which the secondary containment vacuum is less than the required vacuum are acceptable provided the conditions do not affect the ability of the SGT [Standby Gas Treatment] System to establish the required secondary containment vacuum under post-accident conditions within the time assumed in the accident analysis. This condition is incorporated in the proposed change by requiring an analysis of actual environmental and secondary containment pressure conditions to confirm the capability of the SGT System is maintained within the assumptions of the accident analysis. Therefore, the safety function of the secondary containment is not affected. The allowance for both an inner and outer secondary containment door to be open simultaneously for entry and exit does not affect the safety function of the secondary containment as the doors are promptly closed after entry or exit, thereby restoring the secondary containment boundary.

Therefore, the proposed change 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: David J. Wrona.

PSEG Nuclear LLC, and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 29, 2018. A publicly-available version is in ADAMS under Accession No. ML18180A291.

Description of amendment request: The amendments would revise Technical Specification (TS) ¾.3.1, ''Reactor Trip System Instrumentation''; TS ¾.3.2, ''Engineered Safety Feature Actuation System Instrumentation''; TS ¾.7.1.5, ''Main Steam Isolation Valves''; and add a new TS for feedwater isolation to better align the TS with the design basis analyses and the design of the instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the TS will not alter the way any structure, system, or component (SSC) functions, and will not alter the manner in which the plant is operated. The proposed changes do not alter the design of any SSC. Therefore the probability of an accident previously evaluated is not significantly increased.

The proposed changes more accurately align the TS with the design bases accident analysis for the main steam line break, feedwater line break and feedwater malfunction. Therefore, the consequences of an accident previously evaluated are not increased.

Therefore, these proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant or changes in the methods governing normal plant operation. The proposed changes do not impose any new or different requirement or introduce a new accident initiator, accident precursor, or malfunction mechanism.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do[es] the proposed [change] involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the TS impose requirements that are consistent with assumptions in the safety analyses. The proposed changes will not result in changes to system design or setpoints that are intended to ensure timely identification of plant conditions that could be precursors to accidents or potential degradation of accident mitigation systems.

The proposed amendment will not result in a design basis or safety limit being exceeded or altered. Therefore, since the proposed changes do not impact the response of the plant to a design basis accident, the proposed changes do 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Ryan K. Lighty, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004–2541

NRC Branch Chief: James G. Danna.

PSEG Nuclear LLC, and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of amendment request: June 29, 2018. A publicly-available version is in ADAMS under Accession No. ML18183A025.

Description of amendment request: The amendments would delete duplicative Technical Specification (TS) requirements to the refueling water storage tank (RWST) in TS 3.1.2.6, ''Borated Water Sources—Operating,'' and would revise TS 3.5.5, ''Refueling Water Storage Tank,'' to ensure compliance with assumptions used in the design basis accident and containment response analyses and to make Salem TS requirements for the RWST consistent with NUREG–1431, Revision 4, ''Standard Technical Specifications—Westinghouse Plants.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not adversely affect accident initiators or precursors or alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed change is consistent with and continues to support the safety analysis assumptions and resultant consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter or involve any design basis accident initiators. The changes to the Technical Specifications regarding RWST operational limits are primarily administrative in nature and do not affect the design or operation of the plant. Increasing the allowable out of service time (AOT) for the RWST does not cause any plant systems to become initiators of a new or different type of accident. Systems and equipment will be operated in the same configuration and manner that is currently allowed and for which the systems were designed.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the permanent plant design, including instrument set points, nor does it change the assumptions contained in the safety analyses.

The RWST continues to meet the design requirements relative to core and containment cooling and reactivity control; there is no reduction in capability or change in design configuration. Increasing the RWST AOT for reasons directly related to boron concentration or temperature does not affect any accident analysis assumptions, initial conditions, or results. Adding an upper temperature limit to the LCO [limiting condition for operation] for TS 3.5.5 ensures the RWST remains within temperature ranges assumed in the plant's safety analyses. Removing the upper limit on RWST volume does not alter the RWST design and the limit is not used as an input or assumption in any plant safety analysis. The proposed changes do not alter a design basis or safety limit.

Therefore, it is concluded that the proposed changes do 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

amendment request involves no significant hazards consideration.

Attorney for licensee: Ryan K. Lighty, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004–2541.

NRC Branch Chief: James G. Danna.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 16, 2018. A publicly-available version is in ADAMS under Accession No. ML18075A365.

Description of amendment request: The amendments would adopt 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.'' The provisions of 50.69 allow improved focus on equipment that has safety significance, resulting in improved plant safety.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of structures, systems, and components (SSCs) subject to Nuclear Regulatory Commission (NRC) special treatment requirements and to implement alternative treatments per the regulations. The process used to evaluate SSCs for changes to NRC special treatment requirements and the use of alternative requirements ensures the ability of the SSCs to perform their design function. The potential change to special treatment requirements does not change the design and operation of the SSCs. As a result, the proposed change does not significantly affect any initiators to accidents previously evaluated or the ability to mitigate any accidents previously evaluated. The consequences of the accidents previously evaluated are not affected because the mitigation functions performed by the SSCs assumed in the safety analysis are not being modified. The SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition following an accident will continue to perform their design functions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not change the functional requirements, configuration, or method of operation of any SSC. Under the proposed change, no additional plant equipment will be installed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not affect any safety limits or operating parameters used to establish the safety margin. The safety margins included in analyses of accidents are not affected by the proposed change. The regulation requires that there be no significant effect on plant risk due to any change to the special treatment requirements for SSCs and that the SSCs continue to be capable of performing their design basis functions, as well as to perform any beyond design basis functions consistent with the categorization process and results.

Therefore, the proposed change 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 amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Acting Branch Chief: Booma Venkataraman.

III. Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as a separate individual notice. The notice content was the same as above. It was published as an individual notice either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. It is repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: July 8, 2018. A publicly-available version is in ADAMS under Accession No. ML18189A001.

Brief description of amendment request: The proposed amendment would modify the Watts Bar Nuclear Plant, Unit 1, Technical Specifications to extend Surveillance Requirements 3.3.1.5, 3.3.2.2, and 3.3.6.2.

Date of publication of individual notice in ***Federal Register****:* July 16, 2018 (83 FR 32912).

Expiration date of individual notice: August 15, 2018 (public comments); September 14, 2018 (hearing requests).

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of 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 combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, 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. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: September 8, 2017, as supplemented by letter dated March 28, 2018.

Brief description of amendment: The amendment revised the RBS technical specifications (TSs) by adding a new TS 3.7.7, ''Control Building Air Conditioning (CBAC) System.'' This new TS specifically addresses the air conditioning function for switchgear and other electrical equipment located in the RBS control building. A TS Surveillance Requirement 3.7.7.1 was added to verify that each CBAC subsystem has the capability to remove the assumed heat load. The amendment also corrected the RBS operating license Antitrust Conditions, Appendix C, due to an administrative error.

Date of issuance: July 31, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 192. A publicly-available version is in ADAMS under Accession No. ML18177A387; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* January 30, 2018 (83 FR 4291). The supplement dated March 28, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 2018.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station (VY), Windham County, Vermont

Date of amendment request: March 29, 2017, as supplemented by letters dated June 28 and September 14, 2017, and January 18, 2018.

Brief description of amendments: The amendment replaces the VY Physical Security Plan with an Independent Spent Fuel Storage Installation (ISFSI) Only Security Plan. The NRC staff determined that the proposed VY ISFSI-Only Security Plan continues to meet the standards in 10 CFR 72.212, ''Conditions of general license issued under § 72.210,'' paragraph (b)(9). As such, the VY ISFSI-Only Security Plan provides reasonable assurance that adequate protective measures can and will be taken in the event of a design basis threat of radiological sabotage related to the spent fuel. These changes more fully reflect the status of the facility, as well as the reduced scope of potential physical security challenges at the site once all spent fuel has been moved to dry cask storage within the onsite ISFSI, an activity which is currently scheduled for completion in 2018.

Date of issuance: July 25, 2018.

Effective date: As of its date of issuance and shall be implemented within 90 days following VY's submittal of a written certification to the NRC that all spent nuclear fuel assemblies have been transferred out of the spent fuel pool and placed in storage within the onsite ISFSI.

Amendment No.: 269: A publicly-available version is in ADAMS under Accession No. ML18165A423; the Safety Evaluation enclosed with the amendment includes safeguards information that is withheld from public disclosure.

Renewed Facility Operating License No. DPR–28: The amendment revised the Renewed Facility Operating License.

Date of initial notice in ***Federal Register:*** September 26, 2017 (82 FR 44847).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 2018.

No significant hazards consideration comments received: No

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 28, 2017, as supplemented by letters dated August 14, 2017, and January 19, April 23, and July 27, 2018.

Brief description of amendments: The amendments added a new license condition to the Renewed Facility Operating Licenses to allow the implementation of risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors in accordance with 10 CFR 50.69.

Date of issuance: July 31, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 230 (Unit 1) and 193 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18165A162; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register****:* September 26, 2017 (82 FR 44854). The supplemental letters dated letters dated August 14, 2017, and January 19, April 23, and July 27, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station (Braidwood), Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station (Byron), Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant (Calvert Cliffs), Unit Nos. 1 and 2, Calvert County, Maryland

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (Clinton), Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (Dresden), Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (FitzPatrick), Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LaSalle), Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (Limerick), Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station (Nine Mile), Units 1 and 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (Peach Bottom), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station (Quad Cities), Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant (Ginna), Wayne County, New York

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station (TMI), Unit 1, Dauphin County, Pennsylvania

Date of amendment request: March 1, 2018.

Brief description of amendments: The amendments revised the technical specifications for each facility to relocate the staff qualification requirements to the Exelon Generation Company, LLC quality assurance topical report.

Date of issuance: August 2, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 197/197 (Braidwood Units 1 and 2); 203/203 (Byron Units 1 and 2); 325/303 (Calvert Cliffs Units 1 and 2); 219 (Clinton); 258/251 Dresden Units 2 and 3); 320 (FitzPatrick); 229/215 (LaSalle, Units 1 and 2); 231/194 (Limerick Units 1 and 2); 231/172 (Nine Mile Units 1 and 2); 319/322 (Peach Bottom Units 2 and 3); 270/265 (Quad Cities Units 1 and 2); 129 (Ginna); and 294 (TMI). A publicly-available version is in ADAMS under Accession No. ML18206A282.

Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, DPR–53, DPR–69, NPF–62, DPR–19, DPR–25, DPR–59, NPF–11, NPF–18, NPF–39, NPF–85, DPR–63, NPF–69, DPR–44, DPR–56, DPR–29, DPR–30, DPR–18, and DPR–50: Amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* April 24, 2018 (83 FR 17862).

The Commission's related evaluation of the amendments is contained in a safety evaluations dated August 2, 2018.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 7, 2017, as supplemented by letter dated January 31, 2018.

Brief description of amendment: The amendment replaced the existing technical specification (TS) requirements related to ''operations with a potential for draining the reactor vessel'' (OPDRVs) with new requirements on reactor pressure vessel (RPV) water inventory control to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires RPV water level to be greater than the top of active irradiated fuel. The changes are based on NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control.''

Date of issuance: August 1, 2018.

Effective date: As of the date of issuance and shall be implemented prior to the fall 2018 refueling outage (RE30).

Amendment No.: 260. A publicly-available version is in ADAMS under Accession No. ML18186A549; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–46: Amendment revised the Renewed Facility Operating License and TS.

Date of initial notice in ***Federal Register****:* October 24, 2017 (82 FR 49238). The supplemental letter dated January 31, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 2018.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: July 28, 2017.

Brief description of amendment: The amendment revised the Technical Specifications (TS) such that a direct current (DC) electrical train is operable with one 100 percent capacity battery aligned to both DC buses in the associated electrical train.

Date of issuance: August 7, 2018.

Effective date: As of its date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 157. A publicly-available version is in ADAMS under Accession No. ML18199A609; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–86: Amendment revised the Facility Operating License and TS.

Date of initial notice in ***Federal Register****:* October 10, 2017 (82 FR 47038).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 2018.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: June 22, 2017, as supplemented by letters dated February 6, February 21, April 26, and August 6, 2018.

Brief description of amendments: The amendments incorporate the use of the peer-reviewed plant-specific seismic probabilistic risk assessment into the previously approved 10 CFR 50.69 categorization process.

Date of issuance: August 10, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1—196; Unit 2—179. A publicly-available version is in ADAMS under Accession No. ML18180A062; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register****:* August 29, 2017 (82 FR 41072). The supplemental letters dated February 6, February 21, April 26, and August 6, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 2018.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: September 29, 2017, as supplemented by letter dated March 14, 2018.

Brief description of amendments: The amendments revised the SQN Emergency Plan to change staff composition and to extend staff augmentation times for Emergency Response Organization functions.

Date of issuance: August 6, 2018.

Effective date: As of its date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: 342—Unit 1 and 335—Unit 2. A publicly-available version is in ADAMS under Accession No. ML18159A461; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–77 and DPR–79. Amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register****:* February 27, 2018 (83 FR 8520). The supplemental letter dated March 14, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 2018.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 16th day of August 2018.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–18028 Filed 8–27–18; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Survey of Multiemployer Pension Plan Withdrawal Liability Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that OMB approve, under the Paperwork Reduction Act, a survey of terminated and insolvent multiemployer pension plans to obtain withdrawal liability information. PBGC needs the withdrawal liability information to estimate its multiemployer program liabilities for purposes of its financial statements. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by September 27, 2018.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulations/information-collections-under-omb-review.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel, 1200 K Street NW, Washington, DC 20005–4026, faxing a request to 202–326–4042, or calling 202–326–4040 during normal business hours (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040). The Disclosure Division will email, fax, or mail the information to you, as you request.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–326–4400, extension 3839. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, extension 3839.)

SUPPLEMENTARY INFORMATION: When a contributing employer withdraws from an underfunded multiemployer pension plan, the plan sponsor assesses withdrawal liability against the employer. The plan sponsor is required to determine and collect withdrawal liability in accordance with section 4219 of the Employee Retirement Income Security Act of 1974 (ERISA). The plan sponsor assesses withdrawal liability by issuing a notice to an employer, including the amount of the employer's liability and a schedule of payments. PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) requires the plan sponsor to file with PBGC a certification that notices have been provided to employers.

PBGC is proposing to collect information about withdrawal liability that is owed by withdrawn employers of terminated [1] and insolvent [2] multiemployer pension plans. PBGC would distribute a survey that insolvent plans receiving financial assistance and terminated plans not yet receiving financial assistance would be required to complete and return to PBGC. Smaller plans with less than 500 participants would not be required to complete the survey. PBGC needs the information from the survey about withdrawal liability payments and settlements, and whether employers have withdrawn from the plan but have not yet been assessed withdrawal liability, to estimate with more precision PBGC's multiemployer program liabilities for purposes of its financial statements.[3] PBGC would also use the information for its Multiemployer Pension Insurance Modelling System assumptions on

[1] Under section 4041A(f)(2) of ERISA, PBGC may prescribe reporting requirements for terminated multiemployer pension plans, which PBGC considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the corporation.

[2] Under section 4261(b)(1) of ERISA, PBGC provides financial assistance under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

[3] Section 4008 of ERISA requires the corporation, as soon as practicable after the close of each fiscal year, to transmit a report to the President and the Congress, including financial statements setting forth the finances of the corporation at the end of the fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year.

collection of withdrawal liability. Information provided to PBGC would be confidential to the extent provided in the Freedom of Information Act and the Privacy Act.

On June 21, 2018, PBGC published (at 83 FR 28871) a notice of its intent to request OMB approval of the survey of multiemployer pension plan withdrawal liability information described above. No comments were received on the proposed submission of information collection.

PBGC is requesting that OMB approve PBGC's use of this survey for three years. 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 survey initially would be sent to approximately 65 plans.[4] PBGC estimates that each survey would require approximately 20 hours to complete by a combination of pension fund office staff (50%) and outside professionals (attorneys and actuaries) (50%). PBGC estimates a total hour burden of 650 hours (based on pension fund office time). The estimated dollar equivalent of this hour burden, based on an assumed hourly rate of $75 for administrative, clerical, and supervisory time is $48,750. PBGC estimates a total cost burden for the withdrawal liability survey of $260,000 (based on 650 attorney and actuary hours assuming an average hourly rate of $400). PBGC further estimates that the average burden will be 10 hours of pension fund office staff time and $4,000 per plan. After the survey is sent initially, PBGC expects to send the survey to fewer than 10 newly terminated and insolvent plans per year.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–18593 Filed 8–27–18; 8:45 am]

BILLING CODE 7709–02–P

[4] As of September 30, 2017, there were 68 terminated plans not yet receiving financial assistance and 72 insolvent plans that received financial assistance from PBGC. *See* PBGC FY 2017 Annual Report, page 94 at *https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2017.pdf.* Approximately 65 of the plans have 500 or more participants.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83912; File No. SR–NYSEArca–2018–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E

August 22, 2018.

I. Introduction

On January 4, 2018, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares (''Shares'') of the following exchange-traded products under NYSE Arca Rule 8.200–E, Commentary .02: Direxion Daily Bitcoin Bear 1X Shares (''1X Bear Fund''), Direxion Daily Bitcoin 1.25X Bull Shares (''1.25X Bull Fund''), Direxion Daily Bitcoin 1.5X Bull Shares (''1.5X Bull Fund''), Direxion Daily Bitcoin 2X Bull Shares (''2X Bull Fund''), and Direxion Daily Bitcoin 2X Bear Shares (''2X Bear Fund'') (each a ''Fund'' and, collectively, the ''Funds''). The proposed rule change was published for comment in the **Federal Register** on January 24, 2018.[3] The comment period for the Notice of Proposed Rule Change closed on February 14, 2018.

On March 1, 2018, pursuant to Section 19(b)(2) of the Exchange 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 approve or disapprove the proposed rule change.[5] On April 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.[7] The comment period and rebuttal comment period for the Order Instituting Proceedings closed on May 18, 2018, and June 1, 2018, respectively. Finally, on July 18, 2018, the Commission extended the period for consideration of the proposed rule change to September 21, 2018.[8] As of August 21, 2018, the Commission had received six comments on the proposed rule change.[9]

This order disapproves the proposed rule change. Although the Commission is disapproving this proposed rule change, the Commission emphasizes that its disapproval does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, the Exchange has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of the Exchange Act Section 6(b)(5), in particular the requirement that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[10] Among other things, the Exchange has offered no record evidence to demonstrate that bitcoin futures markets are ''markets of significant size.'' That failure is critical because, as explained below, the Exchange has failed to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, and therefore surveillance-sharing with a regulated market of significant size related to bitcoin is necessary to satisfy the statutory requirement that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[11]

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.200–E, Commentary .02, which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82532 (Jan 18, 2018), 83 FR 3380 (Jan. 24, 2018) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82795 (Mar. 1, 2018), 83 FR 9768 (Mar. 7, 2018).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 83094 (Apr. 23, 2018), 83 FR 18603 (Apr. 27, 2018) (''Order Instituting Proceedings'').

[8] *See* Securities Exchange Act Release No. 83661 (July 18, 2018), 83 FR 35040 (July 24, 2018).

[9] *See* Letters from Steven Williams (May 17, 2018) (''Williams Letter''); Sharon Brown-Hruska, Managing Director, and Trevor Wagener, Consultant, NERA Economic Consulting (May 18, 2018) (''NERA Letter''); John Galt (July 24, 2018) (''Galt Letter''); David (July 30, 2018) (''David Letter''); Sami Santos (Aug. 7, 2018) (''Santos Letter''); and Sam M. Ahn (Aug. 21, 2018) (''Ahn Letter''). All comments on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2018-02/nysearca201802.htm.*

[10] *See* 15 U.S.C. 78f(b)(5).

[11] *See infra* notes 32–34 and accompanying text.

governs the listing and trading of Trust Issued Receipts on the Exchange.[12] Each Fund will be a series of the Direxion Shares ETF Trust II (''Trust''), and the Trust and the Funds will be managed and controlled by Direxion Asset Management, LLC (''Sponsor''). Bank of New York Mellon will be the custodian and transfer agent for the Funds. U.S. Bancorp Fund Services, LLC will serve as the administrator for the Funds, and Foreside Fund Services, LLC will serve as the distributor of the Shares (''Distributor'').[13] According to the Notice, each Fund will create and redeem Shares in one or more Creation Units (a Creation Unit is a block of 50,000 Shares of a Fund).[14]

According to the Notice, the Funds will seek to obtain daily short, leveraged long, or leveraged short exposure (before fees and expenses) to the target benchmark, which is the lead-month bitcoin futures contract traded on the Chicago Mercantile Exchange (''CME''), the Cboe Global Markets, Inc. (''CBOE''), or any other U.S. exchange that subsequently trades bitcoin futures contracts (''Bitcoin Futures Contract'').[15] Specifically, the 1.25X Bull Fund, the 1.5X Bull Fund, and the 2X Bull Fund will seek daily investment results (before fees and expenses) that are 125%, 150%, or 200%, respectively, of the daily return of the target benchmark.[16] The 1X Bear Fund and the 2X Bear Fund will seek daily inverse investment results (before fees and expenses) that are −100% or −200%, respectively, of the daily return of the target benchmark.[17]

According to the Notice, the target benchmark's value will be calculated as the last sale price published by CME or CBOE, or any other U.S. exchange that subsequently trades bitcoin futures contracts, on or before 11:00 a.m. E.T. for the Bitcoin Futures Contract and may reflect trades occurring and published by CME, CBOE, or another U.S. exchange that subsequently trades bitcoin futures contracts outside the normal trading session for the Bitcoin Futures Contract.[18] Each Fund will compute its NAV as of 11:00 a.m. E.T., or such earlier time that the NYSE may close.[19]

According to the Notice, each Fund, under normal market conditions, will seek to achieve its daily investment objective by investing in the Bitcoin Futures Contract, swaps on the Bitcoin Futures Contract, or listed options on bitcoin or the Bitcoin Futures Contract (collectively, ''Bitcoin Financial Instruments''). The Funds' investments in Bitcoin Financial Instruments will be used to produce economically ''leveraged'' or ''inverse leveraged'' investment results for the Funds.[20] A Fund may invest in the listed options and swaps described above in a manner consistent with its investment objective in situations where the Sponsor believes that investing in such financial instruments is in the best interests of a Fund. In addition, a Fund may invest in swap contracts referencing the Bitcoin Futures Contract if the market for a specific bitcoin futures contract experiences emergencies or if position, price, or accountability limits (if any) are reached with respect to a specific bitcoin futures contract. Each trading day at the close of the U.S. equity markets, each Fund will position its portfolio to ensure that the Fund's exposure to the target benchmark is consistent with the Fund's investment objective.[21] The Notice also states:

> [U]nlike the futures markets for traditional physical commodities, the market for exchange-traded bitcoin futures contract[s] has limited trading history and operational experience and may be riskier, less liquid, more volatile and more vulnerable to economic, market and industry changes than more established futures markets. The liquidity of the market will depend on, among other things, the adoption of bitcoin and the commercial and speculative interest in the market for the ability to hedge against the price of bitcoin with exchange-traded bitcoin futures contracts.[22]

The Exchange represents that trading in the Shares of each Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[23] The Exchange asserts that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[24]

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether the Exchange's proposal is consistent with Exchange Act Section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [25] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [26]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[27] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[28] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[29]

B. Preventing Fraudulent and Manipulative Practices

1. Applicable Legal Standard

To approve the Exchange's proposal to list the Shares, the Commission must be able to find that the proposal is, consistent with Exchange Act Section 6(b)(5), ''designed to prevent fraudulent

[12] *See* NYSE Arca Rule 8.200–E, Commentary .02. NYSE Arca Rule 8.200–E permits the listing and trading of ''Trust Issued Receipts,'' defined as a security (1) that is issued by a trust which holds specific securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Commentary .02 applies to Trust Issued Receipts that invest in any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[13] *See* Notice, *supra* note 3, 83 FR at 3381.

[14] *See id.* at 3384.

[15] *See id.* at 3381. Bitcoin Futures Contracts will be cash-settled. According to the Exchange, the ''lead month'' contract is the monthly contract with the earliest expiration date. *See id.* at 3381 n.6.

[16] *See id.* at 3382.

[17] *See id.*

[18] *See id.* at 3381.

[19] *See id.* at 3383.

[20] *See id.* at 3381–82.

[21] *See id.* at 3382.

[22] *See id.* at 3383.

[23] *See id.* at 3385.

[24] *See id.*

[25] 15 U.S.C. 78f(b)(5).

[26] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[27] *See id.*

[28] *See id.*

[29] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017).

and manipulative acts and practices.'' [30] As the Commission recently explained in an order disapproving a listing proposal for the Winklevoss Bitcoin Trust (''Winklevoss Order''), although surveillance-sharing agreements are not the exclusive means by which an exchange-traded product (''ETP'') listing exchange can meet its obligations under Exchange Act Section 6(b)(5), such agreements are a widely used means for exchanges that list ETPs to meet their obligations, and the Commission has historically recognized their importance.[31]

The Commission has therefore determined that, if the listing exchange for an ETP fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [32] Accordingly, a surveillance-sharing agreement with a regulated market of significant size is required to ensure that, in compliance with the Exchange Act, the proposal is ''designed to prevent fraudulent and manipulative acts and practices.'' [33] In this context, the Commission has interpreted the terms ''significant market'' and ''market of significant size'' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[34] Thus, a surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because someone attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.''

Although the Winklevoss Order applied these standards to a commodity-trust ETP based on bitcoin, the Commission believes that these standards are also appropriate for an ETP based on bitcoin futures. When approving the first commodity-futures ETP, the Commission specifically noted that ''[i]nformation sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.'' [35] And the Commission's approval orders for commodity-futures ETPs consistently note the ability of an ETP listing exchange to share surveillance information either through surveillance-sharing agreements or through membership by the listing exchange and the relevant futures exchanges in the Intermarket Surveillance Group.[36] While the

[30] 15 U.S.C. 78f(b)(5).

[31] Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37580 (Aug. 1, 2018) (SR–BatsBZX–2016–30).

[32] *Id.* (citing Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 64 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98)).

[33] 15 U.S.C. 78f(b)(5).

[34] *See* Winklevoss Order, *supra* note 31, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants. *See id.*

[35] Securities Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059). Additionally, the Winklevoss Order discusses the broader history and importance of surveillance-sharing agreements relating to derivative securities products, quoting Commission statements dating from 1990 on. *See* Winklevoss Order, *supra* note 31, 83 FR at 37592–94.

[36] *See, e.g.,* Securities Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059) (approval order noted that Amex's ''Information Sharing Agreement with the NYMEX and the CBOT and [Amex's] Memorandum of Understanding with the LME, along with the Exchange's participation in the ISG, in which the CBOT participates . . . create the basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Shares''); Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510, 17518 (Apr. 6, 2006) (SR–Amex–2005–127) (approval order noted that Amex's ''comprehensive surveillance sharing agreements with the NYMEX and ICE Futures . . . create the basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Units'' and that ''[s]hould the USOF invest in oil derivatives traded on markets such as the Singapore Oil Market, the Exchange represents that it will file a proposed rule change pursuant to Section 19(b) of the [Exchange] Act, seeking Commission approval of [Amex's] surveillance agreement with such market''); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372, 36378–79 (June 26, 2006) (NYSE–2006–17) (approval order noted that NYSE's ''comprehensive surveillance sharing agreements with the NYMEX, the Kansas City Board of Trade, ICE Futures, and the LME . . . create the basis for the NYSE to monitor for fraudulent and manipulative trading practices'' and that ''all of the other trading venues on which current Index components and CERFs are traded are members of the ISG''); Securities Exchange Act Release No. 54450 (Sept. 14, 2006), 71 FR 55230, 55236 (Sept. 21, 2006) (SR–Amex–2006–44) (approval order noted that ''CME, where the futures contract for each of the current Index components is traded, is a member of the ISG'' and that in the event of new fund investments in ''foreign currency futures contracts traded on futures exchanges other than CME, [Amex] must have a CSSA with that futures exchange or the futures exchange must be an ISG member''); Securities Exchange Act Release No. 55029 (Dec. 29, 2006), 72 FR 806, 809–10 (Jan. 8, 2007) (SR–Amex–2006–76) (approval order noted that Amex's ''Comprehensive Surveillance Sharing Agreement with the ICE Futures, LME, and NYMEX, . . . and membership in the Intermarket Surveillance Group ('ISG') creates the basis for the Amex to monitor fraudulent and manipulative practices in the trading of the Shares''); Securities Exchange Act Release No. 56880 (Dec. 3, 2007), 72 FR 69259, 69261 (Dec. 7, 2007) (SR–Amex–2006–96) (approval order noted that Amex has ''information sharing agreements with the InterContinental Exchange, the Chicago Mercantile Exchange, and the New York Mercantile Exchange and may obtain market surveillance information from other exchanges, including the Chicago Board of Trade, London Metals Exchange, and the New York Board of Trade through the Intermarket Surveillance Group''); Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987, 19988 (Apr. 20, 2007) (SR–Amex–2006–112) (approval order noted that Amex ''currently has in place an Information Sharing Agreement with the NYMEX and ICE Futures'' and that if ''USNG invests in Natural Gas Interests traded on other exchanges, the Amex represented that it will seek to enter into Information Sharing arrangements with those particular exchanges''); Securities Exchange Act Release No. 57456 (Mar. 7, 2008), 73 FR 13599, 13601 (Mar. 13, 2008) (NYSEArca–2007–91) (approval order noted that NYSEArca ''can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYM, the Kansas City Board of Trade, ICE, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges'' and that ''[a]ll of the other trading venues on which current Index components are traded are members of the ISG''); Securities Exchange Act Release No. 57838 (May 20, 2008), 73 FR 30649, 30652, (May 28, 2008) (SR–NYSEArca–2008–09) (approval order noted that NYSEArca ''may obtain information via the ISG from other exchanges who are members or affiliate members of the ISG,'' that NYSEArca ''has an information sharing agreement in place with ICE Futures,'' and that NYSEArca will file a proposed rule change ''if the Fund invests in EUAs . . . that constitute more than 10% of the weight of the Fund where the principal trading market for such component is not a member or affiliate member of the ISG or where the Exchange does not have a comprehensive surveillance sharing agreement with such market''); Securities Exchange Act Release No. 63635 (Jan. 3, 2011), 76 FR 1489, 1491 (Jan. 10, 2011) (NYSEArca–2010–103) (approval order noted that ''with respect to Fund components traded on exchanges, not more than 10% of the weight of such components in the aggregate will consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which [NYSEArca] does not have a comprehensive surveillance sharing agreement''); Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440, 15444 (Mar. 15, 2012) (SR–NYSEArca–2012–04) (approval order noted that NYSEArca ''can obtain market surveillance information, including customer identity information, from ICE [Futures] and CME, which are members of the Intermarket Surveillance Group''); Securities Exchange Act Release No. 67223 (June 20, 2012), 77 FR 38117, 38124 (June 26, 2012) (NYSEAmex–2012–24) (approval order noted

Commission in those orders did not explicitly undertake an analysis of whether the related futures markets were of ''significant size,'' the exchanges proposing commodity-futures ETPs on a single reference asset or benchmark generally made representations regarding the trading volume of the underlying futures markets,[37] and the

that NYSEAmex ''can obtain market surveillance information, including customer identity information, with respect to transactions occurring on exchanges that are members of ISG, including CME, CBOT, COMEX, NYMEX . . . and ICE Futures US,'' that NYSEAmex ''currently has in place a comprehensive surveillance sharing agreement with each of CME, NYMEX, ICE Futures Europe, and KCBOT,'' and that ''while the Fund may invest in futures contracts or options on futures contracts which trade on markets that are not members of ISG or with which [NYSEAmex] does not have in place a comprehensive surveillance sharing agreement, such instruments will never represent more than 10% of the Fund's holdings''); Securities Exchange Act Release No. 73561 (Nov. 7, 2014), 79 FR 68329, 68330 (Nov. 14, 2014) (NYSEArca–2014–102) (approval order noted that ''FINRA may obtain trading information regarding trading in the Shares and Coal Futures from such markets and other entities that are members of ISG or with which [NYSEArca] has in place a comprehensive surveillance sharing agreement'' and that ''CME is a member of the ISG''); Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625, 61631, 61634 (Dec. 28, 2017) (NYSEArca–2017–107) (approval order noted that NYSEArca ''may obtain information regarding trading in the Shares and Freight Futures from markets and other entities that are members of ISG or with which [NYSEArca] has in place a CSSA'' and that ''not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures or options on Freight Futures shall consist of derivatives whose principal market is not a member of the ISG or is a market with which [NYSEArca] does not have a CSSA'').

[37] *See, e.g.,* Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22) (notice of proposed rule change included NYSE Arca's representations that: (i) Corn futures volume on Chicago Board of Trade (''CBOT'') for 2008 and 2009 (through November 30, 2009) was 59,934,739 contracts and 47,754,866 contracts, respectively, and as of March 16, 2010, CBOT open interest for corn futures was 1,118,103 contracts, and open interest for near month futures was 447,554 contracts; (ii) the corn futures contract price was $18,337.50 ($3.6675 per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $20.5 billion; (iii) as of March 16, 2010, open interest in corn swaps cleared on CBOT was approximately 2,100 contracts, with an approximate value of $38.5 million; and (iv) the position limits for all months is 22,000 corn contracts, and the total value of contracts if position limits were reached would be approximately $403.5 million (based on the $18,337.50 contract price), Securities Exchange Act Release No. 61954 (Apr. 21, 2010), 75 FR 22663, 22664 n.10 (Apr. 29, 2010)); Securities Exchange Act Release No. 63610 (Dec. 27, 2010), 76 FR 199 (Jan. 3, 2011) (SR–NYSEArca–2010–101) (notice of proposed rule change included NYSE Arca's representations that: (i) As of June 14, 2010, there was VIX futures contracts open interest on CFE of 88,366 contracts, with a contract price of $25.55 and value of open interest of $2,257,751,300; (ii) total CFE trading volume in 2009 in VIX futures contracts was 1,143,612 contracts, with average daily volume of 4,538 contracts; and (iii) total volume year-to-date (through May 31, 2010) was 1,399,709 contracts, with average daily volume of 13,458 contracts, Securities Exchange Act Release No. 63317 (Nov. 16, 2010), 75 FR 71158, 71159 n.9 (Nov. 22, 2010)); Securities Exchange Act Release No. 63753 (Jan. 21, 2011), 76 FR 4963 (Jan. 27, 2011) (SR–NYSEArca–2010–110) (notice of proposed rule change included NYSE Arca's representations that: (i) Natural gas futures volume on New York Mercantile Exchange (''NYMEX'') for 2009 and 2010 (through October 29, 2010) was 47,864,639 contracts and 52,490,180 contracts, respectively; (ii) as of October 29, 2010, NYMEX open interest for natural gas futures was 794,741 contracts, and open interest for near month futures was 47,313 contracts; (iii) the contract price was $40,380 ($4.038 per MMBtu and 10,000 MMBtu per contract), and the approximate value of all outstanding contracts was $32.1 billion; (iv) the position limits for all months is 12,000 natural gas contracts and the total value of contracts if position limits were reached would be approximately $484.56 million (based on the $40,380 contract price); and (v) as of October 29, 2010, open interest in natural gas swaps cleared on NYMEX was approximately 2,618,092 contracts, with an approximate value of $26.4 billion ($4.038 per MMBtu and 2,500 MMBtu per contract), Securities Exchange Act Release No. 63493 (Dec. 9, 2010), 75 FR 78290, 78291 n.11 (Dec. 15, 2010)); Securities Exchange Act Release No. 63869 (Feb. 8, 2011), 76 FR 8799 (Feb. 15, 2011) (SR–NYSEArca–2010–119) (notice of proposed rule change included NYSE Arca's representations that: (i) WTI crude oil futures volume on NYMEX for 2009 and 2010 (through November 30, 2010) was 137,352,118 contracts and 156,155,620 contracts, respectively; (ii) as of November 30, 2010, NYMEX open interest for WTI crude oil was 1,342,325 contracts, and open interest for near month futures was 323,184 contracts; (iii) the position limits for all months is 20,000 WTI crude oil contracts and the total value of contracts if position limits were reached would be approximately $1.68 billion (based on the $84.11 contract price); and (iv) the contract price was $84,110 ($84.11 USD per barrel and 1,000 barrels per contract), and the approximate value of all outstanding contracts was $112.9 billion, Securities Exchange Act Release No. 63625 (Dec. 30, 2010), 76 FR 807, 808 n.11 (Jan. 6, 2011)); Securities Exchange Act Release No. 65134 (Aug. 15, 2011), 76 FR 52034 (Aug. 19, 2011) (SR–NYSEArca–2011–23) (notice of proposed rule change included NYSE Arca's representations that: (i) As of January 31, 2011, there was VIX futures contracts open interest on CFE of 163,396 contracts with a value of open interest of $3,461,984,900; (ii) total CFE trading volume in 2010 in VIX futures contracts was 4,402,616 contracts, with average daily volume of 17,741 contracts; and (iii) total volume year-to-date (through January 31, 2011) was 779,493 contracts, with average daily volume of 38,975 contracts, Securities Exchange Act Release No. 64470 (May 11, 2011), 76 FR 28493, 28494 n.12 (May 17, 2011)); Securities Exchange Act Release No. 65136 (Aug. 15, 2011), 76 FR 52037 (Aug. 19, 2011) (SR–NYSEArca–2011–24) (notice of proposed rule change included NYSE Arca's representations that: (i) Natural gas futures volume on NYMEX for 2009 and 2010 (through December 31, 2010) was 47,864,639 contracts and 64,350,673 contracts, respectively; (ii) as of December 31, 2010, NYMEX open interest for all natural gas futures was 772,104 contracts, and the approximate value of all outstanding contracts was $35,664,257,310 billion [sic]; (iii) open interest as of December 31, 2010 for the near month contract was 166,757 contracts and the near month contract value was $7,345,645,850 ($4.405 per MMBtu and 10,000 MMBtu per contract); (iv) the position accountability limits for all months is 12,000 natural gas contracts and the total value of contracts if position accountability limits were reached would be approximately $528,600,000 million (based on the $4.405 contract price); and (v) as of December 31, 2010, open interest in natural gas swaps cleared on NYMEX was approximately 1,493,013 contracts, with an approximate value of $16,463,384,003 ($4.411 per MMBtu and 2,500 MMBtu per contract), Securities Exchange Act Release No. 64464 (May 11, 2011), 76 FR 28483, 28484 n.11 (May 17, 2011)); Securities Exchange Act Release No. 65344 (Sept. 15, 2011), 76 FR 58549 (Sept. 21, 2011) (SR–NYSEArca–2011–48) (notice of proposed rule change included NYSE Arca's representations that: (i) Wheat futures volume on CBOT for 2010 and 2011 (through April 29, 2011) was 23,058,783 contracts and 8,860,135 contracts, respectively; (ii) as of April 29, 2011, open interest for wheat futures was 456,851 contracts; (iii) the wheat contract price was $40,062.50 (801.25 cents per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $18.3 billion; (iv) the position limits for all months was 6,500 wheat contracts and the total value of contracts if position limits were reached would be approximately $260.4 million (based on the $40,062.50 contract price); (v) soybean futures volume on CBOT for 2010 and 2011 (through April 29, 2011) was 36,962,868 contracts and 16,197,385 contracts, respectively; (vi) as of April 29, 2011, open interest for soybean futures was 572,959 contracts; (vii) the soybean contract price was $69,700.00 (1394 cents per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $39.9 billion; (viii) the position limits for all months is 6,500 soybean contracts and the total value of contracts if position limits were reached would be approximately $453 million (based on the $69,700.00 contract price); (ix) sugar futures volume on ICE Futures for 2010 and 2011 (through April 29, 2011) was 27,848,391 contracts and 9,045,069 contracts, respectively; (x) as of April 29, 2011, open interest for sugar futures was 570,948 contracts; (xi) the sugar contract price was $24,920.00 (22.25 cents per pound and 112,000 pounds per contract), and the approximate value of all outstanding contracts was $14.2 billion; and (xii) the position limits for all months is 15,000 sugar contracts and the total value of contracts if position limits were reached would be approximately $373.8 million (based on the $24,920.00 contract price), Securities Exchange Act Release No. 64967 (July 26, 2011), 76 FR 45885, 45886 n.10, 45888 n.20, 45890 n.24 (Aug. 1, 2011)); Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440 (Mar. 15, 2012) (SR–NYSEArca–2012–04) (notice of proposed rule change included NYSE Arca's representations that: (i) As of December 30, 2011, open interest in AUD/USD futures contracts traded on CME was $11.56 billion, and AUD/USD futures contracts had an average daily trading volume in 2011 of 123,006 contracts; (ii) as of December 30, 2011, open interest in CAD/USD futures contracts traded on CME was $11.66 billion, and CAD/USD futures contracts had an average daily trading volume in 2011 of 89,667 contracts; (iii) as of December 30, 2011, open interest in CHF/USD futures contracts traded on CME was $4.99 billion, and CHF/USD futures contracts had an average daily trading volume in 2011 of 40,955 contracts; (iv) futures contracts based on the U.S. Dollar Index (''USDX'') were listed on November 20, 1985, and options on the USDX futures contracts began trading on September 3, 1986; (v) as of December 30, 2011, open interest in USDX futures contracts traded on ICE Futures was $5.44 billion, and USDX futures contracts had an average daily trading volume in 2011 of 30,341 contracts; (vi) as of December 30, 2011, open interest in EUR/USD futures contracts traded on CME was $46.12 billion, and EUR/USD futures contracts had an average daily trading volume in 2011 of 336,947 contracts; and (vii) as of December 30, 2011, open interest in JPY/USD futures contracts traded on CME was $25.75 billion, and JPY/USD futures contracts had an average daily trading volume in 2011 of 113,476 contracts, Securities Exchange Act Release No. 66180 (Jan. 18, 2012), 77 FR 3532, 3534–35 (Jan. 24,

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2012)); Securities Exchange Act Release No. 68165 (Nov. 6, 2012), 77 FR 67707 (Nov. 13, 2012) (SR–NYSEArca–2012–102) (notice of proposed rule change included NYSE Arca's representations that: (i) Gold and silver futures contracts traded on Commodity Exchange, Inc. (''COMEX'') are the global benchmark contracts and most liquid futures contracts in the world for each respective commodity; (ii) as of March 15, 2012, open interest in gold futures contracts and silver futures contracts traded on CME was $23.7 billion and $8.5 billion, respectively; (iii) gold futures contracts and silver futures contracts had an average daily trading volume in 2011 of 138,964 contracts and 63,913 contracts, respectively; (iv) CME constitutes the largest regulated foreign exchange marketplace in the world, with over $100 billion in daily liquidity; (v) as of March 15, 2012, open interest in Euro futures contracts and Yen futures contracts traded on CME and, for Dollar futures contracts, on ICE Futures, were $42.7 billion, $20.8 billion, and $4.8 billion, respectively; and (vi) Euro futures contracts, Yen futures contracts, and Dollar futures contracts had an average daily trading volume in 2011 of 325,103, 106,824, and 27,258 contracts, respectively, Securities Exchange Act Release No. 67882 (Sept. 18, 2012), 77 FR 58881, 58883 n.10, 58883 n.14 (Sept. 24, 2012)); Securities Exchange Act Release No. 81686 (Sept. 22, 2017), 82 FR 45643, 45646 (Sept. 29, 2017) (SR–NYSEArca–2017–05) (order approving the listing and trading of the Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares, citing to NYSE Arca's representations that: (i) The oil contract market was of significant size and liquidity, and had average daily volume of 650,000 contracts and daily open interest of 450,000 contracts; (ii) the Sponsor is registered as a commodity pool operator with the CFTC and is a member of the National Futures Association, and (iii) the CFTC has regulatory jurisdiction over the trading of futures contracts traded on U.S. markets); Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625 (Dec. 28, 2017) (SR–NYSEArca–2017–107) (notice of proposed rule change included NYSE Arca's representations that: (i) Freight futures liquidity has remained relatively constant, in lot terms, over the last five years with approximately 1.1 million lots trading annually; (ii) open interest currently stood at approximately 290,000 lots across all asset classes representing an estimated value of more than $3 billion, and, of such open interest, Capesize contracts accounted for approximately 50%, Panamax for approximately 40%, and Handymax for approximately 10%, Securities Exchange Act Release No. 81681 (Sept. 22, 2017), 82 FR 45342, 45345 (Sept. 28, 2017)). *See also* Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510 (Apr. 6, 2006) (SR–Amex–2005–127) (notice of proposed rule change included Amex's representations that: (i) WTI light, sweet crude oil contract, listed and traded at NYMEX, trades in units of 42,000 gallons (1,000 barrels), and annual daily contract volume on NYMEX from 2001 through October 2005 was 149,028, 182,718, 181,748, 212,382 and 242,262, respectively; (ii) annual daily contract volume on ICE Futures for Brent crude contracts from 2001 through October 2005 was 74,011, 86,499, 96,767, 102,361 and 120,695 respectively; (iii) annual daily contract volume on NYMEX for heating oil futures from 2001 through October 2005 was 41,710, 42,781, 46,327, 51,745 and 52,334, respectively; (iv) annual daily contract volume on NYMEX for natural gas contracts from 2001 through October 2005 was 47,457, 97,431, 76,148, 70,048 and 77,149, respectively; and (v) annual daily contract volume on NYMEX for gasoline contracts from 2001 through October 2005 was 38,033, 43,919, 44,688, 51,315 and 53,577, respectively, Securities Exchange Act Release No. 53324 (Feb. 16, 2006), 71 FR 9614, 9618 (Feb. 24, 2006)); Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987 (Apr. 20, 2007) (SR–Amex–2006–112) (notice of proposed rule change included Amex's representations that annual daily contract volume on NYMEX for natural gas contracts from 2001 through October 2006 was 47,457, 97,431, 76,148, 70,048, 76,265, and 102,097, respectively, Securities Exchange Act Release No. 55372 (Feb. 28, 2007), 72 FR 10267, 10268 (Mar. 7, 2007)).

Commission was in each of those cases dealing with a large futures market that had been trading for a number of years before an exchange proposed an ETP based on those futures.[38] And where the Commission has considered a proposed ETP based on futures that had only recently begun trading,[39] the Commission specifically addressed whether the futures on which the ETP was based—which were futures on an index of well-established commodity futures—were illiquid or susceptible to manipulation.[40]

Accordingly, the Commission examines below whether the representations by the Exchange, and the comments received from the public, support a finding that the Exchange has entered into a surveillance-sharing agreement with a market of significant size relating to bitcoin, the asset underlying the proposed ETPs, or that alternative means of preventing fraud and manipulation would be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that the proposed rule change be designed to prevent fraudulent and manipulative acts and practices.

2. Comments Received

One commenter states that the market for bitcoin derivatives other than bitcoin exchange-traded futures appears to be developing and that financial institutions are reportedly moving toward launching bitcoin-related trading desks and other operations. This commenter believes that the proposed offering of both long and short ETPs raises the possibility that market makers in bitcoin-related derivatives could make two-sided markets if interest in the long and short ETPs is similar in magnitude. The commenter further believes that interest outside of the bitcoin ETPs may be sufficient to motivate market makers to maintain

[38] For example, corn futures began trading in 1877, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on corn futures was approved for listing and trading in 2010. *See* Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22). VIX futures began trading in 2004, *see http://cfe.cboe.com/cfe-products/vx-cboe-volatility-index-vix-futures/contract-specifications,* and the first ETPs based on VIX futures were approved for listing and trading in 2010. *See* Securities Exchange Act Release No. 63610 (Dec. 27, 2010), 76 FR 199 (Jan. 3, 2011) (SR–NYSEArca–2010–10). Natural gas futures began trading in 1990, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on natural gas was approved for listing and trading in 2007. *See* Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987 (Apr. 20, 2007) (SR–Amex–2006–112). Crude oil futures began trading in 1983, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on crude oil futures was approved for listing and trading in 2006. *See* Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510 (Apr. 6, 2006) (SR–Amex–2005–127). Wheat futures, sugar futures, and soybean futures began trading in 1877, 1914, and 1936, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html* and *https://www.theice.com/publicdocs/ICE_Sugar_Brochure.pdf,* and the first ETPs based on each of these commodity futures were approved for listing and trading in 2011. *See* Securities Exchange Act Release No. 65344 (Sept. 15, 2011), 76 FR 58549 (Sept. 21, 2011) (SR–NYSEArca–2011–48). U.S. Dollar Index futures began trading in 1985, *https://www.theice.com/publicdocs/futures_us/ICE_Dollar_Index_FAQ.pdf,* and the first ETPs based on U.S. Dollar Index futures was approved for listing and trading in 2007. *See* Securities Exchange Act Release No. 55292 (Feb. 14, 2007), 72 FR 8406 (Feb. 26, 2007) (SR–Amex–2006–86). Australian Dollar futures and Euro futures began trading in 1987 and 1999, respectively, and Canadian Dollar futures, Swiss Franc futures, and Yen futures began trading in 2002, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on each of these individual currency futures were approved for listing and trading in 2012. *See* Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440 (Mar. 15, 2012) (SR–NYSEArca–2012–04). Silver futures and gold futures began trading in 1933 and 1974, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on each of these commodity futures were approved for listing and trading in 2006. *See* Securities Exchange Act Release No. 55029 (Dec. 29, 2006), 72 FR 806 (Jan. 8, 2007) (SR–Amex–2006–76). Freight futures have been cleared since 2005, and the first ETP based on freight futures was approved for listing and trading in 2017. *See* Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625, 61626 n.6 (Dec. 28, 2017) (SR–NYSEArca–2017–107) (noting that ''Freight Futures have been cleared since 2005'').

[39] The Exchange filed its proposal less than one month after bitcoin futures began trading on either CME or CBOE.

[40] At issue were futures on an index comprising futures on crude oil, Brent crude oil, natural gas, heating oil, gasoline, gas oil, live cattle, wheat, aluminum, corn, copper, soybeans, lean hogs, gold, sugar, cotton, red wheat, coffee, standard lead, feeder cattle, zinc, primary nickel, cocoa, and silver. *See* Securities Exchange Act Release No. 53659 (Apr. 17, 2006), 71 FR 21074, 21080 (Apr. 24, 2006) (SR–NYSE–2006–17) (notice of proposed rule change to list shares of iShares GSCI Commodity-Indexed Trust). The Commission concluded that requirements of Exchange Act Section 6(b)(5) had been met because concerns about manipulation would be addressed by the arbitrage relationship between the new index futures and the existing component futures, as well as the ETP listing exchange's comprehensive surveillance-sharing agreements not only with the market for the index futures, but also with the markets for the component futures. *See* Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372, 36379 (June 26, 2006) (SR–NYSE–2006–17) (order approving listing of shares of iShares GSCI Commodity-Indexed Trust). Additionally, the approval order for the ETP noted that, if the volume in any futures contract that was part of the reference index fell below a specified multiple of production of the underlying commodity, that contract's weight in the index would decrease. *See id.* at 36374.

bitcoin derivatives desks.[41] In addition, the commenter suggests that questions about bitcoin derivatives markets can be addressed through market depth analyses, discussions with potential bitcoin derivatives liquidity providers, and analyses of order and trade data across CME and CBOE to determine the plausibility of simultaneous liquidity collapses on both bitcoin future markets.[42]

This commenter states that a commonly cited factor mitigating possible susceptibility to manipulation is the securities exchanges' own surveillance procedures, in addition to the futures exchanges' surveillance procedures and market surveillance and oversight by the Commodity Futures Trading Commission (''CFTC''). This commenter cites statements by the CFTC that it has the legal authority and means to police certain spot markets for fraud and manipulation through ''heightened review'' collaboration with exchanges, that exchanges will provide the CFTC surveillance team with trade settlement data upon request, and that the exchanges will enter into information-sharing agreements with spot market platforms and monitor trading activity on the spot markets. The commenter also states that the Gemini exchange has announced that it would use Nasdaq's market surveillance system to monitor its marketplace.[43]

This commenter further asserts that market surveillance is generally a prerequisite to identifying potential market manipulation and discourages market manipulation. The commenter believes that the emergence of institutionalized market surveillance on both futures and spot markets is a positive sign for the long-term future of bitcoin markets.[44] The commenter suggests that the Commission, in coordination with the CFTC, self-regulatory organizations, bitcoin futures exchanges, and bitcoin spot market platforms, could gather market surveillance data to conduct an independent analysis of trade and settlement patterns and determine whether potentially manipulative trading practices occur on bitcoin spot and futures markets.[45]

3. Analysis

Unlike previous proposals for bitcoin-based ETPs,[46] the Exchange does not assert here that bitcoin prices or markets are inherently resistant to manipulation. Instead, the Exchange asserts that its existing surveillance procedures (including its ability to review activity by its members) and its ability to share surveillance information with U.S. futures exchanges are sufficient to meet the requirements of Exchange Act Section 6(b)(5).[47] One commenter also asserts that the exchange's own surveillance procedures, along with market surveillance and oversight by the CFTC, can mitigate manipulation.[48]

While the Exchange would, pursuant to its listing rules, be able to obtain certain information regarding trading in the Shares and in the underlying bitcoin or any bitcoin derivative through registered market makers,[49] this trade information would be limited to the activities of market participants who trade on the Exchange. Furthermore, neither the Exchange's ability to surveil trading in the Shares nor its ability to share surveillance information with other securities exchanges trading the Shares would give the Exchange insight into the activity and identity of market participants who trade in bitcoin futures contracts or other bitcoin derivatives or who trade in the underlying bitcoin spot markets, where a substantial majority of trading, the Commission concluded in the Winklevoss Order, ''occurs on unregulated venues overseas that are relatively new and that, generally, appear to trade only digital assets.'' [50] Thus, consistent with its determination in the Winklevoss Order,[51] and with the Commission's previous orders approving commodity-futures ETPs,[52] the Commission believes that the Exchange must demonstrate that it has in place a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [53]

The Exchange represents that it is able to share surveillance information with CME and CBOE, which are bitcoin futures markets regulated by the CFTC, through membership in the Intermarket Surveillance Group.[54] Nonetheless, the Commission must disapprove the proposal, because there is no evidence in the record demonstrating that CME's and CBOE's bitcoin futures markets are markets of significant size.

The Order Instituting Proceedings sought comment on whether the CME and CBOE bitcoin futures markets are markets of significant size,[55] but the Exchange has not responded to any of the questions in the Order Instituting Proceedings, and the only analysis of the underlying futures markets the Exchange has provided in its proposed rule change are the generic statements that the market for bitcoin futures contracts ''has limited trading history and operational experience'' and that the liquidity of these markets will depend on the adoption of bitcoin and interest in the market for these futures.[56] Thus, there is no basis in the record on which the Commission can conclude that the bitcoin futures markets are markets of significant size. Publicly available data show that the median daily notional trading volume, from inception through August 10, 2018, has been 14,185 bitcoins on CME and 5,184

[41] *See* NERA Letter, *supra* note 9, at 2.

[42] *See id.*

[43] *See id.* at 4–5.

[44] *See id.* at 5.

[45] *See id.*

[46] *See* Winklevoss Order, *supra* note 31, 83 FR at 37582 (noting exchange argument that ''intrinsic properties of bitcoin and bitcoin markets make manipulation 'difficult and prohibitively costly' '); Order Disapproving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247, 16251 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (noting that study commissioned by trust sponsor argues that ''the underlying market for bitcoin is inherently resistant to manipulation'').

[47] *See* Notice, *supra* note 3, 83 FR at 3385.

[48] *See supra* notes 43–44 and accompanying text. This commenter also suggests that the Commission—in coordination with the CFTC, SROs, futures markets, and bitcoin spot platforms—could gather market surveillance data to independently analyze whether manipulative practices occur on bitcoin spot and futures platforms. *See supra* note 45 and accompanying text. As noted above, however, it is the Exchange that bears the burden to demonstrate that its proposal is designed to ''prevent fraudulent and manipulative acts and practices.'' *See supra* notes 26–29 and accompanying text.

[49] *See Notice, supra* note 3, at 83 FR 3385 (''The Exchange is also able to obtain information regarding trading in the Shares, futures, the commodity underlying futures or options on futures through ETP [Exchange Trading Permit] Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.'').

[50] *See* Winklevoss Order, *supra* note 31, 83 FR at 37580.

[51] *See id.* at 37591 (finding that ''traditional means'' of surveillance were not sufficient in the absence of a surveillance-sharing agreement with a regulated market of significant size related to the underlying asset).

[52] *See supra* note 36 and accompanying text (noting previous commodity-futures ETPs where surveillance sharing in place between ETP listing exchange and underlying futures exchanges).

[53] Winklevoss Order, *supra* note 31, 83 FR at 37580 (quoting Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98)).

[54] *See https://www.isgportal.org/isgPortal/public/members.htm* (listing the current members and affiliate members of the Intermarket Surveillance Group).

[55] *See* Order Instituting Proceedings, *supra* note 7, 83 FR at 18605.

[56] Notice, *supra* note 3, 83 FR at 3383; *see also supra* note 22 and accompanying text.

bitcoins on CBOE, and that the median daily notional value of open interest on CME and CBOE during the same period has been 10,145 bitcoins and 5,601 bitcoins, respectively.[57] But while these futures contract figures are readily available, meaningful analysis of the size of the CME or CBOE markets relative to the underlying bitcoin spot market is challenging, because reliable data about the spot market, including its overall size, are unavailable.[58]

The Commission also notes that in recent testimony CFTC Chairman Giancarlo characterized the volume of the bitcoin futures markets as ''quite small.'' [59] Additionally, the President and COO of CBOE recently acknowledged in a letter to the Commission staff that ''the current bitcoin futures trading volumes on Cboe Futures Exchange and CME may not currently be sufficient to support ETPs seeking 100% long or short exposure to bitcoin.'' [60] These statements reinforce the Commission's conclusion that there is insufficient evidence to determine that the CME and CBOE bitcoin futures markets are markets of significant size.

Furthermore, according to the Notice, under normal market conditions, each Fund intends to obtain exposure to its target benchmark by investing in the Bitcoin Futures Contract as well as other Bitcoin Financial Instruments, which could be options on bitcoin or the Bitcoin Futures Contract and swaps on the Bitcoin Futures Contract.[61] The Funds' investments in Bitcoin Financial Instruments are used to produce economically ''leveraged'' or ''inverse leveraged'' investment results for the Funds.[62] The Notice does not establish any limit on the Funds' holdings of these other bitcoin-related derivatives; it provides no analysis of the size and liquidity of markets for those derivatives; [63] and it does not discuss whether the Exchange has the ability to share surveillance information with the markets for these derivatives. Thus, as to what might be a substantial proportion of the Funds' portfolios, the Commission is unable to conclude that surveillance-sharing will be available, that the related markets are regulated, or that the related markets are of significant size.

While one commenter suggests that the market for bitcoin derivatives other than exchange-traded futures appears to be developing—and that the offering of long and short bitcoin ETPs ''raises the possibility that market makers in Bitcoin derivatives could make two-sided markets if interest in both the long and short ETFs is similar in magnitude'' [64]—these speculative statements do not provide a basis for the Commission to conclude that the non-exchange-traded bitcoin derivatives market is now, or may eventually be, of significant size.

The Commission therefore concludes that Exchange has not demonstrated that it has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or that, given the current absence of such an agreement, the exchange's own surveillance procedures described above would, by themselves, be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[65] While CME and CBOE are regulated markets for bitcoin derivatives, there is no basis in the record for the Commission to conclude that these markets are of significant size. Additionally, because bitcoin futures have been trading on CME and CBOE only since December 2017, the Commission has no basis on which to predict how these markets may grow or develop over time, or whether or when they may reach significant size.

Although the Exchange has not demonstrated that a regulated bitcoin futures market of significant size currently exists, the Commission is not suggesting that the development of such a market would automatically require approval of a proposed rule change seeking to list and trade shares of an ETP holding bitcoins as an asset. The Commission would need to analyze the facts and circumstances of any particular proposal and examine whether any unique features of a bitcoin futures market would warrant further analysis before approval.

C. Protecting Investors and the Public Interest

1. Comments Received

One commenter asserts that approval of the proposed ETPs would provide greater security in the cryptocurrency market, such as greater liquidity, transparency, and safe custody of assets.[66] Another commenter asserts that promoting the adoption of bitcoin will allow ''paradigms within the cryptocurrency ecosystem,'' such as initial coin offerings, to ''break up the stranglehold cartels have on accruing and owning capital, as the funding model becomes democratized.'' [67]

One commenter suggests that the Commission could address some of its concerns about the proposed ETPs by working with self-regulatory organizations, and in particular FINRA, to create bitcoin and cryptocurrency-related asset suitability requirements. In addition, this commenter suggests that targeted disclosure requirements could make investors aware of volatility, discourage retail investors from investing more than a small portion of their portfolio in cryptocurrency-related assets, and present historical scenarios to retail investors to demonstrate how an instrument such as a particular bitcoin ETP would have performed over time. This commenter believes that suitability requirements are less prescriptive than an effective ban on a class of product and that they could balance the Commission's interest in protecting retail investors against its interest in allowing cryptocurrency-related asset markets to continue to develop in regulated markets where the Commission can observe their performance closely.[68]

[57] These volume figures were calculated by Commission staff using data published by CME and CBOE on their websites.

[58] *See* Winklevoss Order, *supra* note 31, 83 FR at 37601.

[59] CFTC Chairman Giancarlo testified: ''It is important to put the new Bitcoin futures market in perspective. It is quite small with open interest at the CME of 6,695 bitcoin and at Cboe Futures Exchange (Cboe) of 5,569 bitcoin (as of Feb. 2, 2018). At a price of approximately $7,700 per Bitcoin, this represents a notional amount of about $94 million. In comparison, the notional amount of the open interest in CME's WTI crude oil futures was more than one thousand times greater, about $170 billion (2,600,000 contracts) as of Feb[.] 2, 2018 and the notional amount represented by the open interest of Comex gold futures was about $74 billion (549,000 contracts).'' *See* Written Testimony of J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission, Before the Senate Banking Committee at text accompanying nn. 14–15 (Feb. 6, 2018). *See also* Winklevoss Order, *supra* note 31, 83 FR at 37601 (citing Giancarlo testimony).

[60] Letter from Chris Concannon, President and COO, Cboe Global Markets, to Dalia Blass, Director, Division of Investment Management, Commission, at 5 (Mar. 23, 2018), *available at https://www.sec.gov/divisions/investment/cboe-global-markets-innovation-cryptocurrency.pdf.*

[61] *See* Notice, *supra* note 3, 83 FR at 3381; *see also supra* note 20 and accompanying text.

[62] *See* Notice, *supra* note 3, 83 FR at 3381–82.

[63] The Commission also notes that the Exchange did not answer questions in the Order Instituting Proceedings regarding whether, with respect to the Funds that seek leveraged or leveraged-inverse returns, ''trading of the Shares, hedging activity, or creation and redemption activity [would] affect the daily volume, volatility, or liquidity of the underlying Bitcoin Financial Instruments or of the spot bitcoin market any differently than a non-leveraged bitcoin futures exchange-traded product would.'' Order Instituting Proceedings, *supra* note 7, 83 FR at 18605.

[64] *See supra* notes 41–42 and accompanying text.

[65] *See* 15 U.S.C. 78f(b)(5).

[66] *See* Santos Letter, *supra* note 9.

[67] *See* David Letter, *supra* note 9.

[68] *See* NERA Letter, *supra* note 9, at 5–6.

2. Analysis

The Exchange asserts that approval of the proposal would enhance competition among market participants, to the benefit of investors.[69] One commenter asserts that approval of the proposal will provide greater security, transparency, and liquidity, as well as safe custody, for investors in cryptocurrencies.[70] And one commenter suggests that the Commission should seek to protect investors through disclosure requirements or suitability standards, rather than disapproving a bitcoin-ETP proposal.[71]

The Commission acknowledges that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange may provide some additional protection to investors, but the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.

Thus, even if a proposed rule change would provide certain benefits to investors and the markets, the proposed rule change may still fail to meet other requirements under the Exchange Act. For the reasons discussed above, the Exchange has not met its burden of demonstrating an adequate basis in the record for the Commission to find that the proposal is consistent with Exchange Act Section 6(b)(5), and, accordingly, the Commission must disapprove the proposal.

D. Other Comments

Comment letters also addressed the intrinsic value of bitcoin[72]; the desire of individuals to invest in a bitcoin-based ETP[73]; the ways in which approval of the proposal would increase investor confidence[74]; the ways in which promoting the adoption of bitcoin and other cryptocurrencies would ease inter-generational tension and wealth inequality and foster the confidence of younger generations in the economic system[75]; the Commission's process for granting Exchange Act exemptive relief in connection with ETP approval[76]; and the potential impact of Commission approval of the proposed ETPs on the price of bitcoin.[77] Ultimately, however, additional discussion of these tangential topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

E. Basis for Disapproval

The record before the Commission does not provide a basis for the Commission to conclude that the Exchange has met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposed rule change is consistent with Exchange Act Section 6(b)(5).[78]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–NYSEArca–2018–02 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Brent J. Fields,

Secretary.

[FR Doc. 2018–18577 Filed 8–27–18; 8:45 am]

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[69] *See* Notice, *supra* note 3, 83 FR at 3387.

[70] *See supra* note 66 and accompanying text.

[71] *See supra* note 68 and accompanying text. The Commission also notes that the Exchange did not respond to questions in the Order Instituting Proceedings seeking comment on how the Funds' striking NAV as of 11:00 a.m. E.T. (five hours before the close of the regular trading session) would affect arbitrage, and what the potential effect on investors would be if the arbitrage mechanism were impaired. *See* Order Instituting Proceedings, *supra* note 7, 83 FR at 18605.

[72] *See* Ahn Letter, *supra* note 9.

[73] *See* Galt Letter, *supra* note 9; Santos Letter, *supra* note 9.

[74] *See* David Letter, *supra* note 9; Santos Letter, *supra* note 9.

[75] *See* David Letter, *supra* note 9.

[76] *See* Williams Letter, *supra* note 9, at 1.

[77] *See* Santos Letter, *supra* note 9.

[78] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also supra* note 67 and accompanying text.

[79] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83898; File No. SR–NYSEAMER–2018–41]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31E Relating to Reserve Orders and Re-Name an Order Type

August 22, 2018.

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 August 10, 2018, NYSE American LLC (''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31E relating to Reserve Orders and re-name an order type. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Cash Equities Pillar Platform Rule 7.31E

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

relating to Reserve Orders and re-name an order type.

Background

Rule 7.31E(d)(1) defines a Reserve Order as a Limit or Inside Limit Order with a quantity of the size displayed and with a reserve quantity of the size (''reserve interest'') that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders and the reserve interest is ranked Priority 3—Non-Display Orders.[4] Rule 7.31E(d)(1)(A) provides that on entry, the display quantity of a Reserve Order must be entered in round lots and the displayed portion of a Reserve Order will be replenished following any execution. That rule further provides that the Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order. Rule 7.31E(d)(1)(B) provides that each time a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity of the Reserve Order, while the reserve interest retains the working time of original order entry. Pursuant to Rule 7.31E(d)(1)(C), a Reserve Order must be designated Day and may be combined with a Non-Routable Limit Order.

Proposed Rule Change Relating To Renaming of Order Type

The Exchange proposes non-substantive amendments to Rules 7.31E and 7.46E to rename the ''Limit Non-Displayed Order'' as the ''Non-Displayed Limit Order.'' The Exchange believes this proposed rule change would conform the style of this order type with the name of the Non-Routable Limit Order. The Exchange therefore believes that this proposed rule change would promote clarity and consistency in its rules.

Proposed Rule Change Relating to Reserve Orders

The Exchange proposes to amend Rule 7.31E(d)(1) to change the manner by which the display portion of a Reserve Order would be replenished. As proposed, rather than replenishing the display quantity following any execution, the Exchange proposes to replenish the Reserve Order when the display quantity is decremented to below a round lot. The changes that the Exchange is proposing to Rule 7.31 relating to Reserve Orders are identical to changes that were recently approved for the Exchange's affiliate, New York Stock Exchange LLC (''NYSE'').[5] In addition, the proposed changes to how Reserve Orders would be replenished are consistent with how Reserve Orders are replenished on other equity exchanges.[6]

As is currently the case, the replenish quantity would be the minimum display size of the order or the remaining quantity of reserve interest if it is less than the minimum display quantity. To reflect this functionality, the Exchange proposes that Rule 7.31E(d)(1)(A) would be amended as follows (deleted text bracketed; new text underlined):

(A) On entry, the display quantity of a Reserve Order must be entered in round lots. The displayed portion of a Reserve Order will be replenished *when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display quantity of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity* [following any execution. The Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order].

Under current functionality, because the replenished quantity is assigned a new working time, it is feasible for a single Reserve Order to have multiple replenished quantities with separate working times, each, a ''child'' order. The proposed change to limit when a Reserve Order would be replenished to when the display quantity is decremented to below a round lot only would reduce the number of child orders for a Reserve Order. The Exchange believes that minimizing the number of child orders for a Reserve Order would reduce the potential for market participants to detect that a child order displayed on the Exchange's proprietary market data feeds is associated with a Reserve Order.

In most cases, the maximum number of child orders for a Reserve Order would be two. For example, assume a Reserve Order to buy has a display quantity of 100 shares and an additional 200 shares of reserve interest. A sell order of 50 shares would trade with the display quantity of such Reserve Order, which would decrement the display quantity to 50 shares. As proposed, the Exchange would then replenish the Reserve Order with 100 shares from the reserve interest, *i.e.,* the minimum display size for the order. After this second replenishment, the Reserve Order would have two child orders, one for 50 shares, the other for 100 shares, each with different working times.

Generally, when there are two child orders, the older child order of less than a round lot will be executed before the second child order. However, there are limited circumstances when a Reserve Order could have two child orders that equal less than a round lot, which, as proposed, would trigger a replenishment. For such circumstance, the Exchange proposes that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would be reassigned the new working time assigned to the next replenished quantity.

For example, taking the same Reserve Order as above:

- If 100 shares of such order (''A'') are routed on arrival, it would have a display quantity of 100 shares (''B'') and 100 shares in reserve interest.
- While ''A'' is routed, a sell order of 50 shares would trade with ''B,'' decrementing ''B'' to 50 shares and the Reserve Order would be replenished from reserve interest, creating a second child order ''C'' of 100 shares.
- Next, the Exchange receives a request to reduce the size of the Reserve Order from 300 shares to 230 shares. Because ''A'' is still routed away and there is no reserve interest, and as described in more detail below, this 70 share reduction in size would be applied against the most recent child order of ''C,'' which would be reduced to 30 shares. Together with ''B,'' which would still be 50 shares, the two displayed child orders would equal less than a round lot, but with no quantity in reserve interest.
- Next, ''A'' is returned unexecuted, and as described below, becomes reserve interest and is evaluated for replenishment. Because the total display quantity (''B'' + ''C'') is less than a round lot, this Reserve Order would be replenished. But because the Reserve Order already has two child orders, the child order with the later working time, ''C,'' would be returned to the reserve interest, which would now have a quantity of 130 shares (''C'' + ''A''), and the Reserve Order would be replenished with 100 shares from the reserve interest with a new working time, which would be a new child order ''D.''
- After this replenishment, this Reserve Order would have two child orders of ''B'' for 50 shares and ''D'' for 100 shares, and a reserve interest of 30 shares.

To effect these changes, the Exchange proposes to amend current Rule

[4] The terms ''Priority 2—Display Orders'' and ''Priority 3—Non-Display Orders'' are defined in Rule 7.36E(e).

[5] *See* Securities Exchange Act Release No. 83768 (August 3, 2018), 83 FR 39488 (August 9, 2018) (SR–NYSE–2018–26) (Approval Order).

[6] *See* Cboe BZX Exchange, Inc. (''BZX'') Rule 11.9(c)(1); Nasdaq Stock Market LLC (''Nasdaq'') Rule 7503(h).

7.31E(d)(1)(B) to specify that each display quantity of a Reserve Order with a different working time would be referred to as a child order. The Exchange further proposes new Rule 7.31E(d)(1)(B)(i) that would provide that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity.

The Exchange also proposes new Rule 7.31E(d)(1)(B)(ii) to provide that if a Reserve Order is not routable (*i.e.,* is combined with a Non-Routable Limit Order), the replenish quantity would be assigned a display and working price consistent with the instructions for the order, which represents current functionality. For example, for a Non-Routable Limit Reserve Order, if the display price would lock or cross the contra-side PBBO, the replenished quantity would be assigned a display price one MPV worse than the PBBO and a working price equal to the contra-side PBBO, as provided for in Rule 7.31E(e)(1)(A)(i).[7] The Exchange believes that this proposed rule text would provide transparency and clarity to Exchange rules.

The Exchange further proposes to add new subsection (D) to Rule 7.31E(d)(1) to describe when a Reserve Order would be routed. As proposed, a routable Reserve Order would be evaluated for routing both on arrival and each time the display quantity is replenished.

Proposed Rule 7.31E(d)(1)(D)(i) would provide that if routing is required, the Exchange would route from reserve interest before publishing the display quantity. In addition, if after routing, there is less than a round lot available to display, the Exchange would wait until the routed quantity returns (executed or unexecuted) before publishing the display quantity. In the example described above, the Exchange would have published the display quantity before the routed quantity returned because the display quantity was at least a round lot. If, however, 250 shares of a Reserve Order of 300 shares had been routed on arrival, because the unrouted quantity was less than a round lot (50 shares), the Exchange would wait for the routed quantity to return, either executed or unexecuted, before publishing the display quantity.

The Exchange proposes this functionality to reduce the possibility for a Reserve Order to have more than one child order. If the Exchange did not wait, and instead displayed the 50 shares when the balance of the Reserve Order has routed, if the 250 shares returns unexecuted, such Reserve Order would be replenished and would have two child orders—one for the 50 shares that was displayed when the order was entered and a second for the 100 shares that replenished the Reserve Order from the quantity that returned unexecuted. By contrast, by waiting for a report on the routed quantity, if the routed quantity was not executed, the Exchange would display the minimum display quantity as a single child order. If the routed quantity was executed, the Exchange would display the 50 shares, but only because that would be the full remaining quantity of the Reserve Order.

Proposed Rule 7.31E(d)(1)(D)(ii) would provide that any quantity of a Reserve Order that is returned unexecuted would join the working time of the reserve interest, which is current functionality. If there is no quantity of reserve interest to join, the returned quantity would be assigned a new working time as reserve interest. As further proposed, in either case, such reserve interest would replenish the display quantity as provided for in Rules 7.31E(d)(1)(A) and (B). The Exchange believes that this proposed rule text would promote transparency and clarity in Exchange rules. The Exchange further believes it is appropriate for a returned quantity of a Reserve Order to join the reserve interest first because the order may not be eligible for a replenishment to the display quantity.

Proposed Rule 7.31E(d)(1)(E) would provide that a request to reduce in size a Reserve Order would cancel the reserve interest before canceling the display quantity and if there is more than one child order, the child order with the later working time would be cancelled first. This represents current functionality and the example set forth above demonstrates how this would function. The Exchange believes that canceling reserve interest before a child order would promote the display of liquidity on an exchange. The Exchange further believes that canceling a later-timed child order would respect the time priority of the first child order, and any priority such child order may have for allocations.

* * * * *

Because of the technology changes associated with the proposed rule changes to Reserve Orders, the Exchange will announce by Trader Update when these changes will be implemented, which the Exchange anticipates will be in the third quarter of 2018.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change to replenish a Reserve Order only if the display quantity is decremented to below a round lot would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the number of child orders associated with a single Reserve Order. By reducing the number of child orders, the Exchange believes it would reduce the potential for market participants to detect that a child order is associated with a Reserve Order. The proposed changes to Reserve Orders are identical to recently approved changes to the rules of its affiliated exchange, NYSE, and how a Reserve Order would be replenished is also consistent with how Reserve Orders function on BZX and Nasdaq.[10]

For similar reasons, the Exchange believes that if a Reserve Order has two child orders that equal less than a round lot, it would remove impediments to and perfect the mechanism of a free and open market and a national market system to assign a new working time to the later child order so that when such Reserve Order is replenished, it would have a maximum of only two child orders. The Exchange believes that this proposed change would streamline the operation of Reserve Orders and meet the objective to reduce the potential for market participants to be able to identify that a child order is associated with a Reserve Order.

The Exchange further believes that the proposed rule change to evaluate a Reserve Order for routing both on arrival and when replenishing would remove impediments to and perfect the

[7] The term ''PBBO'' is defined in Rule 1.1E. The term ''MPV'' is defined in Rule 7.6E.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* notes 5 and 6.

mechanism of a free and open market and a national market system because it would reduce the potential for the display quantity of a Reserve Order to lock or cross the PBBO of an away market. The Exchange further believes that routing from reserve interest would promote the display of liquidity on the Exchange, because if there is at least a round lot remaining of a Reserve Order that is not routed, the Exchange would display that quantity. The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to wait to display a Reserve Order if there is less than a round lot remaining after routing because it would reduce the potential for such Reserve Order to have more than one child order. Finally, the Exchange believes that joining any quantity of a Reserve Order that is returned unexecuted with reserve interest first would be consistent with the proposed replenishment logic that a Reserve Order would be replenished only if the display quantity is decremented to below a round lot.

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to apply a request to reduce in size a Reserve Order to the reserve interest first, and then next to the child order with the later working time, because such functionality would promote the display of liquidity on the Exchange and honor the priority of the first child order with the earlier working time. The Exchange believes that including this existing functionality in Rule 7.31E would promote transparency and clarity in Exchange rules.

The Exchange believes that the proposed non-substantive amendment to rename the ''Limit Non-Displayed Order'' as the ''Non-Displayed Limit Order'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change would conform to the naming convention of the Exchange's Non-Routable Limit Order and would therefore promote clarity and consistency in Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change to Reserve Orders is designed to reduce the potential for market participants to identify that a child order is related to a Reserve Order. The additional proposed rule changes are non-substantive and are designed to promote clarity and consistency in Exchange rules.

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 [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 15 U.S.C. 78s(b)(2)(B).

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–2018–41 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–2018–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2018–41 and should be submitted on or beforeSeptember 18, 2018.

[16] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18570 Filed 8–27–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83913; File No. SR–CboeBZX–2018–001]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF

August 22, 2018.

I. Introduction

On January 5, 2018, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares (''Shares'') of the GraniteShares Bitcoin ETF (''Long Fund'') and the GraniteShares Short Bitcoin ETF (''Short Fund'') (each a ''Fund'' and, collectively, ''Funds'') issued by the GraniteShares ETP Trust (''Trust'')[3] under BZX Rule 14.11(f)(4).[4] The proposed rule change was published for comment in the **Federal Register** on January 18, 2018.[5] The comment period for the Notice of Proposed Rule Change closed on February 8, 2018.

On February 22, 2018, pursuant to Section 19(b)(2) of the Exchange Act,[6] 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 approve or disapprove the proposed rule change.[7] On April 5, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[8] to determine whether to approve or disapprove the proposed rule change.[9] The comment period and rebuttal comment period for the Order Instituting Proceedings closed on May 1, 2018, and May 15, 2018, respectively.[10] Finally, on June 28, 2018, the Commission extended the period for consideration of the proposed rule change to September 15, 2018.[11] As of August 21, 2018, the Commission had received 15 comments on the proposed rule change.[12]

This order disapproves the proposed rule change. Although the Commission is disapproving this proposed rule change, the Commission emphasizes that its disapproval does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, the Exchange has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of the Exchange Act Section 6(b)(5), in particular the requirement that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[13] Among other things, the Exchange has offered no record evidence to demonstrate that bitcoin futures markets are ''markets of significant size.'' That failure is critical because, as explained below, the Exchange has failed to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, and therefore surveillance-sharing with a regulated market of significant size related to bitcoin is necessary to satisfy the statutory requirement that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[14]

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts on the Exchange.[15] Each Fund will be a series of the Trust, and the Trust and the Funds will be managed and controlled by GraniteShares Advisors LLC (''Sponsor''). Bank of New York Mellon will serve as administrator, custodian, and transfer agent for the Funds. Foreside Fund Services, LLC will serve as the distributor of the Shares (''Distributor''). The Trust will offer Shares of the Funds for sale through the Distributor in ''Creation Units'' in transactions with ''Authorized Participants'' who have entered into agreements with the Distributor.[16]

According to the Exchange, the Long Fund's investment objective will be to seek results (before fees and expenses) that, both for a single day and over time, correspond to the performance of lead month bitcoin futures contracts listed and traded on the Cboe Futures Exchange, Inc. (''CFE'') (''Benchmark Futures Contracts''). Conversely, the Short Fund's investment objective will be to seek results (before fees and expenses) that, on a daily basis, correspond to the inverse (−1x) of the daily performance of the Benchmark Futures Contracts for a single day. Each Fund generally intends to invest substantially all of its assets in the Benchmark Futures Contracts and cash and cash equivalents (which would be used to collateralize the Benchmark Futures Contracts), but may invest in other U.S. exchange listed bitcoin futures contracts, as available (together

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust filed a registration statement with the Commission on December 15, 2017. *See* Registration Statement on Form S–1, dated December 15, 2017 (File No. 333–222109) (''Registration Statement''). The Registration Statement ''will be effective as of the date of any offer and sale pursuant to the Registration Statement.'' Notice, *infra* note 5, 83 FR at 2705 n.7.

[4] On August 21, 2018, the Exchange filed Amendment No. 1 to the proposal, and on August 22, 2018, the Exchange filed Amendment No. 2 to the proposal. As discussed below, however, *see* Section III.E, *infra,* the Commission views these amendments as untimely. Furthermore, even if these amendments had been timely filed, they would not alter the Commission's conclusion that the Exchange's proposal is not consistent with the Exchange Act. *See id.*

[5] *See* Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704 (Jan. 18, 2018) (''Notice'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 82759 (Feb. 22, 2018), 83 FR 8719 (Feb. 28, 2018).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 82995 (Apr. 5, 2018), 83 FR 15425 (Apr. 10, 2018) (''Order Instituting Proceedings'').

[10] *See id.* at 15426.

[11] *See* Securities Exchange Act Release No. 83548 (June 28, 2018), 83 FR 31246 (July 3, 2018).

[12] *See* Letters from Anita Desai (Apr. 6, 2018) (''Desai Letter''); Ed Kaleda (Apr. 6, 2018) (''Kaleda Letter''); Don Krohn (Apr. 7, 2018) (''Krohn Letter''); Adam Malkin (Apr. 8, 2018) (''Malkin Letter''); Shravan Kumar (Apr. 11, 2018) (''Kumar Letter''); David Barnwell (Apr. 12, 2018) (''Barnwell Letter''); Louise Fitzgerald (Apr. 18, 2018) (''Fitzgerald Letter''); Sharon Brown-Hruska, Managing Director, and Trevor Wagener, Consultant, NERA Economic Consulting (May 18, 2018) (''NERA Letter''); Alex Hales (July 8, 2018) (''Hales Letter''); Anthony C. Otenyi (July 18, 2018) (''Otenyi Letter''); V.K. Bhat (July 28, 2018) (''Bhat Letter''); Sami Santos (Aug. 7, 2018) (''Santos Letter''); Arthur Netto (Aug. 9, 2018) (''Netto Letter''); Sam M. Ahn (Aug. 17, 2018) (''Ahn Letter''); and William Rhind, CEO, GraniteShares (Aug. 20, 2018) (''GraniteShares Letter''). All comments on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2018-001/cboebzx2018001.htm.*

[13] *See* 15 U.S.C. 78f(b)(5).

[14] *See infra* notes 31–33 and accompanying text.

[15] BZX Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in BZX Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[16] *See* Notice, *supra* note 5, 83 FR at 2707.

with Benchmark Futures Contracts, collectively, ''Bitcoin Futures Contracts'').[17]

The Exchange represents that no more than 10% of the net assets of a Fund in the aggregate invested in Bitcoin Futures Contracts shall consist of Bitcoin Futures Contracts whose principal market is neither a member of the Intermarket Surveillance Group nor a market with which the Exchange does not have a comprehensive surveillance-sharing agreement.[18] Further, according to the Notice, in the event that position, price, or accountability limits are reached with respect to Bitcoin Futures Contracts, each Fund may invest in U.S. listed swaps on bitcoin or the Benchmark Futures Contracts (''Listed Bitcoin Swaps''). The Notice also states that, in the event that position, price, or accountability limits are reached with respect to Listed Bitcoin Swaps, each Fund may invest in over-the-counter swaps on bitcoin or the Benchmark Futures Contracts (''OTC Bitcoin Swaps,'' and together with Listed Bitcoin Swaps, collectively, ''Bitcoin Swaps'').[19]

The Exchange asserts that ''policy concerns related to an underlying reference asset and its susceptibility to manipulation are mitigated as it relates to bitcoin because the very nature of the bitcoin ecosystem makes manipulation of bitcoin difficult.'' [20] According to the Exchange:

> The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, that the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; it is generally not possible to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.
>
> Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin exchanges, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each exchange make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple bitcoin exchanges in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange. As a result, the potential for manipulation on a particular bitcoin exchange would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.[21]

The Notice also asserts that the susceptibility of the underlying futures contracts to manipulation is mitigated by the ''significant liquidity that the Exchange expects to exist in the market for Bitcoin Futures Contracts.'' [22] The Notice asserts that the market for bitcoin futures will be ''sufficiently liquid to support numerous ETPs shortly after launch,'' citing ''numerous conversations with market participants, issuers, and discussions with personnel of CFE.''[23]

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether the Exchange's proposal is consistent with Exchange Act Section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [24] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [25]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[26] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[27] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[28]

B. Preventing Fraudulent and Manipulative Practices

1. Applicable Legal Standard

To approve the Exchange's proposal to list the Shares, the Commission must be able to find that the proposal is, consistent with Exchange Act Section 6(b)(5), ''designed to prevent fraudulent and manipulative acts and practices.'' [29] As the Commission recently explained in an order disapproving a listing proposal for the Winklevoss Bitcoin Trust (''Winklevoss Order''), although surveillance-sharing agreements are not the exclusive means by which an exchange-traded product (''ETP'') listing exchange can meet its obligations under Exchange Act Section 6(b)(5), such agreements are a widely used means for exchanges that list ETPs to meet their obligations, and the Commission has historically recognized their importance.[30]

The Commission has therefore determined that, if the listing exchange for an ETP fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [31]

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[17] *See id.* at 2705–06. The Bitcoin Futures Contracts include the bitcoin futures contracts listed and traded on the Chicago Mercantile Exchange, Inc. (''CME''). *See id.* at 2705.

[18] *See id.* at 2709 n.26.

[19] *See id.* at 2706.

[20] Notice, *supra* note 5, 83 FR at 2706.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 2710.

[24] 15 U.S.C. 78f(b)(5).

[25] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[26] *See id.*

[27] *See id.*

[28] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017).

[29] 15 U.S.C. 78f(b)(5).

[30] Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37580 (Aug. 1, 2018) (SR–BatsBZX–2018–30).

[31] *Id.* (citing Amendment to Rule Filing Requirements for Self-Regulatory Organizations

Accordingly, a surveillance-sharing agreement with a regulated market of significant size is required to ensure that, in compliance with the Exchange Act, the proposal is ''designed to prevent fraudulent and manipulative acts and practices.'' [32] In this context, the Commission has interpreted the terms ''significant market'' and ''market of significant size'' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[33] Thus, a surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because someone attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.''

Although the Winklevoss Order applied these standards to a commodity-trust ETP based on bitcoin, the Commission believes that these standards are also appropriate for an ETP based on bitcoin futures. When approving the first commodity-futures ETP, the Commission specifically noted that ''[i]nformation sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.'' [34] And the Commission's approval orders for commodity-futures ETPs consistently note the ability of an ETP listing exchange to share surveillance information either through surveillance-sharing agreements or through membership by the listing exchange and the relevant futures exchanges in the Intermarket Surveillance Group.[35] While the Commission in those orders did not explicitly undertake an analysis of whether the related futures markets were of ''significant size,'' the exchanges proposing commodity-futures ETPs on a single reference asset or benchmark generally made representations regarding the trading volume of the

Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98)).

[32] 15 U.S.C. 78f(b)(5).

[33] *See* Winklevoss Order, *supra* note 30, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants. *See id.*

[34] Securities Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059). Additionally, the Winklevoss Order discusses the broader history and importance of surveillance-sharing agreements relating to derivative securities products, quoting Commission statements dating from 1990 on. *See* Winklevoss Order, *supra* note 30, 83 FR at 37592–94.

[35] *See, e.g.,* Securities Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059) (approval order noted that Amex's ''Information Sharing Agreement with the NYMEX and the CBOT and [Amex's] Memorandum of Understanding with the LME, along with the Exchange's participation in the ISG, in which the CBOT participates . . . create the basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Shares''); Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510, 17518 (Apr. 6, 2006) (SR–Amex–2005–127) (approval order noted that Amex's ''comprehensive surveillance sharing agreements with the NYMEX and ICE Futures . . . create the basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Units'' and that ''[s]hould the USOF invest in oil derivatives traded on markets such as the Singapore Oil Market, the Exchange represents that it will file a proposed rule change pursuant to Section 19(b) of the [Exchange] Act, seeking Commission approval of [Amex's] surveillance agreement with such market''); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372, 36378–79 (June 26, 2006) (NYSE–2006–17) (approval order noted that NYSE's ''comprehensive surveillance sharing agreements with the NYMEX, the Kansas City Board of Trade, ICE Futures, and the LME . . . create the basis for the NYSE to monitor for fraudulent and manipulative trading practices'' and that ''all of the other trading venues on which current Index components and CERFs are traded are members of the ISG''); Securities Exchange Act Release No. 54450 (Sept. 14, 2006), 71 FR 55230, 55236 (Sept. 21, 2006) (SR–Amex–2006–44) (approval order noted that ''CME, where the futures contract for each of the current Index components is traded, is a member of the ISG'' and that in the event of new fund investments in ''foreign currency futures contracts traded on futures exchanges other than CME, [Amex] must have a CSSA with that futures exchange or the futures exchange must be an ISG member''); Securities Exchange Act Release No. 55029 (Dec. 29, 2006), 72 FR 806, 809–10 (Jan. 8, 2007) (SR–Amex–2006–76) (approval order noted that Amex's ''Comprehensive Surveillance Sharing Agreement with the ICE Futures, LME, and NYMEX, . . . and membership in the Intermarket Surveillance Group ('ISG') creates the basis for the Amex to monitor fraudulent and manipulative practices in the trading of the Shares''); Securities Exchange Act Release No. 56880 (Dec. 3, 2007), 72 FR 69259, 69261 (Dec. 7, 2007) (SR–Amex–2006–96) (approval order noted that Amex has ''information sharing agreements with the InterContinental Exchange, the Chicago Mercantile Exchange, and the New York Mercantile Exchange and may obtain market surveillance information from other exchanges, including the Chicago Board of Trade, London Metals Exchange, and the New York Board of Trade through the Intermarket Surveillance Group''); Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987, 19988 (Apr. 20, 2007) (SR–Amex–2006–112) (approval order noted that Amex ''currently has in place an Information Sharing Agreement with the NYMEX and ICE Futures'' and that if ''USNG invests in Natural Gas Interests traded on other exchanges, the Amex represented that it will seek to enter into Information Sharing arrangements with those particular exchanges''); Securities Exchange Act Release No. 57456 (Mar. 7, 2008), 73 FR 13599, 13601 (Mar. 13, 2008) (NYSEArca–2007–91) (approval order noted that NYSEArca ''can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYM, the Kansas City Board of Trade, ICE, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges'' and that ''[a]ll of the other trading venues on which current Index components are traded are members of the ISG''); Securities Exchange Act Release No. 57838 (May 20, 2008), 73 FR 30649, 30652, (May 28, 2008) (SR–NYSEArca–2008–09) (approval order noted that NYSEArca ''may obtain information via the ISG from other exchanges who are members or affiliate members of the ISG,'' that NYSEArca ''has an information sharing agreement in place with ICE Futures,'' and that NYSEArca will file a proposed rule change ''if the Fund invests in EUAs . . . that constitute more than 10% of the weight of the Fund where the principal trading market for such component is not a member or affiliate member of the ISG or where the Exchange does not have a comprehensive surveillance sharing agreement with such market''); Securities Exchange Act Release No. 63635 (Jan. 3, 2011), 76 FR 1489, 1491 (Jan. 10, 2011) (NYSEArca–2010–103) (approval order noted that ''with respect to Fund components traded on exchanges, not more than 10% of the weight of such components in the aggregate will consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which [NYSEArca] does not have a comprehensive surveillance sharing agreement''); Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440, 15444 (Mar. 15, 2012) (SR–NYSEArca–2012–04) (approval order noted that NYSEArca ''can obtain market surveillance information, including customer identity information, from ICE [Futures] and CME, which are members of the Intermarket Surveillance Group''); Securities Exchange Act Release No. 67223 (June 20, 2012), 77 FR 38117, 38124 (June 26, 2012) (NYSEAmex–2012–24) (approval order noted that NYSEAmex ''can obtain market surveillance information, including customer identity information, with respect to transactions occurring on exchanges that are members of ISG, including CME, CBOT, COMEX, NYMEX . . . and ICE Futures US,'' that NYSEAmex ''currently has in place a comprehensive surveillance sharing agreement with each of CME, NYMEX, ICE Futures Europe, and KCBOT,'' and that ''while the Fund may invest in futures contracts or options on futures contracts which trade on markets that are not members of ISG or with which [NYSEAmex] does not have in place a comprehensive surveillance sharing agreement, such instruments will never represent more than 10% of the Fund's holdings''); Securities Exchange Act Release No. 73561 (Nov. 7, 2014), 79 FR 68329, 68330 (Nov. 14, 2014) (NYSEArca–2014–102) (approval order noted that ''FINRA may obtain trading information regarding trading in the Shares and Coal Futures from such markets and other entities that are members of ISG or with which [NYSEArca] has in place a comprehensive surveillance sharing agreement'' and that ''CME is a member of the ISG''); Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625, 61631, 61634 (Dec. 28, 2017) (NYSEArca–2017–107) (approval order noted that NYSEArca ''may obtain information regarding trading in the Shares and Freight Futures from markets and other entities that are members of ISG or with which [NYSEArca] has in place a CSSA'' and that ''not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures or options on Freight Futures shall consist of derivatives whose principal market is not a member of the ISG or is a market with which [NYSEArca] does not have a CSSA'').

underlying futures markets,[36] and the

[36] *See, e.g.,* Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22) (notice of proposed rule change included NYSE Arca's representations that: (i) Corn futures volume on Chicago Board of Trade (''CBOT'') for 2008 and 2009 (through November 30, 2009) was 59,934,739 contracts and 47,754,866 contracts, respectively, and as of March 16, 2010, CBOT open interest for corn futures was 1,118,103 contracts, and open interest for near month futures was 447,554 contracts; (ii) the corn futures contract price was $18,337.50 ($3.6675 per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $20.5 billion; (iii) as of March 16, 2010, open interest in corn swaps cleared on CBOT was approximately 2,100 contracts, with an approximate value of $38.5 million; and (iv) the position limits for all months is 22,000 corn contracts, and the total value of contracts if position limits were reached would be approximately $403.5 million (based on the $18,337.50 contract price), Securities Exchange Act Release No. 61954 (Apr. 21, 2010), 75 FR 22663, 22664 n.10 (Apr. 29, 2010)); Securities Exchange Act Release No. 63610 (Dec. 27, 2010), 76 FR 199 (Jan. 3, 2011) (SR–NYSEArca–2010–101) (notice of proposed rule change included NYSE Arca's representations that: (i) As of June 14, 2010, there was VIX futures contracts open interest on CFE of 88,366 contracts, with a contract price of $25.55 and value of open interest of $2,257,751,300; (ii) total CFE trading volume in 2009 in VIX futures contracts was 1,143,612 contracts, with average daily volume of 4,538 contracts; and (iii) total volume year-to-date (through May 31, 2010) was 1,399,709 contracts, with average daily volume of 13,458 contracts, Securities Exchange Act Release No. 63317 (Nov. 16, 2010), 75 FR 71158, 71159 n.9 (Nov. 22, 2010)); Securities Exchange Act Release No. 63753 (Jan. 21, 2011), 76 FR 4963 (Jan. 27, 2011) (SR–NYSEArca–2010–110) (notice of proposed rule change included NYSE Arca's representations that: (i) Natural gas futures volume on New York Mercantile Exchange (''NYMEX'') for 2009 and 2010 (through October 29, 2010) was 47,864,639 contracts and 52,490,180 contracts, respectively; (ii) as of October 29, 2010, NYMEX open interest for natural gas futures was 794,741 contracts, and open interest for near month futures was 47,313 contracts; (iii) the contract price was $40,380 ($4.038 per MMBtu and 10,000 MMBtu per contract), and the approximate value of all outstanding contracts was $32.1 billion; (iv) the position limits for all months is 12,000 natural gas contracts and the total value of contracts if position limits were reached would be approximately $484.56 million (based on the $40,380 contract price); and (v) as of October 29, 2010, open interest in natural gas swaps cleared on NYMEX was approximately 2,618,092 contracts, with an approximate value of $26.4 billion ($4.038 per MMBtu and 2,500 MMBtu per contract), Securities Exchange Act Release No. 63493 (Dec. 9, 2010), 75 FR 78290, 78291 n.11 (Dec. 15, 2010)); Securities Exchange Act Release No. 63869 (Feb. 8, 2011), 76 FR 8799 (Feb. 15, 2011) (SR–NYSEArca–2010–119) (notice of proposed rule change included NYSE Arca's representations that: (i) WTI crude oil futures volume on NYMEX for 2009 and 2010 (through November 30, 2010) was 137,352,118 contracts and 156,155,620 contracts, respectively; (ii) as of November 30, 2010, NYMEX open interest for WTI crude oil was 1,342,325 contracts, and open interest for near month futures was 323,184 contracts; (iii) the position limits for all months is 20,000 WTI crude oil contracts and the total value of contracts if position limits were reached would be approximately $1.68 billion (based on the $84.11 contract price); and (iv) the contract price was $84,110 ($84.11 USD per barrel and 1,000 barrels per contract), and the approximate value of all outstanding contracts was $112.9 billion, Securities Exchange Act Release No. 63625 (Dec. 30, 2010), 76 FR 807, 808 n.11 (Jan. 6, 2011)); Securities Exchange Act Release No. 65134 (Aug. 15, 2011), 76 FR 52034 (Aug. 19, 2011) (SR–NYSEArca–2011–23) (notice of proposed rule change included NYSE Arca's representations that: (i) As of January 31, 2011, there was VIX futures contracts open interest on CFE of 163,396 contracts with a value of open interest of $3,461,984,900; (ii) total CFE trading volume in 2010 in VIX futures contracts was 4,402,616 contracts, with average daily volume of 17,741 contracts; and (iii) total volume year-to-date (through January 31, 2011) was 779,493 contracts, with average daily volume of 38,975 contracts, Securities Exchange Act Release No. 64470 (May 11, 2011), 76 FR 28493, 28494 n.12 (May 17, 2011)); Securities Exchange Act Release No. 65136 (Aug. 15, 2011), 76 FR 52037 (Aug. 19, 2011) (SR–NYSEArca–2011–24) (notice of proposed rule change included NYSE Arca's representations that: (i) Natural gas futures volume on NYMEX for 2009 and 2010 (through December 31, 2010) was 47,864,639 contracts and 64,350,673 contracts, respectively; (ii) as of December 31, 2010, NYMEX open interest for all natural gas futures was 772,104 contracts, and the approximate value of all outstanding contracts was $35,664,257,310 billion [sic]; (iii) open interest as of December 31, 2010 for the near month contract was 166,757 contracts and the near month contract value was $7,345,645,850 ($4.405 per MMBtu and 10,000 MMBtu per contract); (iv) the position accountability limits for all months is 12,000 natural gas contracts and the total value of contracts if position accountability limits were reached would be approximately $528,600,000 million (based on the $4.405 contract price); and (v) as of December 31, 2010, open interest in natural gas swaps cleared on NYMEX was approximately 1,493,013 contracts, with an approximate value of $16,463,384,003 ($4.411 per MMBtu and 2,500 MMBtu per contract), Securities Exchange Act Release No. 64464 (May 11, 2011), 76 FR 28483, 28484 n.11 (May 17, 2011)); Securities Exchange Act Release No. 65344 (Sept. 15, 2011), 76 FR 58549 (Sept. 21, 2011) (SR–NYSEArca–2011–48) (notice of proposed rule change included NYSE Arca's representations that: (i) Wheat futures volume on CBOT for 2010 and 2011 (through April 29, 2011) was 23,058,783 contracts and 8,860,135 contracts, respectively; (ii) as of April 29, 2011, open interest for wheat futures was 456,851 contracts; (iii) the wheat contract price was $40,062.50 (801.25 cents per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $18.3 billion; (iv) the position limits for all months was 6,500 wheat contracts and the total value of contracts if position limits were reached would be approximately $260.4 million (based on the $40,062.50 contract price); (v) soybean futures volume on CBOT for 2010 and 2011 (through April 29, 2011) was 36,962,868 contracts and 16,197,385 contracts, respectively; (vi) as of April 29, 2011, open interest for soybean futures was 572,959 contracts; (vii) the soybean contract price was $69,700.00 (1394 cents per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $39.9 billion; (viii) the position limits for all months is 6,500 soybean contracts and the total value of contracts if position limits were reached would be approximately $453 million (based on the $69,700.00 contract price); (ix) sugar futures volume on ICE Futures for 2010 and 2011 (through April 29, 2011) was 27,848,391 contracts and 9,045,069 contracts, respectively; (x) as of April 29, 2011, open interest for sugar futures was 570,948 contracts; (xi) the sugar contract price was $24,920.00 (22.25 cents per pound and 112,000 pounds per contract), and the approximate value of all outstanding contracts was $14.2 billion; and (xii) the position limits for all months is 15,000 sugar contracts and the total value of contracts if position limits were reached would be approximately $373.8 million (based on the $24,920.00 contract price), Securities Exchange Act Release No. 64967 (July 26, 2011), 76 FR 45885, 45886 n.10, 45888 n.20, 45890 n.24 (Aug. 1, 2011)); Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440 (Mar. 15, 2012) (SR–NYSEArca–2012–04) (notice of proposed rule change included NYSE Arca's representations that: (i) As of December 30, 2011, open interest in AUD/USD futures contracts traded on CME was $11.56 billion, and AUD/USD futures contracts had an average daily trading volume in 2011 of 123,006 contracts; (ii) as of December 30, 2011, open interest in CAD/USD futures contracts traded on CME was $11.66 billion, and CAD/USD futures contracts had an average daily trading volume in 2011 of 89,667 contracts; (iii) as of December 30, 2011, open interest in CHF/USD futures contracts traded on CME was $4.99 billion, and CHF/USD futures contracts had an average daily trading volume in 2011 of 40,955 contracts; (iv) futures contracts based on the U.S. Dollar Index (''USDX'') were listed on November 20, 1985, and options on the USDX futures contracts began trading on September 3, 1986; (v) as of December 30, 2011, open interest in USDX futures contracts traded on ICE Futures was $5.44 billion, and USDX futures contracts had an average daily trading volume in 2011 of 30,341 contracts; (vi) as of December 30, 2011, open interest in EUR/USD futures contracts traded on CME was $46.12 billion, and EUR/USD futures contracts had an average daily trading volume in 2011 of 336,947 contracts; and (vii) as of December 30, 2011, open interest in JPY/USD futures contracts traded on CME was $25.75 billion, and JPY/USD futures contracts had an average daily trading volume in 2011 of 113,476 contracts, Securities Exchange Act Release No. 66180 (Jan. 18, 2012), 77 FR 3532, 3534–35 (Jan. 24, 2012)); Securities Exchange Act Release No. 68165 (Nov. 6, 2012), 77 FR 67707 (Nov. 13, 2012) (SR–NYSEArca–2012–102) (notice of proposed rule change included NYSE Arca's representations that: (i) Gold and silver futures contracts traded on Commodity Exchange, Inc. (''COMEX'') are the global benchmark contracts and most liquid futures contracts in the world for each respective commodity; (ii) as of March 15, 2012, open interest in gold futures contracts and silver futures contracts traded on CME was $23.7 billion and $8.5 billion, respectively; (iii) gold futures contracts and silver futures contracts had an average daily trading volume in 2011 of 138,964 contracts and 63,913 contracts, respectively; (iv) CME constitutes the largest regulated foreign exchange marketplace in the world, with over $100 billion in daily liquidity; (v) as of March 15, 2012, open interest in Euro futures contracts and Yen futures contracts traded on CME and, for Dollar futures contracts, on ICE Futures, were $42.7 billion, $20.8 billion, and $4.8 billion, respectively; and (vi) Euro futures contracts, Yen futures contracts, and Dollar futures contracts had an average daily trading volume in 2011 of 325,103, 106,824, and 27,258 contracts, respectively, Securities Exchange Act Release No. 67882 (Sept. 18, 2012), 77 FR 58881, 58883 n.10, 58883 n.14 (Sept. 24, 2012)); Securities Exchange Act Release No. 81686 (Sept. 22, 2017), 82 FR 45643, 45646 (Sept. 29, 2017) (SR–NYSEArca–2017–05) (order approving the listing and trading of the Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares, citing to NYSE Arca's representations that: (i) The oil contract market was of significant size and liquidity, and had average daily volume of 650,000 contracts and daily open interest of 450,000 contracts; (ii) the Sponsor is registered as a commodity pool operator with the CFTC and is a member of the National Futures Association, and (iii) the CFTC has regulatory jurisdiction over the trading of futures contracts traded on U.S. markets); Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625 (Dec. 28, 2017) (SR–NYSEArca–2017–107) (notice of proposed rule change included NYSE Arca's representations that: (i) Freight futures liquidity has remained relatively constant, in lot terms, over the last five years with

Commission was in each of those cases dealing with a large futures market that had been trading for a number of years before an exchange proposed an ETP based on those futures.[37] And where the Commission has considered a proposed ETP based on futures that had only recently begun trading,[38] the Commission specifically addressed whether the futures on which the ETP was based—which were futures on an index of well-established commodity futures—were illiquid or susceptible to manipulation.[39]

Accordingly, the Commission examines below whether the representations by the Exchange, and the comments received from the public, support a finding that the Exchange has entered into a surveillance-sharing agreement with a market of significant size relating to bitcoin, the asset underlying the proposed ETPs, or that alternative means of preventing fraud and manipulation would be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that the proposed rule change be designed to prevent fraudulent and manipulative acts and practices.

2. Comments Received

One commenter asserts that data on a week's activity on the Gemini exchange, which provides a critical input for the CFE bitcoin futures, show substantial quantities of bitcoin are bought and sold all at once. The commenter believes that this behavior does not appear to be the result of natural trading and in the long run would prevent true price discovery.[40]

One commenter states that commencing an ETP without allowing the market to adjust to the cash-settled futures products would be akin to ''putting the cart before the horse'' and seems to be an attempt to appease institutional investors.[41]

One commenter states that the market for bitcoin derivatives other than bitcoin exchange-traded futures appears to be developing and that financial institutions are reportedly moving toward launching bitcoin-related trading desks and other operations. This commenter believes that the proposed offering of both long and short ETPs raises the possibility that market makers in bitcoin-related derivatives could make two-sided markets if interest in the long and short ETPs is similar in magnitude. The commenter further believes that interest outside of the bitcoin ETPs may be sufficient to motivate market makers to maintain bitcoin derivatives desks.[42] In addition, the commenter suggests that questions about bitcoin derivatives markets can be addressed through market depth analyses, discussions with potential bitcoin derivatives liquidity providers, and analyses of order and trade data across CME and CFE to determine the plausibility of simultaneous liquidity collapses on both bitcoin future markets.[43]

Six commenters assert that there is manipulation in the bitcoin market.[44] One commenter states that it is widely known in the cryptocurrency

approximately 1.1 million lots trading annually; (ii) open interest currently stood at approximately 290,000 lots across all asset classes representing an estimated value of more than $3 billion, and, of such open interest, Capesize contracts accounted for approximately 50%, Panamax for approximately 40%, and Handymax for approximately 10%, Securities Exchange Act Release No. 81681 (Sept. 22, 2017), 82 FR 45342, 45345 (Sept. 28, 2017)). See also Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510 (Apr. 6, 2006) (SR–Amex–2005–127) (notice of proposed rule change included Amex's representations that: (i) WTI light, sweet crude oil contract, listed and traded at NYMEX, trades in units of 42,000 gallons (1,000 barrels), and annual daily contract volume on NYMEX from 2001 through October 2005 was 149,028, 182,718, 181,748, 212,382 and 242,262, respectively; (ii) annual daily contract volume on ICE Futures for Brent crude contracts from 2001 through October 2005 was 74,011, 86,499, 96,767, 102,361 and 120,695 respectively; (iii) annual daily contract volume on NYMEX for heating oil futures from 2001 through October 2005 was 41,710, 42,781, 46,327, 51,745 and 52,334, respectively; (iv) annual daily contract volume on NYMEX for natural gas contracts from 2001 through October 2005 was 47,457, 97,431, 76,148, 70,048 and 77,149, respectively; and (v) annual daily contract volume on NYMEX for gasoline contracts from 2001 through October 2005 was 38,033, 43,919, 44,688, 51,315 and 53,577, respectively, Securities Exchange Act Release No. 53324 (Feb. 16, 2006), 71 FR 9614, 9618 (Feb. 24, 2006)); Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987 (Apr. 20, 2007) (SR–Amex–2006–112) (notice of proposed rule change included Amex's representations that annual daily contract volume on NYMEX for natural gas contracts from 2001 through October 2006 was 47,457, 97,431, 76,148, 70,048, 76,265, and 102,097, respectively, Securities Exchange Act Release No. 55372 (Feb. 28, 2007), 72 FR 10267, 10268 (Mar. 7, 2007)).

[37] For example, corn futures began trading in 1877, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on corn futures was approved for listing and trading in 2010. *See* Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22). VIX futures began trading in 2004, *see http://cfe.cboe.com/cfe-products/vx-cboe-volatility-index-vix-futures/contract-specifications,* and the first ETPs based on VIX futures were approved for listing and trading in 2010. *See* Securities Exchange Act Release No. 63610 (Dec. 27, 2010), 76 FR 199 (Jan. 3, 2011) (SR–NYSEArca–2010–10). Natural gas futures began trading in 1990, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on natural gas was approved for listing and trading in 2007. *See* Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987 (Apr. 20, 2007) (SR–Amex–2006–112). Crude oil futures began trading in 1983, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on crude oil futures was approved for listing and trading in 2006. *See* Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510 (Apr. 6, 2006) (SR–Amex–2005–127). Wheat futures, sugar futures, and soybean futures began trading in 1877, 1914, and 1936, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html* and *https://www.theice.com/publicdocs/ICE_Sugar_Brochure.pdf,* and the first ETPs based on each of these commodity futures were approved for listing and trading in 2011. *See* Securities Exchange Act Release No. 65344 (Sept. 15, 2011), 76 FR 58549 (Sept. 21, 2011) (SR–NYSEArca–2011–48). U.S. Dollar Index futures began trading in 1985, *https://www.theice.com/publicdocs/futures_us/ICE_Dollar_Index_FAQ.pdf,* and the first ETPs based on U.S. Dollar Index futures was approved for listing and trading in 2007. *See* Securities Exchange Act Release No. 55292 (Feb. 14, 2007), 72 FR 8406 (Feb. 26, 2007) (SR–Amex–2006–86). Australian Dollar futures and Euro futures began trading in 1987 and 1999, respectively, and Canadian Dollar futures, Swiss Franc futures, and Yen futures began trading in 2002, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on each of these individual currency futures were approved for listing and trading in 2012. *See* Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440 (Mar. 15, 2012) (SR–NYSEArca–2012–04). Silver futures and gold futures began trading in 1933 and 1974, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on each of these commodity futures were approved for listing and trading in 2006. *See* Securities Exchange Act Release No. 55029 (Dec. 29, 2006), 72 FR 806 (Jan. 8, 2007) (SR–Amex–2006–76). Freight futures have been cleared since 2005, and the first ETP based on freight futures was approved for listing and trading in 2017. *See* Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625, 61626 n.6 (Dec. 28, 2017) (SR–NYSEArca–2017–107) (noting that ''Freight Futures have been cleared since 2005'').

[38] The Exchange filed its proposal less than one month after bitcoin futures began trading on either CME or CFE.

[39] At issue were futures on an index comprising futures on crude oil, Brent crude oil, natural gas, heating oil, gasoline, gas oil, live cattle, wheat, aluminum, corn, copper, soybeans, lean hogs, gold, sugar, cotton, red wheat, coffee, standard lead, feeder cattle, zinc, primary nickel, cocoa, and silver. *See* Securities Exchange Act Release No. 53659 (Apr. 17, 2006), 71 FR 21074, 21080 (Apr. 24, 2006) (SR–NYSE–2006–17) (notice of proposed rule change to list shares of iShares GSCI Commodity-Indexed Trust). The Commission concluded that requirements of Exchange Act Section 6(b)(5) had been met because concerns about manipulation would be addressed by the arbitrage relationship between the new index futures and the existing component futures, as well as the ETP listing exchange's comprehensive surveillance-sharing agreements not only with the market for the index futures, but also with the markets for the component futures. *See* Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372, 36379 (June 26, 2006) (SR–NYSE–2006–17) (order approving listing of shares of iShares GSCI Commodity-Indexed Trust). Additionally, the approval order for the ETP noted that, if the volume in any futures contract that was part of the reference index fell below a specified multiple of production of the underlying commodity, that contract's weight in the index would decrease. *See id.* at 36374.

[40] *See* Malkin Letter, *supra* note 12, at 1–2.

[41] *See* Desai Letter, *supra* note 12, at 1.

[42] *See* NERA Letter, *supra* note 12, at 2.

[43] *See id.*

[44] *See* Desai Letter, *supra* note 12, at 1; Fitzgerald Letter, *supra* note 12, at 1; Kumar Letter, *supra* note 12; Krohn Letter, *supra* note 12; Barnwell Letter, *supra* note 12, at 2; Bhat Letter, *supra* note 12.

community that volatility in the bitcoin market is the result of manipulation through the coordinated use of high-frequency trading across multiple exchanges.[45] Another commenter asserts that it is common knowledge that the bitcoin market is being manipulated and asserts that BitConnect, which was recently shut down and had promised risk-free annual returns of up to 120%, is an example of Ponzi and multi-level marketing schemes that are too common. This commenter argues that the Commission should not send the wrong signal to bitcoin manipulators—who, the commenter asserts, currently operate with impunity—by approving a bitcoin ETP.[46]

One commenter asserts that, in an unregulated market, a small minority can manipulate the price of bitcoin and other ''altcoins'' and that bitcoin and other cryptocurrencies are freely manipulated by players who hold a disproportionate amount of cryptocurrencies or access to fiat currencies. This commenter cites data showing that 4.11% of bitcoin addresses own 96.53% of all the bitcoin in circulation, that the top four addresses control 3.13% of all bitcoin currently in distribution (worth over $4 billion), and that 115 individuals control bitcoin worth over $24 billion.[47]

One commenter asserts that widespread pump-and-dump schemes organized through the messaging platform ''Telegram'' are evidence of manipulation.[48] This commenter further cites an inquiry by then-New York Attorney General Eric Schneiderman into cryptocurrency exchanges and the use of trading ''bots'' on those exchanges to manipulate the market, and asserts that such activity can drive prices above fair market value by over 300%. The commenter notes the Kraken exchange's refusal to cooperate with this inquiry and believes that this refusal should pose serious questions for investors and the Commission about the Kraken exchange's operations, particularly after the Kraken exchange recently exited the Japanese market due to regulatory requirements.[49]

One commenter states that a commonly cited factor mitigating possible susceptibility to manipulation is the securities exchanges' own surveillance procedures, in addition to the futures exchanges' surveillance procedures and market surveillance and oversight by the Commodity Futures Trading Commission (''CFTC''). This commenter cites statements by the CFTC that it has the legal authority and means to police certain spot markets for fraud and manipulation through ''heightened review'' collaboration with exchanges, that exchanges will provide the CFTC surveillance team with trade settlement data upon request, and that the exchanges will enter into information-sharing agreements with spot market platforms and monitor trading activity on the spot markets. The commenter also states that the Gemini exchange has announced that it would use Nasdaq's market surveillance system to monitor its marketplace.[50]

This commenter further asserts that market surveillance is generally a prerequisite to identifying potential market manipulation and discourages market manipulation. The commenter believes that the emergence of institutionalized market surveillance on both futures and spot markets is a positive sign for the long-term future of bitcoin markets.[51] The commenter suggests that the Commission, in coordination with the CFTC, self-regulatory organizations, bitcoin futures exchanges, and bitcoin spot market platforms, could gather market surveillance data to conduct an independent analysis of trade and settlement patterns and determine whether potentially manipulative trading practices occur on bitcoin spot and futures markets.[52]

A commenter asserts that bitcoin ETPs should be structured in such a way that the funds own bitcoin directly, because this commenter believes that cryptocurrency ETPs that are based on futures or other derivatives would invite manipulation of prices. A bitcoin ETP that holds the underlying cryptocurrency directly, this commenter states, would be simpler, more transparent, and less subject to complex and destabilizing trading strategies.[53]

The Sponsor asserts that the operation of, and risks posed by, an ETP that seeks to track the performance of a bitcoin futures contract, are relatively straightforward and similar to the operation and risks involved with many existing commodity-futures-based ETPs, and that the Commission has not raised concerns about the risk of market manipulation in the underlying commodity markets, even when the risk is disclosed in the offering document for a commodity-futures-based ETP, or when the production of the underlying commodity is dominated by relatively few players operating under a common organization.[54] The Sponsor also asserts that CFE and CME surveil their markets to ensure that they are free from manipulation, other price distortion, or disorderly trading or expiration of futures contracts and that it is not necessary for the Exchange to enter into surveillance-sharing agreements with the underlying bitcoin spot markets.[55] The Sponsor states that investors should only consider the price of the Bitcoin Futures Contracts, rather than the price of bitcoin itself,[56] but also concedes that, to the extent price manipulation is possible in the underlying market and affects the price of the futures contracts, the NAV of the Funds would be affected as well.[57]

The Sponsor asserts that CFE and CME have specific and well-established trading and clearing rules to maintain an orderly and continuous market for bitcoin futures contracts that is supported by market makers providing continuous two-sided markets throughout the day.[58] The Sponsor concedes that bitcoin futures contracts have limited operating histories, but asserts that the market infrastructure for these contracts is at least as advanced as that underlying the futures contracts used by a previously approved ETP that invests in freight futures contracts, noting that bitcoin futures trade with an electronic order book, while freight futures trade by voice orders, and asserting that the daily dollar volume in bitcoin futures contracts over a two-month period exceeds that of freight futures contracts.[59] The Sponsor asserts that CFE and CME are significant markets based on the existing market as well as the trading infrastructure.[60] The Sponsor further concedes that, if the Funds hit position limits in Bitcoin Futures Contracts, this would potentially affect the trading and liquidity of the Shares, but asserts that this risk is disclosed to investors in the Registration Statement, that other commodity-futures-based ETPs face similar risks, and that interest from investors in the Shares would support

[45] *See* Barnwell Letter, *supra* note 12, at 2.

[46] *See* Kumar Letter, *supra* note 12.

[47] *See* Fitzgerald Letter, *supra* note 12, at 1–2.

[48] *See id.* at 2.

[49] *See id.*

[50] *See* NERA Letter, *supra* note 12, at 4–5.

[51] *See id.* at 5.

[52] *See id.*

[53] *See* Krohn Letter, *supra* note 12.

[54] *See* GraniteShares Letter, *supra* note 12, at 1–2. The Commission notes that the Sponsor did not submit its comment letter until 97 days after the close of the comment period under the Order Instituting Proceedings.

[55] *See id.* at 2 & n.2, 6.

[56] *See id.* at 8.

[57] *See id.* at 6, 8.

[58] *See id.* at 2–3, 8–9.

[59] *See id.* at 3.

[60] *See id.* at 8–9.

development of the bitcoin futures market.[61]

3. Analysis

The Exchange asserts that the price of bitcoin is inherently resistant to manipulation,[62] offering, in summary fashion, a list of arguments that are exactly the same as arguments that it or commenters already raised with respect to previous proposals for bitcoin-based ETPs.[63] The Commission comprehensively addressed each of these arguments in the Winklevoss Order, finding in each case that the Exchange had failed to carry its burden to demonstrate that the argument was correct,[64] and finding overall that the Exchange ''ha[d] not demonstrated that the structure of the spot market for bitcoin is uniquely resistant to manipulation.'' [65] Given that the Exchange has merely repeated these arguments, providing no elaboration or support, the Commission would have no basis—other than ''unquestioning reliance'' on the Exchange's representations—on which to come to a different conclusion here.[66]

The Sponsor concedes that manipulation of the underlying bitcoin markets may affect the value of the Shares,[67] but argues that the risk of manipulation has been disclosed to investors and that the Commission has not raised similar concerns in connection with previously approved commodity-futures ETPs, even when the risk of manipulation has been disclosed to investors or when the underlying commodity market was controlled by relatively few players.[68] But the Commission, as it stated in the Winklevoss Order, is not applying a ''cannot be manipulated'' standard to ETPs.[69] Rather, the Commission has held that—absent a showing that the underlying assets for an ETP are inherently resistant to manipulation, or that other means of surveillance will suffice—a listing exchange must demonstrate that it has entered into a surveillance-sharing agreement with a regulated market of significant size relating to the underlying asset.[70]

The Exchange asserts that its existing surveillance procedures and its ability to share surveillance information with U.S. futures exchanges are sufficient to meet the requirements of Exchange Act Section 6(b)(5).[71] One commenter also asserts that the exchange's own surveillance procedures, along with market surveillance and oversight by the CFTC, can mitigate manipulation.[72]

While the Exchange would, pursuant to its listing rules, be able to obtain certain information regarding trading in the Shares and in the underlying bitcoin or any bitcoin derivative through registered market makers,[73] this trade information would be limited to the activities of market participants who trade on the Exchange. Furthermore, neither the Exchange's ability to surveil trading in the Shares nor its ability to share surveillance information with other securities exchanges trading the Shares would give the Exchange insight into the activity and identity of market participants who trade in bitcoin futures contracts or other bitcoin derivatives or who trade in the underlying bitcoin spot markets, where a substantial majority of trading, the Commission concluded in the Winklevoss Order, ''occurs on unregulated venues overseas that are relatively new and that, generally, appear to trade only digital assets.'' [74] Thus, consistent with its determination in the Winklevoss Order,[75] and with the Commission's previous orders approving commodity-futures ETPs,[76] the Commission believes that the Exchange must demonstrate that it has in place a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [77]

The Exchange represents that it is able to share surveillance information with CME and CFE, which are bitcoin futures markets regulated by the CFTC, through membership in the Intermarket Surveillance Group.[78] And the Sponsor asserts that CFE and CME surveil their markets to ensure that they are free from manipulation, other price distortion, or disorderly trading,[79] and that CFE and CME are ''significant markets'' based on their structure and volume.[80] Nonetheless, the Commission must disapprove the proposal, because the evidence in the record does not support a conclusion that CME's and CFE's bitcoin futures markets are markets of significant size.

The Order Instituting Proceedings sought comment on whether the CME and CFE bitcoin futures markets are markets of significant size,[81] but the Exchange has not responded to any of the questions in the Order Instituting Proceedings, and the only analysis of

[61] *See id.* at 7.

[62] *See supra* notes 20–21 and accompanying text.

[63] *See* Winklevoss Order, *supra* note 30, 83 FR at 37582–84 (Section III.B.1(a) of the order).

[64] *See id.* at 37584–87 (Section III.B.1(b) of the order).

[65] *See id.* at 37584.

[66] *See supra* note 28 and accompanying text (discussing the holding of *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission*). Additionally, the Trust's Registration Statement acknowledges that bitcoin spot markets have been the subject of fraud and security breaches, that the ''nature of the assets held at Bitcoin Exchanges make them appealing targets for hackers,'' and that the bitcoin spot markets' exposure to ''fraud and security breaches . . . could have a negative impact on the Bitcoin Futures Contracts in which the Funds invest.'' *See* Registration Statement, *supra* note 3, at 9.

[67] *See supra* note 57 and accompanying text.

[68] *See supra* note 54 and accompanying text.

[69] *See* Winklevoss Order, *supra* note 30, 83 FR at 37582.

[70] *See id.* The Sponsor argues that it is not necessary for the Exchange to enter into a surveillance-sharing agreement with an underlying bitcoin trading venue, but the Commission has not asserted that such a surveillance-sharing agreement is necessary. Instead, the Commission has held in the Winklevoss Order ''that—*when the spot market is unregulated*—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' *Id.* at 37600 (emphasis added).

[71] *See* Notice, *supra* note 5, 83 FR at 2709.

[72] *See supra* notes 50–51 and accompanying text. This commenter also suggests that the Commission—in coordination with the CFTC, SROs, futures markets, and bitcoin spot platforms—could gather market surveillance data to independently analyze whether manipulative practices occur on bitcoin spot and futures platforms. *See supra* note 52 and accompanying text. As noted above, however, it is the Exchange that bears the burden to demonstrate that its proposal is designed to ''prevent fraudulent and manipulative acts and practices.'' *See supra* notes 25–28 and accompanying text.

[73] *See Notice, supra* note 5, 83 FR at 2709 (''In addition to the existing obligations under Exchange rules regarding the production of books and records . . ., the registered Market Maker in Trust Issued Receipts shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.'').

[74] Winklevoss Order, *supra* note 30, 83 FR at 37580.

[75] *See id.* at 37591 (finding that ''traditional means'' of surveillance were not sufficient in the absence of a surveillance-sharing agreement with a regulated market of significant size related to the underlying asset).

[76] *See supra* note 35 and accompanying text (noting previous commodity-futures ETPs where surveillance sharing in place between ETP listing exchange and underlying futures exchanges).

[77] Winklevoss Order, *supra* note 30, 83 FR at 37580 (quoting Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98)).

[78] *See https://www.isgportal.org/isgPortal/public/members.htm* (listing the current members and affiliate members of the Intermarket Surveillance Group).

[79] *See supra* note 55 and accompanying text.

[80] *See supra* notes 59–60 and accompanying text.

[81] *See* Order Instituting Proceedings, *supra* note 9, 83 FR at 15427.

the underlying futures markets the Notice provides is the generic statement that, ''based on numerous conversations with market participants, issuers, and discussions with personnel of CFE,'' the Exchange ''expects that the market for Bitcoin Futures Contracts will be sufficiently liquid to support numerous ETPs shortly after launch.'' [82] The Sponsor argues that the daily volume in the Bitcoin Futures Contracts, based on a two-month sample period, exceeds that of the futures contracts underlying a previously approved commodity-futures ETP investing in freight futures, adding that the Bitcoin Futures Contracts trade on an electronic order book, whereas the freight futures trade by voice, and that the trading infrastructure of the CME and CFE makes them significant markets.[83] The Sponsor further asserts that, if the Funds hit position limits in the Bitcoin Futures Contracts, although it could impact trading and liquidity in the Shares, the interest in the Shares would support further development of the bitcoin futures market.[84]

Whether an underlying market is a ''market of significant size,'' however, does not depend on whether a market operates by electronic or voice trading, and it does not depend solely on trading volume in isolation from the broader context of the underlying market. Moreover, to the extent that isolated trading volume is relevant, the Commission does not believe that a two-month sample is sufficient to establish that a market is of significant size. Instead, as noted above and stated in the Winklevoss Order, the Commission interprets a ''significant market'' or ''market of significant size'' to be ''a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.'' [85] Neither the Exchange nor the Sponsor has provided an analysis of whether the CME or CFE meets this standard, and the Sponsor's assertion that the bitcoin futures markets will grow to accommodate demand for the Funds (which are two of nine recently proposed bitcoin futures ETPs),[86] this speculative statement does not provide a basis for the Commission to conclude that CME and CFE are currently markets of significant size.[87] Thus, there is no basis in the record on which the Commission can conclude that the bitcoin futures markets are markets of significant size.

Publicly available data show that the median daily notional trading volume, from inception through August 10, 2018, has been 14,185 bitcoins on CME and 5,184 bitcoins on CFE, and that the median daily notional value of open interest on CME and CFE during the same period has been 10,145 bitcoins and 5,601 bitcoins, respectively.[88] But while these futures contract figures are readily available, meaningful analysis of the size of the CME or CFE markets relative to the underlying bitcoin spot market is challenging, because reliable data about the spot market, including its overall size, are unavailable.[89]

The Commission also notes that in recent testimony CFTC Chairman Giancarlo characterized the volume of the bitcoin futures markets as ''quite small.'' [90] Additionally, the President and COO of CFE, recently acknowledged in a letter to the Commission staff that ''the current bitcoin futures trading volumes on Cboe Futures Exchange and CME may not currently be sufficient to support ETPs seeking 100% long or short exposure to bitcoin.'' [91] These statements reinforce the Commission's conclusion that there is insufficient evidence to determine that the CME and CFE bitcoin futures markets are markets of significant size.

Although this conclusion is dispositive with respect to the Exchange's proposal, the Commission will also address the Exchange's representation that no more than 10% of the net assets of a Fund in the aggregate invested in bitcoin futures contracts will be invested in contracts whose principal market is neither a member of the Intermarket Surveillance Group nor a market with whom the Exchange has a comprehensive surveillance-sharing agreement.[92] The Commission does not believe that this representation would function as a meaningful limitation when, according to the Notice, there is no minimum amount of a Fund that must be invested in such contracts. According to the Notice, in the event position, price, or accountability limits are reached with respect to bitcoin futures contracts, each Fund may invest in listed and OTC swaps on bitcoin or the Benchmark Futures Contracts.[93] The Notice does not establish any limit on the Funds' holdings of these other bitcoin-related derivatives; it provides no analysis of the size and liquidity of markets for those derivatives; and it does not discuss whether the Exchange has the ability to share surveillance information with the markets for these derivatives. Thus, as to what might be a substantial proportion of the Funds' portfolios under the Notice, the

[82] Notice, *supra* note 5, 83 FR at 2710; *see also supra* note 23 and accompanying text. The Exchange sought to remove this representation from its proposal in Amendment No. 2. *See infra* note 128.

[83] *See supra* notes 59–60 and accompanying text.

[84] *See supra* note 61 and accompanying text.

[85] *See supra* note 33 and accompanying text (quoting Winklevoss Order, *supra* note 30, 83 FR at 37594).

[86] *See Notice, supra* note 5 (proposing two GraniteShares bitcoin-futures ETPs); Securities Exchange Act Release No. 82350 (Dec. 19, 2017), 82 FR 61100 (Dec. 26, 2017) (SR–NYSEArca–2017–139) (proposing two ProShares bitcoin-futures ETPS); Securities Exchange Act Release No. 82532 (Jan. 18, 2018), 83 FR 3380 (Jan. 24, 2018) (SR–NYSEArca–2018–02) (proposing five Direxion bitcoin-futures ETPs).

[87] With respect to the Sponsor's argument that daily volume in the Bitcoin Futures Contracts over a two-month period exceeds that of futures contracts underlying a previously approved commodity-futures ETP, the Breakwave Dry Bulk Shipping ETF, the Commission notes that the futures in question had been trading for at least a dozen years before the ETP was proposed, *see supra* note 37 (SR–NYSEArca–2017–107), and that the exchange proposing that ETP had provided not just daily volume figures, but had provided statistics on open interest, yearly volume, and distribution of open interest across contract types and had represented that liquidity had remained relatively constant over a five-year period. *See supra* note 36. Moreover, in approving the Breakwave Dry Bulk Shipping ETF, the Commission noted that the listing exchange had represented that ''the Freight Futures trade on well-established, regulated markets that are members of the ISG'' and found that the exchange would be able to ''share surveillance information with a significant regulated market for trading futures on dry bulk freight.'' Securities Exchange Act Release No. 82390, *supra* note 35, 82 FR at 61633.

[88] These volume figures were calculated by Commission staff using data published by CME and CFE on their websites.

[89] *See* Winklevoss Order, *supra* note 30, 83 FR at 37601.

[90] CFTC Chairman Giancarlo testified: ''It is important to put the new Bitcoin futures market in perspective. It is quite small with open interest at the CME of 6,695 bitcoin and at Cboe Futures Exchange (Cboe) of 5,569 bitcoin (as of Feb. 2, 2018). At a price of approximately $7,700 per Bitcoin, this represents a notional amount of about $94 million. In comparison, the notional amount of the open interest in CME's WTI crude oil futures was more than one thousand times greater, about $170 billion (2,600,000 contracts) as of Feb[.] 2, 2018 and the notional amount represented by the open interest of Comex gold futures was about $74 billion (549,000 contracts).'' *See* Written Testimony of J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission, Before the Senate Banking Committee at text accompanying nn. 14–15 (Feb. 6, 2018). *See also* Winklevoss Order, *supra* note 30, 83 FR at 37601 (citing Giancarlo testimony).

[91] Letter from Chris Concannon, President and COO, Cboe Global Markets, to Dalia Blass, Director, Division of Investment Management, Commission, at 5 (Mar. 23, 2018), *available at https://www.sec.gov/divisions/investment/cboe-global-markets-innovation-cryptocurrency.pdf*.

[92] *See supra* note 18 and accompanying text.

[93] *See* Notice, *supra* note 5, 83 FR 2706; *see also supra* note 19 and accompanying text.

Commission cannot conclude that surveillance-sharing would be available, that the related markets would be regulated, or that the related markets would be of significant size.[94]

Additionally, while one commenter suggests that the market for bitcoin derivatives other than exchange-traded futures appears to be developing—and that the offering of long and short bitcoin ETPs ''raises the possibility that market makers in Bitcoin derivatives could make two-sided markets if interest in the long and short ETFs is similar in magnitude'' [95]—these speculative statements do not provide a basis for the Commission to conclude that the non-exchange-traded bitcoin derivatives market is now, or may eventually be, of significant size.

The Commission therefore concludes that Exchange has not demonstrated that it has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or that, given the current absence of such an agreement, the exchange's own surveillance procedures described above would, by themselves, be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[96] While CME and CFE are regulated markets for bitcoin derivatives, there is no basis in the record for the Commission to conclude that these markets are of significant size. Additionally, because bitcoin futures have been trading on CME and CFE only since December 2017, the Commission has no basis on which to predict how these markets may grow or develop over time, or whether or when they may reach significant size.

Although the Exchange has not demonstrated that a regulated bitcoin futures market of significant size currently exists, the Commission is not suggesting that the development of such a market would automatically require approval of a proposed rule change seeking to list and trade shares of an ETP holding bitcoins as an asset. The Commission would need to analyze the facts and circumstances of any particular proposal and examine whether any unique features of a bitcoin futures market would warrant further analysis before approval.

C. Protecting Investors and the Public Interest

1. Comments Received

One commenter believes that, while the Commission should deny the proposed ETPs, it should regulate this environment to stop individual consumers from coming to financial harm.[97]

One commenter suggests that the Commission could address some of its concerns about the proposed ETPs by working with self-regulatory organizations, and in particular FINRA, to create bitcoin and cryptocurrency-related asset suitability requirements. In addition, this commenter suggests that targeted disclosure requirements could make investors aware of volatility, discourage retail investors from investing more than a small portion of their portfolio in cryptocurrency-related assets, and present historical scenarios to retail investors to demonstrate how an instrument such as a particular bitcoin ETP would have performed over time. This commenter believes that suitability requirements are less prescriptive than an effective ban on a class of product and that they could balance the Commission's interest in protecting retail investors against its interest in allowing cryptocurrency-related asset markets to continue to develop in regulated markets where the Commission can observe their performance closely.[98]

Several commenters assert that the Commission should deny the proposed ETPs to help protect the public from exposure to financial risk from an unregulated market.[99] One commenter asserts that, while the risk posed by the cash-settled futures products is mostly contained, a bitcoin ETP would expose the public to significant financial risk due to a highly volatile, unregulated, and manipulated market in bitcoin as well as cryptocurrencies in general.[100] Several commenters further believe that before the Commission approves a bitcoin ETP, there should be a proper legal and regulatory framework put in place by a suitable governmental body to prevent manipulation and protect the public.[101]

2. Analysis

The Exchange asserts that approval of the proposal would enhance competition among market participants, to the benefit of investors and that it would protect investors by permitting them to seek exposure to bitcoin through efficient and transparent ETPs.[102] The Exchange also states that the Funds would enhance the security afforded to investors as compared to a direct investment in bitcoin.[103] Other commenters suggest that the Commission should either seek to regulate the underlying bitcoin markets,[104] or should seek to protect investors through disclosure requirements or suitability standards, rather than disapproving a bitcoin-ETP proposal.[105] Several other commenters, however, assert that approval of a bitcoin-based ETP would expose investors to risks from unregulated bitcoin markets.[106]

The Commission acknowledges that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange may provide some additional protection to investors, but the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.

Thus, even if a proposed rule change would provide certain benefits to investors and the markets, the proposed rule change may still fail to meet other requirements under the Exchange Act. For the reasons discussed above, the Exchange has not met its burden of demonstrating an adequate basis in the record for the Commission to find that the proposal is consistent with Exchange Act Section 6(b)(5), and, accordingly, the Commission must disapprove the proposal.

[94] As discussed below, *see* Section III.E, *infra* the exchange has filed two untimely amendments to the proposal, each of which would have limited the Funds' investments to the Bitcoin Futures Contracts. Even if these amendments had been timely, however, the Commission would still determine that the proposal was not consistent with the Exchange Act. *See id*.

[95] *See supra* notes 42–43 and accompanying text.

[96] *See* 15 U.S.C. 78f(b)(5).

[97] *See* Fitzgerald Letter, *supra* note 12, at 2.

[98] *See* NERA Letter, *supra* note 12, at 5–6.

[99] *See* Desai Letter, *supra* note 12, at 1; Kumar Letter, *supra* note 12; Malkin Letter, *supra* note 12, at 2.

[100] *See* Desai Letter, *supra* note 12, at 1.

[101] *See* Desai Letter, *supra* note 12, at 1, 2; Kumar Letter, *supra* note 12; Malkin Letter, *supra* note 12, at 2.

[102] *See* Notice, *supra* note 5, 83 FR at 2710–11.

[103] *See id*. at 2710.

[104] *See supra* note 97 and accompanying text.

[105] *See supra* note 98 and accompanying text.

[106] *See supra* notes 99–101 and accompanying text.

D. Other Comments

Comment letters also addressed the following topics:

- The desire of investors to gain access to bitcoin through an ETP;[107]
- investor understanding about bitcoin;[108]
- the valuation of bitcoin and price differentials across bitcoin trading venues;[109]
- the intrinsic value of bitcoin;[110]
- the reliability of bitcoin as a store of value;[111]
- the volatility of bitcoin prices;[112]
- the regulation of bitcoin spot markets;[113]
- the operation and valuation of the proposed ETPs;[114]
- arbitrage between the price of the Shares and the underlying portfolio instruments;[115]
- the ability of the Funds to meet redemption orders;[116]
- the custody of the assets of the Funds;[117]
- the effect on the Funds of a fork in the bitcoin blockchain;[118]
- the potential impact of Commission approval of the proposed ETP on the price of bitcoin and on the U.S. economy;[119]
- the leadership role that the United States might play in the cryptocurrency space if the Commission were to approve the proposed ETP;[120]
- the utility of a bitcoin ETP as a global tool for wealth distribution;[121] and
- the legitimacy that Commission approval of the proposed ETP might confer upon bitcoin as a digital asset.[122]

Ultimately, however, additional discussion of these tangential topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

E. The Exchange's Untimely Amendments to the Proposal

As noted above, the deadline for rebuttal comments in response to the Order Instituting Proceedings was May 15, 2018.[123] On August 21, 2018, however, the Exchange filed Amendment No. 1 with the Commission, stating that the amendment ''amends and replaces in its entirety the proposal as originally submitted on January 5, 2018.'' Then, on August 22, 2018, the Exchange filed Amendment No. 2 with the Commission, stating that the amendment ''amends and replaces in its entirety Amendment No. 1 as submitted on August 21, 2018, which amended and replaced in its entirety the proposal as originally submitted on January 5, 2018.'' Because these amendments were filed months after the deadline for comments on the proposed rule change, the Commission deems Amendment No. 1 and Amendment No. 2 to have been untimely filed.

Even if these amendments had been timely filed, however, the Commission would still conclude that the Exchange had not met its burden to demonstrate that its proposal is consistent with Exchange Act Section 6(b)(5). The change that the amendments made to the proposal was to limit the investments of the Funds to Bitcoin Futures Contracts, which trade on CFE and CME, eliminating the Funds' ability to invest in listed or unlisted swaps on bitcoin or on the Benchmark Futures Contracts.[124] Although CFE and CME are ''regulated markets,'' the record, as discussed above, does not provide a basis for the Commission to conclude that CFE and CME are regulated markets ''of significant size'' in Bitcoin Futures Contracts.[125] Therefore, even if the Exchange's amendments were timely filed, the Commission would be unable to find, based on the record, that the Exchange had entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin.[126]

F. Basis for Disapproval

The record before the Commission does not provide a basis for the Commission to conclude that the Exchange has met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposed rule change is consistent with Exchange Act Section 6(b)(5).[127]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–CboeBZX–2018–001 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[128]

Brent J. Fields,

Secretary.

[FR Doc. 2018–18578 Filed 8–27–18; 8:45 am]

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[107] *See* Kaleda Letter, *supra* note 12; Santos Letter, *supra* note 12; Netto Letter, *supra* note 12.

[108] *See* Desai Letter, *supra* note 12, at 1; Kumar Letter, *supra* note 12.

[109] *See* Kumar Letter, *supra* note 12; Malkin Letter, *supra* note 12; Bhat Letter, *supra* note 12; GraniteShares Letter, *supra* note 12, at 6–7, 10–11.

[110] *See* Ahn Letter, *supra* note 12.

[111] *See* Otenyi Letter, *supra* note 12; Desai Letter, *supra* note 12, at 1.

[112] *See* Desai Letter, *supra* note 12, at 1; Malkin Letter, *supra* note 12, at 1; Bhat Letter, *supra* note 12.

[113] *See* Barnwell Letter, *supra* note 12, at 2; Desai Letter, *supra* note 12, at 1; Fitzgerald Letter, *supra* note 12, at 1; Kumar Letter, *supra* note 12; Malkin Letter, *supra* note 12, at 1.

[114] *See* NERA Letter, *supra* note 12, at 1–3, 5; GraniteShares Letter, *supra* note 12, at 3, 5–6.

[115] *See* GraniteShares Letter, *supra* note 12, at 8.

[116] *See id.* at 7.

[117] *See id.* at 3.

[118] *See id.* at 6.

[119] *See* Krohn Letter, *supra* note 12; Hales Letter, *supra* note 12; Santos Letter, *supra* note 12.

[120] *See* Hales Letter, *supra* note 12.

[121] *See* Otenyi Letter, *supra* note 12.

[122] *See* Desai Letter, *supra* note 12, at 1, 2; Kumar Letter, *supra* note 12; Santos Letter, *supra* note 12.

[123] *See supra* note 10 and accompanying text.

[124] The Sponsor also represents in its August 20, 2018, comment letter that the Funds would invest only in Bitcoin Futures Contracts. *See* GraniteShares Letter, *supra* note 12, at 5.

[125] *See supra* notes 78–91 and accompanying text.

[126] Additionally, even though the Exchange's amendments would have removed the representation in the Notice that the Exchange expects significant liquidity to exist in the market for Bitcoin Futures Contracts, based on numerous conversations with market participants, issuers, and discussions with personnel of CFE, *see supra* notes 23 & 82 and accompanying text, the elimination of this representation would not alter the Commission's conclusion that the Exchange has not met its burden to demonstrate that CFE and CME are markets ''of significant size.''

[127] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[128] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83908; File No. SR–CboeBZX–2018–064]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Representations Relating to the Listing and Trading of Shares of the Innovator S&P 500 Buffer ETFs

August 22, 2018.

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 August 16, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposal to amend certain representations made in a proposed rule change previously filed with the Commission pursuant to Rule 19b–4 relating to the Innovator S&P 500 Buffer ETFs (the ''Buffer Funds'').

The text of the proposed rule change is available at the Exchange's website 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 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 shares of the Buffer Funds (the ''Shares'') were approved to be listed and traded on the Exchange under Rule 14.11(i),[3] which governs the listing and trading of Managed Fund Shares, but have not yet begun trading. The Buffer Funds are each a series of the Innovator ETFs Trust (the ''Trust''), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.[4]

In this proposed rule change, the Exchange proposes to amend several representations made in the Prior Approval related to the investment strategy, as described below.[5] Throughout the description of the Buffer Funds' investment strategy in the Prior Approval, there are representations such as ''(each Buffer Fund will) seek to provide investment returns during the outcome period that match the gains of the S&P 500 Index up to the Buffer Cap Level, while shielding investors from S&P 500 Index losses of up to 10%.'' The Exchange is proposing to amend all such representations related to the Buffer Funds such that the Buffer Funds will provide investment returns during the outcome period that match the gains of the S&P 500 Index up to the Buffer Cap Level, while shielding investors from S&P 500 Index losses of up to 9% instead of the previously stated 10%.

The Exchange does not believe that this proposed change raises any substantive issues for the Commission because it represents only a small change to the investment strategy and all other statements and representations made in the Prior Approval regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in the Prior Approval remain true and shall continue to constitute continued listing requirements for the Buffer Funds. Additionally, the change proposed above will constitute a continued listing requirement for the Buffer Funds.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[6] in general and Section 6(b)(5) of the Act[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

As described above, all of the representations from the Prior Approval which formed the basis for the Prior Approval remain true and will continue to constitute continued listing requirements for the Buffer Funds with the exception of the one point (changing the downside protection from 10% to 9%) that the Exchange is proposing to amend. This proposed change will not make any changes to the types of instruments that the Buffer Funds can hold, but will only make a small change to the investment strategy. As such, the Exchange believes that the proposal does not raise any substantive issues that were not previously addressed in the Prior Approval.

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 believes that the proposal to allow the Buffer Funds to amend their investment strategy will enhance competition among both market participants and listing venues by allowing additional series of Managed Fund Shares to come to list on the Exchange, 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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the

[3] *See* Securities Exchange Act Release No. 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018) (SR–BatsBZX–2017–72) (the ''Prior Approval'').

[4] *See* Registration Statement on Form N–1A for the Trust, dated August 8, 2018 (File Nos. 333–146827 and 811–22135) (the ''Registration Statement''). The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 32854 (October 6, 2017) (File No. 812–14781).

[5] The Exchange notes that while a change was made to the principal investment strategy, there were no changes to the Buffer Funds' investment objective, the method or methods used to select the Buffer Funds' portfolio investments, or the Buffer Funds' fees and expenses.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule19b–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 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.

Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the 30-day operative delay would allow the Buffer Funds to immediately begin listing and trading on the Exchange and employ its amended investment strategy. The Commission does not believe that any new or novel issues are raised by the proposal. Moreover, as noted above, apart from modifying the downside protection from 10% to 9%, all other statements and representations made in the Prior Approval would remain true and will apply on a continuous basis. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–064, and should be submitted on or before September 18, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18573 Filed 8–27–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83904; File No. SR–NYSEArca–2017–139]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF

August 22, 2018.

I. Introduction

On December 4, 2017, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares (''Shares'') of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF (each a ''Fund'' and, collectively, the ''Funds'') issued by the ProShares Trust II (''Trust'') under NYSE Arca Rule 8.200–E, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on December 26, 2017.[3] The comment period for the Notice of Proposed Rule Change closed on January 16, 2018.

On January 30, 2018, pursuant to Section 19(b)(2) of the Exchange 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 approve or disapprove the proposed rule change.[5] On March 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The comment period and rebuttal comment period for the Order Instituting Proceedings closed on April 19, 2018, and May 3, 2018, respectively. Finally, on June 15, 2018, the Commission extended the period for consideration of the proposed rule change to August 23, 2018.[8] As of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82350 (Dec. 19, 2017), 82 FR 61100 (Dec. 26, 2017) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82602 (Jan. 30, 2018), 83 FR 4941 (Feb. 2, 2018).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 82939 (Mar. 23, 2018), 83 FR 13537 (Mar. 29, 2018) (''Order Instituting Proceedings'').

[8] *See* Securities Exchange Act Release No. 83452 (June 15, 2018), 83 FR 28894 (June 21, 2018).

August 21, 2018, the Commission had received 13 comments on the proposed rule change.[9]

This order disapproves the proposed rule change. Although the Commission is disapproving this proposed rule change, the Commission emphasizes that its disapproval does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, the Exchange has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of the Exchange Act Section 6(b)(5), in particular the requirement that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[10] Among other things, the Exchange has offered no record evidence to demonstrate that bitcoin futures markets are ''markets of significant size.'' That failure is critical because, as explained below, the Exchange has failed to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, and therefore surveillance-sharing with a regulated market of significant size related to bitcoin is necessary to satisfy the statutory requirement that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[11]

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts on the Exchange.[12] Each Fund will be a series of the Trust, and the Trust and the Funds will be managed and controlled by ProShare Capital Management LLC (''Sponsor''). Brown Brothers Harriman & Co. will be the custodian and administrator for the Trust. SEI Investments Distribution Co. will serve as the distributor of the Shares (''Distributor''). The Trust will offer Shares of the Funds for sale through the Distributor in ''Creation Units.'' [13]

According to the Notice, the ProShares Bitcoin ETF's investment objective will be to seek results (before fees and expenses) that, both for a single day and over time, correspond to the performance of lead-month bitcoin futures contracts [14] listed and traded on either the Cboe Futures Exchange (''CFE'') or the Chicago Mercantile Exchange (''CME'') (''Benchmark Futures Contract''). This Fund generally intends to invest substantially all of its assets in the Benchmark Futures Contracts, but may invest in other U.S. exchange-listed bitcoin futures contracts, if available (together with Benchmark Futures Contracts, collectively, ''Bitcoin Futures Contracts'').[15]

According to the Notice, the ProShares Short Bitcoin ETF's investment objective will be to seek results, for a single day, that correspond (before fees and expenses) to the inverse of the daily performance of the Benchmark Futures Contract. This Fund generally intends to invest substantially all of its assets through short positions in Benchmark Futures Contracts, but may invest through short positions in Bitcoin Futures Contracts, if available.[16]

The Exchange represents that no more than 10% of the net assets of a Fund in the aggregate invested in Bitcoin Futures Contracts shall consist of Bitcoin Futures Contracts whose principal market is neither a member of the Intermarket Surveillance Group nor a market with which the Exchange does not have a comprehensive surveillance-sharing agreement.[17] Further, according to the Notice, in the event that position, price, or accountability limits are reached with respect to Bitcoin Futures Contracts, each Fund may invest in listed options on Bitcoin Futures Contracts (should such listed options become available) and OTC swap agreements referencing Bitcoin Futures Contracts (collectively, ''Financial Instruments'').[18] The Notice also states:

> Bitcoin Futures Contracts are a new type of futures contract to be traded on the CFE and CME or other U.S. exchanges (if available). Unlike the established futures markets for traditional physical commodities, the market for Bitcoin Futures Contracts is in the development stage and has very limited trading and operational history. As such, the liquidity of the market for Bitcoin Futures Contracts will depend on, among other things, the supply and demand for Bitcoin Futures Contracts, the adoption of bitcoin and the commercial and speculative interest in the market for Bitcoin Futures Contracts and the potential ability to hedge against the price of bitcoin with exchange-traded Bitcoin Futures Contracts.[19]

The Exchange represents that trading in the Shares of each Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[20] The Exchange asserts that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[21]

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether the Exchange's proposal is consistent with Exchange Act Section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [22] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on

[9] *See* Letters from Abe Kohen, AK Financial Engineering Consultants, LLC (Dec. 27, 2017) (''Kohen Letter''); Anita Desai (Apr. 6, 2018) (''Desai Letter''); Ed Kaleda (Apr. 6, 2018) (''Kaleda Letter''); Scott Moberg (Apr. 6, 2018) (''Moberg Letter''); Adam Malkin (Apr. 8, 2018) (''Malkin Letter''); Gisan Mohammed (Apr. 11, 2018) (''Mohammed Letter''); Shravan Kumar (Apr. 11, 2018) (''Kumar Letter''); Louise Fitzgerald (Apr. 19, 2018) (''Fitzgerald Letter''); Joshua Rousseau (Apr. 30, 2018) (''Rousseau Letter''); Thomas W. Fink (May 3, 2018) (''Fink Letter''); Sharon Brown-Hruska, Managing Director, and Trevor Wagener, Consultant, NERA Economic Consulting (May 18, 2018) (''NERA Letter''); Sami Santos (Aug. 9, 2018) (''Santos Letter''); and Sam M. Ahn (Aug. 16, 2018) (''Ahn Letter''). All comments on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2017-139/nysearca2017139.htm.*

[10] *See* 15 U.S.C. 78f(b)(5).

[11] *See infra* notes 29–31 and accompanying text.

[12] *See* NYSE Arca Rule 8.200–E, Commentary .02. NYSE Arca Rule 8.200–E permits the listing and trading of ''Trust Issued Receipts,'' defined as a security (1) that is issued by a trust which holds specific securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Commentary .02 applies to Trust Issued Receipts that invest in any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[13] *See* Notice, *supra* note 3, 82 FR at 61101.

[14] According to the Exchange, lead-month futures contracts are the monthly contracts with the earliest expiration date. *See* Notice, *supra* note 3, 82 FR at 61101, n.6.

[15] *See* Notice, *supra* note 3, 82 FR at 61101.

[16] *See id.*

[17] *See id.* at 61105.

[18] *See id.* at 61102.

[19] *Id.* at 61103.

[20] *See id.* at 61105.

[21] *See id.*

[22] 15 U.S.C. 78f(b)(5).

the self-regulatory organization ['SRO'] that proposed the rule change.'' [23]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[24] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[25] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[26]

B. Preventing Fraudulent and Manipulative Practices

1. Applicable Legal Standard

To approve the Exchange's proposal to list the Shares, the Commission must be able to find that the proposal is, consistent with Exchange Act Section 6(b)(5), ''designed to prevent fraudulent and manipulative acts and practices.'' [27] As the Commission recently explained in an order disapproving a listing proposal for the Winklevoss Bitcoin Trust (''Winklevoss Order''), although surveillance-sharing agreements are not the exclusive means by which an exchange-traded product (''ETP'') listing exchange can meet its obligations under Exchange Act Section 6(b)(5), such agreements are a widely used means for exchanges that list ETPs to meet their obligations, and the Commission has historically recognized their importance.[28]

The Commission has therefore determined that, if the listing exchange for an ETP fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [29] Accordingly, a surveillance-sharing agreement with a regulated market of significant size is required to ensure that, in compliance with the Exchange Act, the proposal is ''designed to prevent fraudulent and manipulative acts and practices.'' [30] In this context, the Commission has interpreted the terms ''significant market'' and ''market of significant size'' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[31] Thus, a surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because someone attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.''

Although the Winklevoss Order applied these standards to a commodity-trust ETP based on bitcoin, the Commission believes that these standards are also appropriate for an ETP based on bitcoin futures. When approving the first commodity-futures ETP, the Commission specifically noted that ''[i]nformation sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.'' [32] And the Commission's approval orders for commodity-futures ETPs consistently note the ability of an ETP listing exchange to share surveillance information either through surveillance-sharing agreements or through membership by the listing exchange and the relevant futures exchanges in the Intermarket Surveillance Group.[33] While the

[23] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[24] *See id.*

[25] *See id.*

[26] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017).

[27] 15 U.S.C. 78f(b)(5).

[28] Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37580 (Aug. 1, 2018) (SR–BatsBZX–2016–30).

[29] *Id.* (citing Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998) 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98)).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* Winklevoss Order, *supra* note 28, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants. *See id.*

[32] Securities Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059). Additionally, the Winklevoss Order discusses the broader history and importance of surveillance-sharing agreements relating to derivative securities products, quoting Commission statements dating from 1990 on. *See* Winklevoss Order, *supra* note 28, 83 FR at 37592–94.

[33] *See, e.g.,* Securities Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059) (approval order noted that Amex's ''Information Sharing Agreement with the NYMEX and the CBOT and [Amex's] Memorandum of Understanding with the LME, along with the Exchange's participation in the ISG, in which the CBOT participates . . . create the basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Shares''); Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510, 17518 (Apr. 6, 2006) (SR–Amex–2005–127) (approval order noted that Amex's ''comprehensive surveillance sharing agreements with the NYMEX and ICE Futures . . . create the basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Units'' and that ''[s]hould the USOF invest in oil derivatives traded on markets such as the Singapore Oil Market, the Exchange represents that it will file a proposed rule change pursuant to Section 19(b) of the [Exchange] Act, seeking Commission approval of [Amex's] surveillance agreement with such market''); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372, 36378–79 (June 26, 2006) (NYSE–2006–17) (approval order noted that NYSE's ''comprehensive surveillance sharing agreements with the NYMEX, the Kansas City Board of Trade, ICE Futures, and the LME . . . create the basis for the NYSE to monitor for fraudulent and manipulative trading practices'' and that ''all of the other trading venues on which current Index components and CERFs are traded are members of the ISG''); Securities Exchange Act Release No. 54450 (Sept. 14, 2006), 71 FR 55230, 55236 (Sept. 21, 2006) (SR–Amex–2006–44) (approval order noted that ''CME, where the futures contract for each of the current Index components is traded, is a member of the ISG'' and that in the event of new fund investments in ''foreign currency futures contracts traded on futures exchanges other than CME, [Amex] must have a CSSA with that futures exchange or the futures exchange must be an ISG member''); Securities Exchange Act Release No. 55029 (Dec. 29, 2006), 72 FR 806, 809–10 (Jan. 8, 2007) (SR–Amex–2006–76) (approval order noted that Amex's ''Comprehensive Surveillance Sharing Agreement with the ICE Futures, LME, and NYMEX, . . . and membership in the Intermarket Surveillance Group ('ISG') creates the basis for the Amex to monitor fraudulent and manipulative practices in the trading of the Shares''); Securities Exchange Act Release No. 56880 (Dec. 3, 2007), 72 FR 69259, 69261 (Dec. 7, 2007) (SR–Amex–2006–96) (approval order noted that Amex has ''information sharing agreements with the InterContinental Exchange, the Chicago Mercantile Exchange, and the New York Mercantile Exchange and may obtain market surveillance information from other exchanges, including the Chicago Board of Trade, London Metals Exchange, and the New York Board of Trade through the Intermarket Surveillance Group''); Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987, 19988 (Apr. 20, 2007) (SR–Amex–2006–112) (approval order noted that Amex ''currently has in place an Information Sharing Agreement with the NYMEX and ICE Futures'' and that if ''USNG invests in Natural Gas Interests traded on other exchanges, the Amex represented that it will seek to enter into Information Sharing arrangements with those particular exchanges''); Securities Exchange Act Release No. 57456 (Mar. 7, 2008), 73 FR 13599, 13601 (Mar. 13, 2008) (NYSEArca–2007–91) (approval order noted that NYSEArca ''can obtain

Commission in those orders did not explicitly undertake an analysis of whether the related futures markets were of ''significant size,'' the exchanges proposing commodity-futures ETPs on a single reference asset or benchmark generally made representations regarding the trading volume of the underlying futures markets,[34] and the

market surveillance information, including customer identity information, with respect to transactions occurring on the NYM, the Kansas City Board of Trade, ICE, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges'' and that ''[a]ll of the other trading venues on which current Index components are traded are members of the ISG''); Securities Exchange Act Release No. 57838 (May 20, 2008), 73 FR 30649, 30652, (May 28, 2008) (SR–NYSEArca–2008–09) (approval order noted that NYSEArca ''may obtain information via the ISG from other exchanges who are members or affiliate members of the ISG,'' that NYSEArca ''has an information sharing agreement in place with ICE Futures,'' and that NYSEArca will file a proposed rule change ''if the Fund invests in EUAs . . . that constitute more than 10% of the weight of the Fund where the principal trading market for such component is not a member or affiliate member of the ISG or where the Exchange does not have a comprehensive surveillance sharing agreement with such market''); Securities Exchange Act Release No. 63635 (Jan. 3, 2011), 76 FR 1489, 1491 (Jan. 10, 2011) (NYSEArca–2010–103) (approval order noted that ''with respect to Fund components traded on exchanges, not more than 10% of the weight of such components in the aggregate will consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which [NYSEArca] does not have a comprehensive surveillance sharing agreement''); Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440, 15444 (Mar. 15, 2012) (SR–NYSEArca–2012–04) (approval order noted that NYSEArca ''can obtain market surveillance information, including customer identity information, from ICE [Futures] and CME, which are members of the Intermarket Surveillance Group''); Securities Exchange Act Release No. 67223 (June 20, 2012), 77 FR 38117, 38124 (June 26, 2012) (NYSEAmex–2012–24) (approval order noted that NYSEAmex ''can obtain market surveillance information, including customer identity information, with respect to transactions occurring on exchanges that are members of ISG, including CME, CBOT, COMEX, NYMEX . . . and ICE Futures US,'' that NYSEAmex ''currently has in place a comprehensive surveillance sharing agreement with each of CME, NYMEX, ICE Futures Europe, and KCBOT,'' and that ''while the Fund may invest in futures contracts or options on futures contracts which trade on markets that are not members of ISG or with which [NYSEAmex] does not have in place a comprehensive surveillance sharing agreement, such instruments will never represent more than 10% of the Fund's holdings''); Securities Exchange Act Release No. 73561 (Nov. 7, 2014), 79 FR 68329, 68330 (Nov. 14, 2014) (NYSEArca–2014–102) (approval order noted that ''FINRA may obtain trading information regarding trading in the Shares and Coal Futures from such markets and other entities that are members of ISG or with which [NYSEArca] has in place a comprehensive surveillance sharing agreement'' and that ''CME is a member of the ISG''); Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625, 61631, 61634 (Dec. 28, 2017) (NYSEArca–2017–107) (approval order noted that NYSEArca ''may obtain information regarding trading in the Shares and Freight Futures from markets and other entities that are members of ISG or with which [NYSEArca] has in place a CSSA'' and that ''not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures or options on Freight Futures shall consist of derivatives whose principal market is not a member of the ISG or is a market with which [NYSEArca] does not have a CSSA'').

[34] *See, e.g.,* Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22) (notice of proposed rule change included NYSE Arca's representations that: (i) Corn futures volume on Chicago Board of Trade (''CBOT'') for 2008 and 2009 (through November 30, 2009) was 59,934,739 contracts and 47,754,866 contracts, respectively, and as of March 16, 2010, CBOT open interest for corn futures was 1,118,103 contracts, and open interest for near month futures was 447,554 contracts; (ii) the corn futures contract price was $18,337.50 ($3.6675 per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $20.5 billion; (iii) as of March 16, 2010, open interest in corn swaps cleared on CBOT was approximately 2,100 contracts, with an approximate value of $38.5 million; and (iv) the position limits for all months is 22,000 corn contracts, and the total value of contracts if position limits were reached would be approximately $403.5 million (based on the $18,337.50 contract price), Securities Exchange Act Release No. 61954 (Apr. 21, 2010), 75 FR 22663, 22664 n.10 (Apr. 29, 2010)); Securities Exchange Act Release No. 63610 (Dec. 27, 2010), 76 FR 199 (Jan. 3, 2011) (SR–NYSEArca–2010–101) (notice of proposed rule change included NYSE Arca's representations that: (i) As of June 14, 2010, there was VIX futures contracts open interest on CFE of 88,366 contracts, with a contract price of $25.55 and value of open interest of $2,257,751,300; (ii) total CFE trading volume in 2009 in VIX futures contracts was 1,143,612 contracts, with average daily volume of 4,538 contracts; and (iii) total volume year-to-date (through May 31, 2010) was 1,399,709 contracts, with average daily volume of 13,458 contracts, Securities Exchange Act Release No. 63317 (Nov. 16, 2010), 75 FR 71158, 71159 n.9 (Nov. 22, 2010)); Securities Exchange Act Release No. 63753 (Jan. 21, 2011), 76 FR 4963 (Jan. 27, 2011) (SR–NYSEArca–2010–110) (notice of proposed rule change included NYSE Arca's representations that: (i) Natural gas futures volume on New York Mercantile Exchange (''NYMEX'') for 2009 and 2010 (through October 29, 2010) was 47,864,639 contracts and 52,490,180 contracts, respectively; (ii) as of October 29, 2010, NYMEX open interest for natural gas futures was 794,741 contracts, and open interest for near month futures was 47,313 contracts; (iii) the contract price was $40,380 ($4.038 per MMBtu and 10,000 MMBtu per contract), and the approximate value of all outstanding contracts was $32.1 billion; (iv) the position limits for all months is 12,000 natural gas contracts and the total value of contracts if position limits were reached would be approximately $484.56 million (based on the $40,380 contract price); and (v) as of October 29, 2010, open interest in natural gas swaps cleared on NYMEX was approximately 2,618,092 contracts, with an approximate value of $26.4 billion ($4.038 per MMBtu and 2,500 MMBtu per contract), Securities Exchange Act Release No. 63493 (Dec. 9, 2010), 75 FR 78290, 78291 n.11 (Dec. 15, 2010)); Securities Exchange Act Release No. 63869 (Feb. 8, 2011), 76 FR 8799 (Feb. 15, 2011) (SR–NYSEArca–2010–119) (notice of proposed rule change included NYSE Arca's representations that: (i) WTI crude oil futures volume on NYMEX for 2009 and 2010 (through November 30, 2010) was 137,352,118 contracts and 156,155,620 contracts, respectively; (ii) as of November 30, 2010, NYMEX open interest for WTI crude oil was 1,342,325 contracts, and open interest for near month futures was 323,184 contracts; (iii) the position limits for all months is 20,000 WTI crude oil contracts and the total value of contracts if position limits were reached would be approximately $1.68 billion (based on the $84.11 contract price); and (iv) the contract price was $84,110 ($84.11 USD per barrel and 1,000 barrels per contract), and the approximate value of all outstanding contracts was $112.9 billion, Securities Exchange Act Release No. 63625 (Dec. 30, 2010), 76 FR 807, 808 n.11 (Jan. 6, 2011)); Securities Exchange Act Release No. 65134 (Aug. 15, 2011), 76 FR 52034 (Aug. 19, 2011) (SR–NYSEArca–2011–23) (notice of proposed rule change included NYSE Arca's representations that: (i) As of January 31, 2011, there was VIX futures contracts open interest on CFE of 163,396 contracts with a value of open interest of $3,461,984,900; (ii) total CFE trading volume in 2010 in VIX futures contracts was 4,402,616 contracts, with average daily volume of 17,741 contracts; and (iii) total volume year-to-date (through January 31, 2011) was 779,493 contracts, with average daily volume of 38,975 contracts, Securities Exchange Act Release No. 64470 (May 11, 2011), 76 FR 28493, 28494 n.12 (May 17, 2011)); Securities Exchange Act Release No. 65136 (Aug. 15, 2011), 76 FR 52037 (Aug. 19, 2011) (SR–NYSEArca–2011–24) (notice of proposed rule change included NYSE Arca's representations that: (i) Natural gas futures volume on NYMEX for 2009 and 2010 (through December 31, 2010) was 47,864,639 contracts and 64,350,673 contracts, respectively; (ii) as of December 31, 2010, NYMEX open interest for all natural gas futures was 772,104 contracts, and the approximate value of all outstanding contracts was $35,664,257,310 billion [sic]; (iii) open interest as of December 31, 2010 for the near month contract was 166,757 contracts and the near month contract value was $7,345,645,850 ($4.405 per MMBtu and 10,000 MMBtu per contract); (iv) the position accountability limits for all months is 12,000 natural gas contracts and the total value of contracts if position accountability limits were reached would be approximately $528,600,000 million (based on the $4.405 contract price); and (v) as of December 31, 2010, open interest in natural gas swaps cleared on NYMEX was approximately 1,493,013 contracts, with an approximate value of $16,463,384,003 ($4.411 per MMBtu and 2,500 MMBtu per contract), Securities Exchange Act Release No. 64464 (May 11, 2011), 76 FR 28483, 28484 n.11 (May 17, 2011)); Securities Exchange Act Release No. 65344 (Sept. 15, 2011), 76 FR 58549 (Sept. 21, 2011) (SR–NYSEArca–2011–48) (notice of proposed rule change included NYSE Arca's representations that: (i) Wheat futures volume on CBOT for 2010 and 2011 (through April 29, 2011) was 23,058,783 contracts and 8,860,135 contracts, respectively; (ii) as of April 29, 2011, open interest for wheat futures was 456,851 contracts; (iii) the wheat contract price was $40,062.50 (801.25 cents per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $18.3 billion; (iv) the position limits for all months was 6,500 wheat contracts and the total value of contracts if position limits were reached would be approximately $260.4 million (based on the $40,062.50 contract price); (v) soybean futures volume on CBOT for 2010 and 2011 (through April 29, 2011) was 36,962,868 contracts and 16,197,385 contracts, respectively; (vi) as of April 29, 2011, open interest for soybean futures was 572,959 contracts; (vii) the soybean contract price was $69,700.00 (1394 cents per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $39.9 billion; (viii) the position limits for all months is 6,500 soybean contracts and the total value of contracts if position limits were reached would be approximately $453 million (based on the $69,700.00 contract price); (ix) sugar futures volume on ICE Futures for 2010 and 2011 (through April 29, 2011) was 27,848,391 contracts and 9,045,069 contracts, respectively; (x) as of April 29, 2011, open interest for sugar futures was 570,948 contracts; (xi) the sugar contract price was $24,920.00 (22.25 cents per pound and 112,000 pounds per contract), and the approximate value of

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all outstanding contracts was $14.2 billion; and (xii) the position limits for all months is 15,000 sugar contracts and the total value of contracts if position limits were reached would be approximately $373.8 million (based on the $24,920.00 contract price), Securities Exchange Act Release No. 64967 (July 26, 2011), 76 FR 45885, 45886 n.10, 45888 n.20, 45890 n.24 (Aug. 1, 2011)); Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440 (Mar. 15, 2012) (SR–NYSEArca–2012–04) (notice of proposed rule change included NYSE Arca's representations that: (i) As of December 30, 2011, open interest in AUD/USD futures contracts traded on CME was $11.56 billion, and AUD/USD futures contracts had an average daily trading volume in 2011 of 123,006 contracts; (ii) as of December 30, 2011, open interest in CAD/USD futures contracts traded on CME was $11.66 billion, and CAD/USD futures contracts had an average daily trading volume in 2011 of 89,667 contracts; (iii) as of December 30, 2011, open interest in CHF/USD futures contracts traded on CME was $4.99 billion, and CHF/USD futures contracts had an average daily trading volume in 2011 of 40,955 contracts; (iv) futures contracts based on the U.S. Dollar Index (''USDX'') were listed on November 20, 1985, and options on the USDX futures contracts began trading on September 3, 1986; (v) as of December 30, 2011, open interest in USDX futures contracts traded on ICE Futures was $5.44 billion, and USDX futures contracts had an average daily trading volume in 2011 of 30,341 contracts; (vi) as of December 30, 2011, open interest in EUR/USD futures contracts traded on CME was $46.12 billion, and EUR/USD futures contracts had an average daily trading volume in 2011 of 336,947 contracts; and (vii) as of December 30, 2011, open interest in JPY/USD futures contracts traded on CME was $25.75 billion, and JPY/USD futures contracts had an average daily trading volume in 2011 of 113,476 contracts, Securities Exchange Act Release No. 66180 (Jan. 18, 2012), 77 FR 3532, 3534–35 (Jan. 24, 2012)); Securities Exchange Act Release No. 68165 (Nov. 6, 2012), 77 FR 67707 (Nov. 13, 2012) (SR–NYSEArca–2012–102) (notice of proposed rule change included NYSE Arca's representations that: (i) Gold and silver futures contracts traded on Commodity Exchange, Inc. (''COMEX'') are the global benchmark contracts and most liquid futures contracts in the world for each respective commodity; (ii) as of March 15, 2012, open interest in gold futures contracts and silver futures contracts traded on CME was $23.7 billion and $8.5 billion, respectively; (iii) gold futures contracts and silver futures contracts had an average daily trading volume in 2011 of 138,964 contracts and 63,913 contracts, respectively; (iv) CME constitutes the largest regulated foreign exchange marketplace in the world, with over $100 billion in daily liquidity; (v) as of March 15, 2012, open interest in Euro futures contracts and Yen futures contracts traded on CME and, for Dollar futures contracts, on ICE Futures, were $42.7 billion, $20.8 billion, and $4.8 billion, respectively; and (vi) Euro futures contracts, Yen futures contracts, and Dollar futures contracts had an average daily trading volume in 2011 of 325,103, 106,824, and 27,258 contracts, respectively, Securities Exchange Act Release No. 67882 (Sept. 18, 2012), 77 FR 58881, 58883 n.10, 58883 n.14 (Sept. 24, 2012)); Securities Exchange Act Release No. 81686 (Sept. 22, 2017), 82 FR 45643, 45646 (Sept. 29, 2017) (SR–NYSEArca–2017–05) (order approving the listing and trading of the Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares, citing to NYSE Arca's representations that: (i) The oil contract market was of significant size and liquidity, and had average daily volume of 650,000 contracts and daily open interest of 450,000 contracts; (ii) the Sponsor is registered as a commodity pool operator with the CFTC and is a member of the National Futures Association, and (iii) the CFTC has regulatory jurisdiction over the trading of futures contracts traded on U.S. markets);

Commission was in each of those cases dealing with a large futures market that had been trading for a number of years before an exchange proposed an ETP based on those futures.[35] And where the Commission has considered a proposed ETP based on futures that had only recently begun trading,[36] the Commission specifically addressed whether the futures on which the ETP was based—which were futures on an index of well-established commodity futures—were illiquid or susceptible to manipulation.[37]

Accordingly, the Commission examines below whether the

Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625 (Dec. 28, 2017) (SR–NYSEArca–2017–107) (notice of proposed rule change included NYSE Arca's representations that: (i) Freight futures liquidity has remained relatively constant, in lot terms, over the last five years with approximately 1.1 million lots trading annually; (ii) open interest currently stood at approximately 290,000 lots across all asset classes representing an estimated value of more than $3 billion, and, of such open interest, Capesize contracts accounted for approximately 50%, Panamax for approximately 40%, and Handymax for approximately 10%, Securities Exchange Act Release No. 81681 (Sept. 22, 2017), 82 FR 45342, 45345 (Sept. 28, 2017)). *See also* Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510 (Apr. 6, 2006) (SR–Amex–2005–127) (notice of proposed rule change included Amex's representations that: (i) WTI light, sweet crude oil contract, listed and traded at NYMEX, trades in units of 42,000 gallons (1,000 barrels), and annual daily contract volume on NYMEX from 2001 through October 2005 was 149,028, 182,718, 181,748, 212,382 and 242,262, respectively; (ii) annual daily contract volume on ICE Futures for Brent crude contracts from 2001 through October 2005 was 74,011, 86,499, 96,767, 102,361 and 120,695 respectively; (iii) annual daily contract volume on NYMEX for heating oil futures from 2001 through October 2005 was 41,710, 42,781, 46,327, 51,745 and 52,334, respectively; (iv) annual daily contract volume on NYMEX for natural gas contracts from 2001 through October 2005 was 47,457, 97,431, 76,148, 70,048 and 77,149, respectively; and (v) annual daily contract volume on NYMEX for gasoline contracts from 2001 through October 2005 was 38,033, 43,919, 44,688, 51,315 and 53,577, respectively, Securities Exchange Act Release No. 53324 (Feb. 16, 2006), 71 FR 9614, 9618 (Feb. 24, 2006)); Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987 (Apr. 20, 2007) (SR–Amex–2006–112) (notice of proposed rule change included Amex's representations that annual daily contract volume on NYMEX for natural gas contracts from 2001 through October 2006 was 47,457, 97,431, 76,148, 70,048, 76,265, and 102,097, respectively, Securities Exchange Act Release No. 55372 (Feb. 28, 2007), 72 FR 10267, 10268 (Mar. 7, 2007)).

[35] For example, corn futures began trading in 1877, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on corn futures was approved for listing and trading in 2010. *See* Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22). VIX futures began trading in 2004, *see http://cfe.cboe.com/cfe-products/vx-cboe-volatility-index-vix-futures/contract-specifications,* and the first ETPs based on VIX futures were approved for listing and trading in 2010. *See* Securities Exchange Act Release No. 63610 (Dec. 27, 2010), 76 FR 199 (Jan. 3, 2011) (SR–NYSEArca–2010–10). Natural gas futures began trading in 1990, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on natural gas was approved for listing and trading in 2007. *See* Securities Exchange Act Release No. 55632 (Apr. 13, 2007), 72 FR 19987 (Apr. 20, 2007) (SR–Amex–2006–112). Crude oil futures began trading in 1983, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETP based on crude oil futures was approved for listing and trading in 2006. *See* Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510 (Apr. 6, 2006) (SR–Amex–2005–127). Wheat futures, sugar futures, and soybean futures began trading in 1877, 1914, and 1936, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html* and *https://www.theice.com/publicdocs/ICE_Sugar_Brochure.pdf,* and the first ETPs based on each of these commodity futures were approved for listing and trading in 2011. *See* Securities Exchange Act Release No. 65344 (Sept. 15, 2011), 76 FR 58549 (Sept. 21, 2011) (SR–NYSEArca–2011–48). U.S. Dollar Index futures began trading in 1985, *https://www.theice.com/publicdocs/futures_us/ICE_Dollar_Index_FAQ.pdf,* and the first ETPs based on U.S. Dollar Index futures was approved for listing and trading in 2007. *See* Securities Exchange Act Release No. 55292 (Feb. 14, 2007), 72 FR 8406 (Feb. 26, 2007) (SR–Amex–2006–86). Australian Dollar futures and Euro futures began trading in 1987 and 1999, respectively, and Canadian Dollar futures, Swiss Franc futures, and Yen futures began trading in 2002, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on each of these individual currency futures were approved for listing and trading in 2012. *See* Securities Exchange Act Release No. 66553 (Mar. 9, 2012), 77 FR 15440 (Mar. 15, 2012) (SR–NYSEArca–2012–04). Silver futures and gold futures began trading in 1933 and 1974, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on each of these commodity futures were approved for listing and trading in 2006. *See* Securities Exchange Act Release No. 55029 (Dec. 29, 2006), 72 FR 806 (Jan. 8, 2007) (SR–Amex–2006–76). Freight futures have been cleared since 2005, and the first ETP based on freight futures was approved for listing and trading in 2017. *See* Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625, 61626 n.6 (Dec. 28, 2017) (SR–NYSEArca–2017–107) (noting that ''Freight Futures have been cleared since 2005'').

[36] The Exchange filed its proposal before bitcoin futures began trading on either CME or CFE.

[37] At issue were futures on an index comprising futures on crude oil, Brent crude oil, natural gas, heating oil, gasoline, gas oil, live cattle, wheat, aluminum, corn, copper, soybeans, lean hogs, gold, sugar, cotton, red wheat, coffee, standard lead, feeder cattle, zinc, primary nickel, cocoa, and silver. *See* Securities Exchange Act Release No. 53659 (Apr. 17, 2006), 71 FR 21074, 21080 (Apr. 24, 2006) (SR–NYSE–2006–17) (notice of proposed rule change to list shares of iShares GSCI Commodity-Indexed Trust). The Commission concluded that requirements of Exchange Act Section 6(b)(5) had been met because concerns about manipulation would be addressed by the arbitrage relationship between the new index futures and the existing component futures, as well as the ETP listing exchange's comprehensive surveillance-sharing agreements not only with the market for the index futures, but also with the markets for the component futures. *See* Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372, 36379 (June 26, 2006) (SR–NYSE–2006–17) (order approving listing of shares of iShares GSCI Commodity-Indexed Trust). Additionally, the approval order for the ETP noted that, if the volume in any futures contract that was part of the reference index fell below a specified multiple of production of the underlying commodity, that contract's weight in the index would decrease. *See id.* at 36374.

representations by the Exchange, and the comments received from the public, support a finding that the Exchange has entered into a surveillance-sharing agreement with a market of significant size relating to bitcoin, the asset underlying the proposed ETPs, or that alternative means of preventing fraud and manipulation would be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that the proposed rule change be designed to prevent fraudulent and manipulative acts and practices.

2. Comments Received

One commenter states that commencing an ETP without allowing the market to adjust to the cash-settled futures products would be akin to ''putting the cart before the horse'' and seems to be an attempt to appease institutional investors.[38]

One commenter states that the market for bitcoin derivatives other than bitcoin exchange-traded futures appears to be developing and that financial institutions are reportedly moving toward launching bitcoin-related trading desks and other operations. This commenter believes that the proposed offering of both long and short ETPs raises the possibility that market makers in bitcoin-related derivatives could make two-sided markets if interest in the long and short ETPs is similar in magnitude. The commenter further believes that interest outside of the bitcoin ETPs may be sufficient to motivate market makers to maintain bitcoin derivatives desks.[39] In addition, the commenter suggests that questions about bitcoin derivatives markets can be addressed through market depth analyses, discussions with potential bitcoin derivatives liquidity providers, and analyses of order and trade data across CME and CFE to determine the plausibility of simultaneous liquidity collapses on both bitcoin future markets.[40]

Three commenters assert that there is manipulation in the bitcoin market.[41] One commenter states that it is common knowledge that the bitcoin market is being manipulated and asserts that BitConnect, which was recently shut down and had promised risk-free annual returns of up to 120%, is an example of Ponzi and multi-level marketing schemes that are too common. This commenter argues that the Commission should not send the wrong signal to bitcoin manipulators—who, the commenter asserts, currently operate with impunity—by approving a bitcoin ETP.[42] Another commenter believes that the volatility of bitcoin trading does not appear to be the result of natural trading and in the long run would prevent true price discovery.[43]

One commenter asserts that, in an unregulated market, a small minority can manipulate the price of bitcoin and other ''altcoins'' and that bitcoin and other cryptocurrencies are freely manipulated by players who hold a disproportionate amount of cryptocurrencies or access to fiat currencies. This commenter cites data showing that 4.11% of bitcoin addresses own 96.53% of all the bitcoin in circulation, that the top four addresses control 3.13% of all bitcoin currently in distribution (worth over $4 billion), and that 115 individuals control bitcoin worth over $24 billion.[44] In contrast, another commenter states that, although a small number of wallets may own 90% of available bitcoin, exchanges own some of these wallets and may hold bitcoin on behalf of hundreds, thousands, or millions of people.[45]

One commenter asserts that widespread pump-and-dump schemes organized through the messaging platform ''Telegram'' are evidence of manipulation.[46] This commenter further cites an inquiry by then-New York Attorney General Eric Schneiderman into cryptocurrency exchanges and the use of trading ''bots'' on those exchanges to manipulate the market, and asserts that such activity can drive prices above fair market value by over 300%. The commenter notes the Kraken exchange's refusal to cooperate with this inquiry and believes that this refusal should pose serious questions for investors and the Commission about the Kraken exchange's operations, particularly after the Kraken exchange recently exited the Japanese market due to regulatory requirements.[47]

One commenter states that a commonly cited factor mitigating possible susceptibility to manipulation is the securities exchanges' own surveillance procedures, in addition to the futures exchanges' surveillance procedures and market surveillance and oversight by the Commodity Futures Trading Commission (''CFTC''). This commenter cites statements by the CFTC that it has the legal authority and means to police certain spot markets for fraud and manipulation through ''heightened review'' collaboration with exchanges, that exchanges will provide the CFTC surveillance team with trade settlement data upon request, and that the exchanges will enter into information-sharing agreements with spot market platforms and monitor trading activity on the spot markets. The commenter also states that the Gemini exchange has announced that it would use Nasdaq's market surveillance system to monitor its marketplace.[48]

This commenter further asserts that market surveillance is generally a prerequisite to identifying potential market manipulation and discourages market manipulation. The commenter believes that the emergence of institutionalized market surveillance on both futures and spot markets is a positive sign for the long-term future of bitcoin markets.[49] The commenter suggests that the Commission, in coordination with the CFTC, self-regulatory organizations, bitcoin futures exchanges, and bitcoin spot market platforms, could gather market surveillance data to conduct an independent analysis of trade and settlement patterns and determine whether potentially manipulative trading practices occur on bitcoin spot and futures markets.[50]

3. Analysis

Unlike previous proposals for bitcoin-based ETPs,[51] the Exchange does not assert here that bitcoin prices or markets are inherently resistant to manipulation. A number of commenters, however, have noted the potential for manipulation in bitcoin markets.[52] Instead, the Exchange asserts that its existing surveillance procedures (including its ability to review activity by its members) and its ability to share surveillance information with U.S. futures exchanges are sufficient to meet the requirements of Exchange Act

[38] *See* Desai Letter, *supra* note 9, at 1.

[39] *See* NERA Letter, *supra* note 9, at 2.

[40] *See id.* at 2.

[41] *See* Desai Letter, *supra* note 9, at 1; Fitzgerald Letter, *supra* note 9, at 1; Kumar Letter, *supra* note 9.

[42] *See* Kumar Letter, *supra* note 9.

[43] *See* Malkin Letter, *supra* note 9, at 1–2.

[44] *See* Fitzgerald Letter, *supra* note 9, at 1–2.

[45] *See* Rousseau Letter, *supra* note 9.

[46] *See* Fitzgerald Letter, *supra* note 9, at 2.

[47] *See id.* at 2.

[48] *See* NERA Letter, *supra* note 9, at 4–5.

[49] *See id.* at 5.

[50] *See id.*

[51] *See* Winklevoss Order, *supra* note 28, 83 FR at 37582 (noting exchange argument that ''intrinsic properties of bitcoin and bitcoin markets make manipulation 'difficult and prohibitively costly' ''); Order Disapproving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247, 16251 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (noting that study commissioned by trust sponsor argues that ''the underlying market for bitcoin is inherently resistant to manipulation'').

[52] *See supra* notes 41–47 and accompanying text.

Section 6(b)(5).[53] One commenter also asserts that the exchange's own surveillance procedures, along with market surveillance and oversight by the CFTC, can mitigate manipulation.[54]

While the Exchange would, pursuant to its listing rules, be able to obtain certain information regarding trading in the Shares and in the underlying bitcoin or any bitcoin derivative through registered market makers,[55] this trade information would be limited to the activities of market participants who trade on the Exchange. Furthermore, neither the Exchange's ability to surveil trading in the Shares nor its ability to share surveillance information with other securities exchanges trading the Shares would give the Exchange insight into the activity and identity of market participants who trade in bitcoin futures contracts or other bitcoin derivatives or who trade in the underlying bitcoin spot markets, where a substantial majority of trading, the Commission concluded in the Winklevoss Order, ''occurs on unregulated venues overseas that are relatively new and that, generally, appear to trade only digital assets.'' [56] Thus, consistent with its determination in the Winklevoss Order,[57] and with the Commission's previous orders approving commodity-futures ETPs,[58] the Commission believes that the Exchange must demonstrate that it has in place a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [59]

The Exchange represents that it is able to share surveillance information with CME and CFE, which are bitcoin futures markets regulated by the CFTC, through membership in the Intermarket Surveillance Group.[60] Nonetheless, the Commission must disapprove the proposal, because there is no evidence in the record demonstrating that CME's and CFE's bitcoin futures markets are markets of significant size.

The Order Instituting Proceedings sought comment on whether the CME and CFE bitcoin futures markets are markets of significant size,[61] but the Exchange has not responded to any of the questions in the Order Instituting Proceedings, and the only analysis of the underlying futures markets the Exchange has provided in its proposed rule change are the generic statements that the market for bitcoin futures contracts ''has very limited trading and operational history'' and that the liquidity of these markets will depend on supply and demand, the adoption of bitcoin, and interest in the market for these futures.[62] Thus, there is no basis in the record on which the Commission can conclude that the bitcoin futures markets are markets of significant size. Publicly available data show that the median daily notional trading volume, from inception through August 10, 2018, has been 14,185 bitcoins on CME and 5,184 bitcoins on CFE, and that the median daily notional value of open interest on CME and CFE during the same period has been 10,145 bitcoins and 5,601 bitcoins, respectively.[63] But while these futures contract figures are readily available, meaningful analysis of the size of the CME or CFE markets relative to the underlying bitcoin spot market is challenging, because reliable data about the spot market, including its overall size, are unavailable.[64]

The Commission also notes that in recent testimony CFTC Chairman Giancarlo characterized the volume of the bitcoin futures markets as ''quite small.'' [65] Additionally, the President and COO of CFE, recently acknowledged in a letter to the Commission staff that ''the current bitcoin futures trading volumes on Cboe Futures Exchange and CME may not currently be sufficient to support ETPs seeking 100% long or short exposure to bitcoin.'' [66] These statements reinforce the Commission's conclusion that there is insufficient evidence to determine that the CME and CFE bitcoin futures markets are markets of significant size.

Furthermore, while the Exchange represents that no more than 10% of the net assets of a Fund in the aggregate invested in bitcoin futures contracts will be invested in contracts whose principal market is neither a member of the Intermarket Surveillance Group nor a market with whom the Exchange has a comprehensive surveillance-sharing agreement,[67] this does not function as a meaningful limitation where, as here, there is no minimum amount of a Fund that must be invested in such contracts. According to the Notice, in the event position, price, or accountability limits are reached with respect to bitcoin futures contracts, each Fund may invest in listed options on bitcoin futures contracts (should such listed options become available) and OTC swap agreements referencing bitcoin futures contracts.[68] The Notice does not establish any limit on the Funds' holdings of these other bitcoin-related derivatives; it provides no analysis of the size and liquidity of markets for those derivatives; and it does not discuss whether the Exchange has the ability to share surveillance information

[53] *See* Notice, *supra* note 3, 82 FR at 61105.

[54] *See supra* notes 48–49 and accompanying text. This commenter also suggests that the Commission—in coordination with the CFTC, SROs, futures markets, and bitcoin spot platforms—could gather market surveillance data to independently analyze whether manipulative practices occur on bitcoin spot and futures platforms. *See supra* note 50 and accompanying text. As noted above, however, it is the Exchange that bears the burden to demonstrate that its proposal is designed to ''prevent fraudulent and manipulative acts and practices.'' *See supra* notes 23–26 and accompanying text.

[55] *See Notice, supra* note 3, at 82 FR 61105 (''The Exchange is also able to obtain information regarding trading in the Shares, the commodity underlying futures or options on futures through ETP [Exchange Trading Permit] Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.'').

[56] Winklevoss Order, *supra* note 28, 83 FR at 37580.

[57] *See id*. at 37591 (finding that ''traditional means'' of surveillance were not sufficient in the absence of a surveillance-sharing agreement with a regulated market of significant size related to the underlying asset).

[58] *See supra* note 33 and accompanying text (noting previous commodity-futures ETPs where surveillance sharing in place between ETP listing exchange and underlying futures exchanges).

[59] Winklevoss Order, *supra* note 28, 83 FR at 37580 (quoting Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98)).

[60] *See https://www.isgportal.org/isgPortal/public/members.htm* (listing the current members and affiliate members of the Intermarket Surveillance Group).

[61] *See* Order Instituting Proceedings, *supra* note 7, 83 FR at 13539.

[62] Notice, *supra* note 3, 82 FR at 61103; *see also supra* note 19 and accompanying text.

[63] These volume figures were calculated by Commission staff using data published by CME and CFE on their websites.

[64] *See* Winklevoss Order, *supra* note 28, 83 FR at 37601.

[65] CFTC Chairman Giancarlo testified: ''It is important to put the new Bitcoin futures market in perspective. It is quite small with open interest at the CME of 6,695 bitcoin and at Cboe Futures Exchange (Cboe) of 5,569 bitcoin (as of Feb. 2, 2018). At a price of approximately $7,700 per Bitcoin, this represents a notional amount of about $94 million. In comparison, the notional amount of the open interest in CME's WTI crude oil futures was more than one thousand times greater, about $170 billion (2,600,000 contracts) as of Feb[.] 2, 2018 and the notional amount represented by the open interest of Comex gold futures was about $74 billion (549,000 contracts).'' *See* Written Testimony of J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission, Before the Senate Banking Committee at text accompanying nn. 14–15 (Feb. 6, 2018). *See also* Winklevoss Order, *supra* note 28, 83 FR at 37601 (citing Giancarlo testimony).

[66] Letter from Chris Concannon, President and COO, Cboe Global Markets, to Dalia Blass, Director, Division of Investment Management, Commission, at 5 (Mar. 23, 2018), *available at https://www.sec.gov/divisions/investment/cboe-global-markets-innovation-cryptocurrency.pdf*.

[67] *See supra* note 17 and accompanying text.

[68] *See* Notice, *supra* note 3, 83 FR at 61102; *see also supra* note 18 and accompanying text.

with the markets for these derivatives. Thus, as to what might be a substantial proportion of the Funds' portfolios, the Commission is unable to conclude that surveillance-sharing will be available, that the related markets are regulated, or that the related markets are of significant size.

While one commenter suggests that the market for bitcoin derivatives other than exchange-traded futures appears to be developing—and that the offering of long and short bitcoin ETPs ''raises the possibility that market makers in Bitcoin derivatives could make two-sided markets if interest in both the long and short ETFs is similar in magnitude'' [69]—these speculative statements do not provide a basis for the Commission to conclude that the non-exchange-traded bitcoin derivatives market is now, or may eventually be, of significant size.

The Commission therefore concludes that Exchange has not demonstrated that it has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or that, given the current absence of such an agreement, the exchange's own surveillance procedures described above would, by themselves, be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[70] While CME and CFE are regulated markets for bitcoin derivatives, there is no basis in the record for the Commission to conclude that these markets are of significant size. Additionally, because bitcoin futures have been trading on CME and CFE only since December 2017, the Commission has no basis on which to predict how these markets may grow or develop over time, or whether or when they may reach significant size.

Although the Exchange has not demonstrated that a regulated bitcoin futures market of significant size currently exists, the Commission is not suggesting that the development of such a market would automatically require approval of a proposed rule change seeking to list and trade shares of an ETP holding bitcoins as an asset. The Commission would need to analyze the facts and circumstances of any particular proposal and examine whether any unique features of a bitcoin futures market would warrant further analysis before approval.

[69] *See supra* notes 39–40 and accompanying text.

[70] *See* 15 U.S.C. 78f(b)(5).

C. Protecting Investors and the Public Interest

1. Comments Received

One commenter states that approval of a bitcoin ETP on a U.S.-regulated exchange would protect small traders and increase exposure to a new asset class in a safe manner.[71] Another commenter states that if the Commission rejects bitcoin ETPs, it will push investors to unregulated and possibly unsafe environments.[72]

One commenter believes that, while the Commission should deny the proposed ETPs, it should regulate this environment to stop individual consumers from coming to financial harm.[73]

One commenter suggests that the Commission could address some of its concerns about the proposed ETPs by working with self-regulatory organizations, and in particular FINRA, to create bitcoin and cryptocurrency-related asset suitability requirements. In addition, this commenter suggests that targeted disclosure requirements could make investors aware of volatility, discourage retail investors from investing more than a small portion of their portfolio in cryptocurrency-related assets, and present historical scenarios to retail investors to demonstrate how an instrument such as a particular bitcoin ETP would have performed over time. This commenter believes that suitability requirements are less prescriptive than an effective ban on a class of product and that they could balance the Commission's interest in protecting retail investors against its interest in allowing cryptocurrency-related asset markets to continue to develop in regulated markets where the Commission can observe their performance closely.[74]

Several commenters assert that the Commission should deny the proposed ETPs to help protect the public from exposure to financial risk from an unregulated market.[75] One commenter asserts that, while the risk posed by the cash-settled futures products is mostly contained, a bitcoin ETP would expose the public to significant financial risk due to a highly volatile, unregulated, and manipulated market in bitcoin as well as cryptocurrencies in general.[76] Several commenters further believe that before the Commission approves a bitcoin ETP, there should be a proper legal and regulatory framework put in place by a suitable governmental body to prevent manipulation and protect the public.[77] Another commenter refers to the proposed ETPs as a ''house of cards'' and expresses concern that the Funds' attempt to replicate the bitcoin futures markets, which are related to underlying cryptocurrencies that trade on unregulated exchanges, will lead to losses for retail investors, and that the inclusion of an inverse Fund will add to the risk.[78]

2. Analysis

The Exchange asserts that approval of the proposal would enhance competition among market participants, to the benefit of investors,[79] and two commenters assert that approval would protect investors by permitting them to seek exposure to bitcoin through a safer, regulated market.[80] Other commenters suggest that the Commission should either seek to regulate the underlying bitcoin markets,[81] or should seek to protect investors through disclosure requirements or suitability standards, rather than disapproving a bitcoin-ETP proposal.[82] Several other commenters, however, assert that approval of a bitcoin-based ETP would expose investors to risks from unregulated bitcoin markets.[83]

The Commission acknowledges that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange may provide some additional protection to investors, but the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.

Thus, even if a proposed rule change would provide certain benefits to

[71] *See* Mohammed Letter, *supra* note 9.

[72] *See* Fink Letter, *supra* note 9.

[73] *See* Fitzgerald Letter, *supra* note 9, at 2.

[74] *See* NERA Letter, *supra* note 9, at 5–6.

[75] *See* Desai Letter, *supra* note 9, at 1; Kohen Letter, *supra* note 9; Kumar Letter, *supra* note 9; Malkin Letter, *supra* note 9, at 2.

[76] *See* Desai Letter, *supra* note 9, at 1.

[77] *See* Desai Letter, *supra* note 9, at 1, 2; Kumar Letter, *supra* note 9; Malkin Letter, *supra* note 9, at 2.

[78] *See* Kohen Letter, *supra* note 9.

[79] *See* Notice, *supra* note 3, 82 FR at 61106.

[80] *See supra* notes 71–72 and accompanying text.

[81] *See supra* note 73 and accompanying text.

[82] *See supra* note 74 and accompanying text.

[83] *See supra* notes 75–78 and accompanying text.

investors and the markets, the proposed rule change may still fail to meet other requirements under the Exchange Act. For the reasons discussed above, the Exchange has not met its burden of demonstrating an adequate basis in the record for the Commission to find that the proposal is consistent with Exchange Act Section 6(b)(5), and, accordingly, the Commission must disapprove the proposal.

D. Other Comments

Comment letters also addressed the intrinsic value of bitcoin; [84] the desire of investors to gain access to bitcoin through an ETP; [85] investor understanding about bitcoin; [86] the volatility of bitcoin prices,[87] the regulation of bitcoin spot markets,[88] the operation and valuation of the proposed ETPs,[89] the potential impact of Commission approval of the proposed ETP on the price of bitcoin,[90] and the legitimacy that Commission approval of the proposed ETP might confer upon bitcoin as a digital asset.[91] Ultimately, however, additional discussion of these tangential topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

E. Basis for Disapproval

The record before the Commission does not provide a basis for the Commission to conclude that the Exchange has met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposed rule change is consistent with Exchange Act Section 6(b)(5).[92]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–NYSEArca–2017–139 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[93]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18572 Filed 8–27–18; 8:45 am]

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[84] *See* Ahn Letter, *supra* note 9.

[85] *See* Fink Letter, *supra* note 9; Kaleda Letter, *supra* note 9; Moberg Letter, *supra* note 9; Rousseau Letter, *supra* note 9; Santos Letter, *supra* note 9.

[86] *See* Desai Letter, *supra* note 9, at 1; Kumar Letter, *supra* note 9.

[87] *See* Desai Letter, *supra* note 9, at 1; Malkin Letter, *supra* note 9, at 1.

[88] *See* Desai Letter, *supra* note 9, at 1; Fitzgerald Letter, *supra* note 9, at 1; Kumar Letter, *supra* note 9; Malkin Letter, *supra* note 9, at 1; Mohammed Letter, *supra* note 9.

[89] *See* Desai Letter, *supra* note 9, at 1; Malkin Letter, *supra* note 9, at 1; Kumar Letter, *supra* note 9; NERA Letter, *supra* note 9, at 1–2, 3, 5.

[90] *See* Santos Letter, *supra* note 9.

[91] *See* Desai Letter, *supra* note 9, at 1, 2; Kumar Letter, *supra* note 9; Santos Letter, *supra* note 9.

[92] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[93] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83900; File No. SR–NYSENAT–2018–19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31 Relating to Reserve Orders and Re-Name Two Order Types

August 22, 2018.

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 August 9, 2018, NYSE National, Inc. (''Exchange'' or ''NYSE National'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31 relating to Reserve Orders and re-name two order types. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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 Rule 7.31 relating to Reserve Orders and re-name two order types.

Background

Rule 7.31(d)(1) defines a Reserve Order as a Limit or Inside Limit Order with a quantity of the size displayed and with a reserve quantity of the size (''reserve interest'') that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders and the reserve interest is ranked Priority 3—Non-Display Orders.[4] Rule 7.31(d)(1)(A) provides that on entry, the display quantity of a Reserve Order must be entered in round lots and the displayed portion of a Reserve Order will be replenished following any execution. That rule further provides that the Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order. Rule 7.31(d)(1)(B) provides that each time a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity of the Reserve Order, while the reserve interest retains the working time of original order entry. Pursuant to Rule 7.31(d)(1)(C), a Reserve Order must be designated Day and may be combined with a Limit Non-Routable Order or a Primary Pegged Order.

Rule 7.31(d)(2) defines a ''Limit Non-Displayed Order,'' which is a Limit Order that is not displayed and does not route. Rule 7.31(e)(1) defines a ''Limit Non-Routable Order,'' which is a Limit Order that does not route.

[4] The terms ''Priority 2—Display Orders'' and ''Priority 3—Non-Display Orders'' are defined in Rule 7.36(e).

Proposed Rule Change Relating to Order Type Names

The Exchange proposes non-substantive amendments to Rules 7.31 and 7.46 to re-name the ''Limit Non-Routable Order'' as the ''Non-Routable Limit Order.'' This proposed rule change is based on the term used by the Exchange's affiliate, NYSE American LLC (''NYSE American'') for the same order type.

The Exchange also proposes non-substantive amendments to Rules 7.31 and 7.46 to re-name the ''Limit Non-Displayed Order'' as the ''Non-Displayed Limit Order.'' In both cases, the Exchange believes that it promotes clarity and consistency in its rules to move the respective modifier for each of these rules before the term ''Limit Order.''

Proposed Rule Change Relating to Reserve Orders

The Exchange proposes to amend Rule 7.31(d)(1) to change the manner by which the display portion of a Reserve Order would be replenished. As proposed, rather than replenishing the display quantity following any execution, the Exchange proposes to replenish the Reserve Order when the display quantity is decremented to below a round lot. The changes that the Exchange is proposing to Rule 7.31 relating to Reserve Orders (and Primary Pegged Orders) are identical to changes that were recently approved for the Exchange's affiliate, New York Stock Exchange LLC (''NYSE'').[5] In addition, the proposed changes to how Reserve Orders would be replenished are consistent with how Reserve Orders are replenished on other equity exchanges.[6]

As is currently the case, the replenish quantity would be the minimum display size of the order or the remaining quantity of reserve interest if it is less than the minimum display quantity. To reflect this functionality, the Exchange proposes that Rule 7.31(d)(1)(A) would be amended as follows (deleted text bracketed; new text underlined):

(A) On entry, the display quantity of a Reserve Order must be entered in round lots. The displayed portion of a Reserve Order will be replenished *when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display quantity of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity*[following any execution. The Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order].

Under current functionality, because the replenished quantity is assigned a new working time, it is feasible for a single Reserve Order to have multiple replenished quantities with separate working times, each, a ''child'' order. The proposed change to limit when a Reserve Order would be replenished to when the display quantity is decremented to below a round lot only would reduce the number of child orders for a Reserve Order. The Exchange believes that minimizing the number of child orders for a Reserve Order would reduce the potential for market participants to detect that a child order displayed on the Exchange's proprietary market data feeds is associated with a Reserve Order.

In most cases, the maximum number of child orders for a Reserve Order would be two. For example, assume a Reserve Order to buy has a display quantity of 100 shares and an additional 200 shares of reserve interest. A sell order of 50 shares would trade with the display quantity of such Reserve Order, which would decrement the display quantity to 50 shares. As proposed, the Exchange would then replenish the Reserve Order with 100 shares from the reserve interest, *i.e.,* the minimum display size for the order. After this second replenishment, the Reserve Order would have two child orders, one for 50 shares, the other for 100 shares, each with different working times.

Generally, when there are two child orders, the older child order of less than a round lot will be executed before the second child order. However, there are limited circumstances when a Reserve Order could have two child orders that equal less than a round lot, which, as proposed, would trigger a replenishment. For such circumstance, the Exchange proposes that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would be reassigned the new working time assigned to the next replenished quantity.

For example, taking the same Reserve Order as above:

- If 100 shares of such order (''A'') are routed on arrival, it would have a display quantity of 100 shares (''B'') and 100 shares in reserve interest.
- While ''A'' is routed, a sell order of 50 shares would trade with ''B,'' decrementing ''B'' to 50 shares and the Reserve Order would be replenished from reserve interest, creating a second child order ''C'' of 100 shares.
- Next, the Exchange receives a request to reduce the size of the Reserve Order from 300 shares to 230 shares. Because ''A'' is still routed away and there is no reserve interest, and as described in more detail below, this 70 share reduction in size would be applied against the most recent child order of ''C,'' which would be reduced to 30 shares. Together with ''B,'' which would still be 50 shares, the two displayed child orders would equal less than a round lot, but with no quantity in reserve interest.
- Next, ''A'' is returned unexecuted, and as described below, becomes reserve interest and is evaluated for replenishment. Because the total display quantity (''B'' + ''C'') is less than a round lot, this Reserve Order would be replenished. But because the Reserve Order already has two child orders, the child order with the later working time, ''C,'' would be returned to the reserve interest, which would now have a quantity of 130 shares (''C'' + ''A''), and the Reserve Order would be replenished with 100 shares from the reserve interest with a new working time, which would be a new child order ''D.''
- After this replenishment, this Reserve Order would have two child orders of ''B'' for 50 shares and ''D'' for 100 shares, and a reserve interest of 30 shares.

To effect these changes, the Exchange proposes to amend current Rule 7.31(d)(1)(B) to specify that each display quantity of a Reserve Order with a different working time would be referred to as a child order. The Exchange further proposes new Rule 7.31(d)(1)(B)(i) that would provide that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity.

The Exchange also proposes new Rule 7.31(d)(1)(B)(ii) to provide that if a Reserve Order is not routable (*i.e.,* is combined with either a Non-Routable Limit Order or a Primary Pegged Order), the replenish quantity would be assigned a display and working price consistent with the instructions for the order, which represents current functionality. For example, for a Non-Routable Limit Reserve Order, if the display price would lock or cross the contra-side PBBO, the replenished quantity would be assigned a display price one MPV worse than the PBBO

[5] *See* Securities Exchange Act Release No. 83768 (August 3, 2018), 83 FR 39488 (August 9, 2018) (SR–NYSE–2018–26) (Approval Order).

[6] *See* Cboe BZX Exchange, Inc. (''BZX'') Rule 11.9(c)(1); Nasdaq Stock Market LLC (''Nasdaq'') Rule 7503(h).

and a working price equal to the contra-side PBBO, as provided for in Rule 7.31(e)(1)(A)(i).[7] The Exchange believes that this proposed rule text would provide transparency and clarity to Exchange rules.

For a Primary Pegged Reserve Order, the Exchange proposes that the replenished quantity would follow Rule 7.31(h)(2)(B), which provides that a Primary Pegged Order would be rejected if the PBBO is locked or crossed. Because a Primary Pegged Reserve Order would have resting reserve interest, the Exchange proposes to amend Rule 7.31(h)(2)(B) to provide that if the PBBO is locked or crossed when the display quantity of a Primary Pegged Reserve Order is replenished, the entire order would be cancelled. The Exchange believes that cancelling the entire order is consistent with the current rule that provides that the entire order would be rejected on arrival if the display quantity would lock or cross the PBBO.

The Exchange further proposes to add new subsection (D) to Rule 7.31(d)(1) to describe when a Reserve Order would be routed. As proposed, a routable Reserve Order would be evaluated for routing both on arrival and each time the display quantity is replenished.

Proposed Rule 7.31(d)(1)(D)(i) would provide that if routing is required, the Exchange would route from reserve interest before publishing the display quantity. In addition, if after routing, there is less than a round lot available to display, the Exchange would wait until the routed quantity returns (executed or unexecuted) before publishing the display quantity. In the example described above, the Exchange would have published the display quantity before the routed quantity returned because the display quantity was at least a round lot. If, however, 250 shares of a Reserve Order of 300 shares had been routed on arrival, because the unrouted quantity was less than a round lot (50 shares), the Exchange would wait for the routed quantity to return, either executed or unexecuted, before publishing the display quantity.

The Exchange proposes this functionality to reduce the possibility for a Reserve Order to have more than one child order. If the Exchange did not wait, and instead displayed the 50 shares when the balance of the Reserve Order has routed, if the 250 shares returns unexecuted, such Reserve Order would be replenished and would have two child orders—one for the 50 shares that was displayed when the order was entered and a second for the 100 shares that replenished the Reserve Order from the quantity that returned unexecuted. By contrast, by waiting for a report on the routed quantity, if the routed quantity was not executed, the Exchange would display the minimum display quantity as a single child order. If the routed quantity was executed, the Exchange would display the 50 shares, but only because that would be the full remaining quantity of the Reserve Order.

Proposed Rule 7.31(d)(1)(D)(ii) would provide that any quantity of a Reserve Order that is returned unexecuted would join the working time of the reserve interest, which is current functionality. If there is no quantity of reserve interest to join, the returned quantity would be assigned a new working time as reserve interest. As further proposed, in either case, such reserve interest would replenish the display quantity as provided for in Rules 7.31(d)(1)(A) and (B). The Exchange believes that this proposed rule text would promote transparency and clarity in Exchange rules. The Exchange further believes it is appropriate for a returned quantity of a Reserve Order to join the reserve interest first because the order may not be eligible for a replenishment to the display quantity.

Proposed Rule 7.31(d)(1)(E) would provide that a request to reduce in size a Reserve Order would cancel the reserve interest before canceling the display quantity and if there is more than one child order, the child order with the later working time would be cancelled first. This represents current functionality and the example set forth above demonstrates how this would function. The Exchange believes that canceling reserve interest before a child order would promote the display of liquidity on an exchange. The Exchange further believes that canceling a later-timed child order would respect the time priority of the first child order, and any priority such child order may have for allocations.

* * * * *

Because of the technology changes associated with the proposed rule changes relating to Reserve Orders, the Exchange will announce by Trader Update when these changes will be implemented, which the Exchange anticipates will be in the third quarter of 2018.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change to replenish a Reserve Order only if the display quantity is decremented to below a round lot would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the number of child orders associated with a single Reserve Order. By reducing the number of child orders, the Exchange believes it would reduce the potential for market participants to detect that a child order is associated with a Reserve Order. The proposed changes to Reserve Orders and Primary Pegged Orders are identical to recently approved changes to the rules of its affiliated exchange, NYSE, and how a Reserve Order would be replenished is also consistent with how Reserve Orders function on BZX and Nasdaq.[10]

For similar reasons, the Exchange believes that if a Reserve Order has two child orders that equal less than a round lot, it would remove impediments to and perfect the mechanism of a free and open market and a national market system to assign a new working time to the later child order so that when such Reserve Order is replenished, it would have a maximum of only two child orders. The Exchange believes that this proposed change would streamline the operation of Reserve Orders and meet the objective to reduce the potential for market participants to be able to identify that a child order is associated with a Reserve Order.

The Exchange further believes that the proposed rule change to evaluate a Reserve Order for routing both on arrival and when replenishing would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the potential for the display quantity of a Reserve Order to lock or cross the PBBO of an away market. The Exchange further believes that routing from reserve interest would

[7] The term ''PBBO'' is defined in Rule 1.1. The term ''MPV'' is defined in Rule 7.6.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* notes 5 and 6.

promote the display of liquidity on the Exchange, because if there is at least a round lot remaining of a Reserve Order that is not routed, the Exchange would display that quantity. The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to wait to display a Reserve Order if there is less than a round lot remaining after routing because it would reduce the potential for such Reserve Order to have more than one child order. Finally, the Exchange believes that joining any quantity of a Reserve Order that is returned unexecuted with reserve interest first would be consistent with the proposed replenishment logic that a Reserve Order would be replenished only if the display quantity is decremented to below a round lot.

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to apply a request to reduce in size a Reserve Order to the reserve interest first, and then next to the child order with the later working time, because such functionality would promote the display of liquidity on the Exchange and honor the priority of the first child order with the earlier working time. The Exchange believes that including this existing functionality in Rule 7.31 would promote transparency and clarity in Exchange rules.

The Exchange believes that the proposed change to Primary Pegged Reserve Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because similar to how a Primary Pegged Order would function on arrival, if the replenish quantity of a Primary Pegged Reserve Order would lock or cross the PBBO, the entire Reserve Order would be cancelled. The Exchange believes that by cancelling the entire order, the Exchange would reduce the potential for such order to be displayed at a price that would lock or cross the PBBO.

The Exchange believes that the proposed non-substantive amendments to rename the ''Limit Non-Displayed Order'' as the ''Non-Displayed Limit Order'' and to rename the ''Limit Non-Routable Order'' as the ''Non-Routable Limit Order'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to promote clarity and consistency in Exchange rules by moving the modifier describing the function of the order type before the term ''Limit Order.''

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change to Reserve Orders is designed to reduce the potential for market participants to identify that a child order is related to a Reserve Order. The additional proposed rule changes are non-substantive and are designed to promote clarity and consistency in Exchange rules.

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 [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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) [15] 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–NYSENAT–2018–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2018–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 15 U.S.C. 78s(b)(2)(B).

submissions should refer to File Number SR–NYSENAT–2018–19 and should be submitted on or before September 18, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18571 Filed 8–27–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83909; File No. SR–CBOE–2018–061]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.5A, Select Provisions of Options Listing Procedures Plan, 5.8, Long-Term Equity Option Series (LEAPS) and Rule 24.9, Terms of Index Option Contracts

August 22, 2018.

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 August 20, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 5.5A, 5.8, and 24.9.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.5A. Select Provisions of Options Listing Procedures Plan

(a) No change.

(b) The exercise price of each option series listed by the Exchange shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, Exchange Traded Fund (''ETF'' and referred to as a ''Unit'' in Rule 5.3) or Trust Issued Receipt (''TIR'') at or about the time the Exchange determines to list such series. Additionally,

(i) Exercise Price Range Limitations—Except as provided in subparagraphs (ii) through (iv) below, if the price of the underlying security is less than or equal to $20, the Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. However, the foregoing restriction shall not prohibit the listing of at least three exercise prices per expiration month in an option class. Except as provided in Rule 5.5(d)(4), if the price of the underlying security is greater than $20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security.

The price of the underlying security is measured by:

(1) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges;

(2) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of new series; [and]

(3) for option series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 7:45 a.m. and 8:30 a.m. (Chicago time)[.]*; and*

(4) for option series to be added based on trading following regular trading hours, the most recent share price reported by all national securities exchanges between 3:15 p.m. and 5:00 p.m. (Chicago time).

(ii)–(vi) No change.

* * * * *

Rule 5.8. Long-Term Equity Option Series (LEAPS)

(a) No change.

(b) [When a new equity LEAPS series is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading.

(c)] With regard to the listing of new January LEAPS series on equity option classes, options on Exchange Traded Funds (''ETFs'' and referred to as ''Units'' in Rule 5.3), or options on Trust Issued Receipts (''TIRs''), the Exchange shall not add new LEAP series on a currently listed and traded option class *earlier than the Monday prior to the September expiration (which is 28 months before the expiration)*[:

(i) Earlier than September (which is 28 months before the expiration), for an option class on the January expiration cycle;

(ii) Earlier than October (which is 27 months before expiration), for an option class on the February expiration cycle; and

(iii) Earlier than November (which is 26 months before expiration), for an option class on the March expiration cycle].

Pursuant to the Options Listing Procedures Plan, exchanges that list and trade the same equity option class, ETF option class, or TIR option class are authorized to jointly determine and coordinate with the Clearing Corporation on the date of introduction of new LEAP series for that option class consistent with this paragraph ([c]*b*).

([d]*c*) The Exchange shall not list new LEAP series on equity option classes, options on ETFs, or options on TIRs in a new expiration year if the national average daily contract volume, excluding LEAP and FLEX series, for that option class during the preceding three calendar months is less than 1,000 contracts, unless the new LEAP series has an expiration year that has already been listed on another exchange for that option class. The preceding volume threshold does not apply during the first six months an equity option class, option on an ETF, or option on a TIR is listed on any exchange.

* * * * *

Rule 24.9. Terms of Index Option Contracts

(a) No change.

(b) Long-Term Index Option Series (''LEAPS'').

(1) Notwithstanding the provisions of Paragraph (a)(2) above, the Exchange may list long-term index option series that expire from 12 to 180 months from the date of issuance.

(A) Index LEAPS may be based on either the full or reduced value of the underlying index.

(B) There may be up to 10 expiration months, none further out than one-hundred eighty (180) months.

[(B) When a new Index LEAPS series is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

option series until they are opened for trading.]

(2) No change.

(c)–(e) No change.

. . . *Interpretations and Policies:*

.01–.14 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rules 5.5A, 5.8, and 24.9 to conform to recently approved changes to the Options Listing Procedures Plan (''OLPP'').[5] The Exchange, which is one of the Participant Exchanges[6] to the OLPP, currently has rules that are designed to incorporate the requirements of the OLPP. All Participant Exchanges have similar such (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify such rules to reflect the recent updates as described below.

Addition of Long-Term Equity Options (''LEAPS'')

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds (''ETF''), or options on Trust Issued Receipts (''TIR'') may be added to a single date (from three separate months). As noted in the OLPP Notice, in the past, there were operational concerns related to adding new January LEAPs series for all options classes on which LEAPs were listed on a single trading day.[7] And, the addition of new series in a pre-electronic trading environment was a manual process. To accommodate this, the addition of new January LEAPs series was spread across three months (September, October, and November). Today, however, these operational concerns related to January LEAPs have been alleviated as new series can be added in bulk electronically. The Plan Participants, including the Exchange, believe that moving the addition of new January LEAPs series to no earlier than the Monday prior to the September expiration would reduce marketplace confusion about available January LEAPs series. Where previously January LEAPs series for options classes on the February or March expiration cycles would not have been available as early as January LEAPs series for options classes on the January expiration cycle, under the proposed change, all January LEAPs series will be available concurrently. Accordingly, to conform to this change, the Exchange proposes to modify current Rule 5.8(c) to reflect that new January LEAPS series on equity options classes, options on ETFs, or options on TIRs, may not be added on a currently listed and traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).[8]

Addition of Equity, ETF, and TIR Option Series After Regular Trading Hours

Second, the OLPP has been amended to allow equity, ETF, and TIR option series to be added based on trading after regular trading hours (*i.e.,* after-market). As noted in the OLPP Notice, the prior version of the OLPP did not allow for option series to be added based on trading following regular trading hours.[9] As such, the Exchange Participants were are unable to add new option series that may result from trading following regular trading hours until the next morning, depending on the range of prices in pre-market trading, which is significant because events that occur after regular trading hours, such as earnings releases, often have an important impact on the price of an underlying security. In addition, there are operational difficulties for market participants throughout the industry adding series after system startup. To avoid the potential burden that would result from the inability to add series as a result of trading following regular trading hours, the OLPP was amended to allow an additional category by which the price of an underlying security may be measured. Specifically, to conform to the amended OLPP, the Exchange proposes to add subparagraph (b)(i)(4) to Rule 5.5A to provide that ''for option series to be added based on trading following regular trading hours,'' the price of the underlying security is measured by ''the most recent share price reported by all national securities exchanges between 3:15 p.m. and 5:00 p.m. (Chicago time).'' [10]

Technical Changes

The Exchange proposes to modify Rules to delete now obsolete operational language, which dates back to when LEAPs were first adopted. This language provides that when a new equity or index LEAPS series, as applicable, is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading. The Exchange proposes to delete this language because when this language was adopted, LEAPs were not opened for trading until late in the trading day unless there was buying or selling interest.[11] Today, however, technological improvements allow the Exchange to open all LEAP series at the same time as all other series in an option class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the

[5] *See* Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58668 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 (''OLPP Notice'').

[6] In addition to the Exchange, the ''Participant Exchanges'' are: Box Options Exchange, LLC; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

[7] *See* OLPP Notice at 49249.

[8] *See* proposed Rule 5.8(b).

[9] *See* OLPP Notice at 49250.

[10] *See* proposed Rule 5.5A(b)(i)(4). The Exchange proposes to relocate ''and'' from subparagraph (2) to (3) to conform to the change. *See* proposed Rule 5.5A(b)(i)(2) and (3).

[11] *See* current Rules 5.8(b) and 24.9(b)(1)(B). The proposed rule change amends a cross-reference to current Rule 5.8(c) (proposed Rule 5.8(b)), and changes current Rule 5.8(d) to proposed Rule 5.8(c), to conform to the deletion of current Rule 5.8(b). *See* proposed Rule 5.8(b) and (c). The proposed rule change splits current Rule 24.9(b)(1)(A) into two provisions (proposed Rule 24.9(b)(1)(A) and (B)) to separate two different rule provisions. *See* proposed Rule 24.9(b)(1).

Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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)[14] 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, which conforms to the recently adopted provisions of the OLPP, as amended, allows the Exchange to continue to list extended far term option series that have been viewed as beneficial to traders, investors and public customers. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to list all January 2021 expiration series on the Monday prior to the September 2018 expiration. Moreover, this change would simplify the process for adding new January LEAP options series and reduce potential for investor confusion because all new January LEAP options would be made available beginning at the same time, consistent with the amended OLPP. The Exchange notes that this proposal does not propose any new provisions that have not already been approved by the Commission in the amended OLPP, but instead maintains series listing rules that conform to the amended OLPP.

The proposal to permit series to be added based on after-market trading is designed 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, by allowing the Exchange to make series available for trading with reduced operational difficulties. The Exchange notes that this proposed change, which is consistent with the amended OLPP should provide market participants with earlier notice regarding what options series will be available for trading the following day, and should help to enhance investors' ability to plan their options trading. The Exchange also believes that the proposed technical changes, including deleting obsolete language and reorganizing and consolidating the rule, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that by conforming Exchange rules to the amended OLPP, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by Participant Exchanges, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[19] 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. The Commission notes that the Exchange's proposal would conform the Exchange's rules to the amended OLPP, which the Commission previously approved.[20] Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[21]

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)[22] 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *See* OLPP Notice, *supra* note 5.

[21] 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).

[22] 15 U.S.C. 78s(b)(2)(B).

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–2018–061 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–2018–061. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–SR–CBOE–2018–061 and should be submitted on or before September 18, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18574 Filed 8–27–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:30 p.m. on Thursday, August 30, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Jackson, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 23, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–18679 Filed 8–24–18; 11:15 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15664 and #15665; Wisconsin Disaster Number WI–00065]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Wisconsin

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wisconsin (FEMA–4383–DR), dated 08/10/2018.

Incident: Severe Storms, Straight-line Winds, and Flooding.

Incident Period: 06/15/2018 through 06/19/2018.

DATES: Issued on 08/10/2018.

Physical Loan Application Deadline Date: 10/09/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/10/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/10/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Ashland, Bayfield, Burnett, Clark, Douglas, Iron.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 156646 and for economic injury is 156650.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–18540 Filed 8–27–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15661 and #15662; IOWA Disaster Number IA–00083]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4386–DR), dated 08/20/2018.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/06/2018 through 07/02/2018.

DATES: Issued on 08/20/2018.

Physical Loan Application Deadline Date: 10/19/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/20/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/20/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adair, Buchanan, Buena Vista, Cerro Gordo, Cherokee, Chickasaw, Clay, Dallas, Delaware, Dickinson, Emmet, Floyd, Hamilton, Hancock, Howard, Humboldt, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Pocahontas, Polk, Sioux, Story, Warren, Webster, Winnebago, Winneshiek, Wright.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 156616 and for economic injury is 156620.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2018–18539 Filed 8–27–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 15622 and # 15623; California Disaster Number CA–00288]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4382–DR), dated 08/04/2018.

Incident: Wildfires and High Winds.

Incident Period: 07/23/2018 and continuing.

DATES: Issued on 08/17/2018.

Physical Loan Application Deadline Date: 10/03/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/06/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 08/04/2018, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Lake

Contiguous Counties (Economic Injury Loans Only):

California: Colusa, Glenn, Mendocino, Napa, Sonoma, Yolo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–18538 Filed 8–27–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15657 and #15658; CONFEDERATED TRIBES of the COLVILLE RESERVATION Disaster Number WA–00071]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Confederated Tribes of the Colville Reservation

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Confederated Tribes of the Colville Reservation (FEMA–4384–DR), dated 08/17/2018.

Incident: Flooding.

Incident Period: 05/05/2018 through 05/28/2018.

DATES: Issued on 08/17/2018.

Physical Loan Application Deadline Date: 10/16/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/17/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/17/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Confederated Tribes of the Colville Reservation

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 156576 and for economic injury is 156580.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–18536 Filed 8–27–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10503]

30-Day Notice of Proposed Information Collection: Application for Nonimmigrant Visa

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to September 27, 2018.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov*. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for Nonimmigrant Visa.
- *OMB Control Number:* 1405–0182.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).
- *Form Number:* DS–160 and DS–156.
- *Respondents:* All Nonimmigrant Visa Applicants.
- *Estimated Number of Respondents:* 14,000,000.
- *Estimated Number of Responses:* 14,000,000.
- *Average Time per Response:* 90 Minutes.
- *Total Estimated Burden Time:* 21,000,000 Annual Hours.
- *Frequency:* Once per respondent's application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Online Application for Nonimmigrant Visa (DS–160) is used to collect biographical information from individuals seeking a nonimmigrant visa. The consular officer uses the information collected to determine the applicant's eligibility for a visa. Form DS–156 is required by regulation of all nonimmigrant visa applicants who do not use the Online Application for Nonimmigrant Visa (Form DS–160). Posts will use the DS–156 in limited circumstances when the DS–160 is unavailable, as outlined below, to elicit information necessary to determine an applicant's visa eligibility.

Methodology

The DS–160 will be submitted electronically over industry standard encryption technology to maintain a secure connection to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing. The Nonimmigrant Visa Application (DS–156) paper version will be used only in the following limited circumstances when applicants cannot access the DS–160:

- An applicant has an urgent medical or humanitarian travel need and the consular officer has received explicit permission from the Visa Office to accept form DS–156;
- The applicant is a student exchange visitor who must leave immediately in order to arrive on time for his/her course and the consular officer has explicit permission from the Visa Office to accept form DS–156;
- The applicant is a diplomatic or official traveler with urgent government business and form DS–160 has been unavailable for more than four hours; or
- Form DS–160 has been unavailable for more than three days and the officer receives explicit permission from the Visa Office.

In order to obtain a copy of form DS–156, an applicant must contact the Embassy or consulate at which he or she is applying, and request a copy.

Additional Information

This collection is being revised to include both nonimmigrant visa application methods: The online version (form DS–160) which is used by the vast majority of applications, and the paper version (form DS–156) which is used in limited circumstances. Currently, the online application and paper application are approved under two separate collections. With this renewal, the Department seeks to combine these into a single collection. Upon approval, the Department will seek to discontinue OMB Control Number 1405–0018, the existing collection for form DS–156.

The Department also is revising the collection to add several additional questions for most nonimmigrant visa applicants. One question lists multiple social media platforms and requires the applicant to provide any identifiers used by applicants for those platforms during the five years preceding the date of application. The platforms listed may be updated by the Department by adding or removing platforms. Additional platforms will be added only if collection is consistent with the uses described in the Supporting Statement and after Office of Management and Budget approval. In addition, the applicant will be given the option to provide information about any social media identifiers associated with any platforms other than those that are listed that the applicant has used in the last five years. The Department will collect this information from visa applicants for

identity resolution and vetting purposes based on statutory visa eligibility standards; however, the Department does not intend to routinely require applicants for specific visa classifications, such as most diplomatic and official visa applicants, to respond to this question. Other questions seek five years of previously used telephone numbers, email addresses, and international travel; whether the applicant has been deported or removed from any country; and whether specified family members have been involved in terrorist activities. Additionally, some E nonimmigrant visa applicants will be asked whether the principal treaty trader was issued a visa. The ''Sign and Submit'' statement will provide applicants additional information related to correcting records within Federal Bureau of Investigation databases. Finally, the revised visa application forms will include additional information regarding the visa medical examination that some applicants may be required to undergo. Additional details of the changes are available in supporting documents.

Carl C. Risch,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018–18594 Filed 8–27–18; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 10505]

30-Day Notice of Proposed Information Collection: Electronic Application for Immigrant Visa and Alien Registration

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to September 27, 2018.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Electronic Application for Immigrant Visa and Alien Registration.
- *OMB Control Number:* 1405–0185.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO/L/R).
- *Form Number:* DS–260.
- *Respondents:* Immigrant Visa Applicants.
- *Estimated Number of Respondents:* 710,000.
- *Estimated Number of Responses:* 710,000.
- *Average Time per Response:* 155 minutes.
- *Total Estimated Burden Time:* 1,834,167 Annual Hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Electronic Application for Immigrant Visa and Alien Registration (DS–260) is used to collect biographical information from individuals seeking an immigrant visa. The consular officer uses the information collected to elicit information necessary to determine an applicant's eligibility for a visa.

Methodology

The DS–260 will be submitted electronically over industry standard encryption technology to maintain a secure connection to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Additional Information

The Department is revising the collection to add several additional questions for immigrant visa applicants. One question lists multiple social media platforms and requires the applicant to provide any identifiers used by applicants for those platforms during the five years preceding the date of application. The platforms listed may be updated by the Department by adding or removing platforms. Additional platforms will be added only if collection is consistent with the uses described in the Supporting Statement and after Office of Management and Budget approval. In addition, the applicant will be given the option to provide information about any social media identifiers associated with any platforms other than those that are listed that the applicant has used in the last five years. The Department will collect this information for identity resolution and vetting purposes based on statutory visa eligibility standards. Other questions seek five years of previously used telephone numbers, email addresses, and international travel; whether the applicant has been deported or removed from any country; and whether specified family members have been involved in terrorist activities. The ''Sign and Submit'' statement will provide applicants information related to correcting records within Federal Bureau of Investigation databases and additional information regarding the immigrant visa medical examination. Applicants from countries where female genital mutilation/cutting (FGM/C) is prevalent will be provided a link in the DS–260 to an electronic pamphlet that covers the illegality of the practice in the United States. Further, applicants will be required to check a box verifying that the link was provided to them. Finally, the revised visa application forms will include additional information regarding the visa medical examination that some applicants may be required to undergo. Additional details of the changes are available in supporting documents.

Carl C. Risch,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018–18595 Filed 8–27–18; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Financial Responsibility for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 28, 2018. The required information to be collected will be used to determine if licensees or those who have permits have complied with financial responsibility requirements for maximum probable loss determination (MPL) analysis as set forth in FAA regulations. The FAA is responsible for determining MPL required to covered claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from a Commercial space transportation permitted or licensed activity. The MPL determination forms the basis for financial responsibility requirements issued in a license or permit order.

DATES: Written comments should be submitted by September 27, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0601.

Title: Financial Responsibility for Licensed Launch Activities.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 28, 2018 (83 FR 30475). The information is collected per 14 CFR part 440 Appendix A. A permit or license applicant who is seeking a permit or license to conduct launch actives is required to provide the FAA information to conduct maximum probable loss determination. The information is collected once based on vehicle configuration, launch site, and flight trajectory that are introduced in the license or permit application. Furthermore, it is a mandatory requirement that all commercial permitted and licensed launch applicants obtain financial coverage for claims by a third party for bodily injury or property damage. FAA is responsible for determining the amount of financial responsibility required using maximum probable loss determination. The financial responsibility must be in place and active for every launch activity. Applicants' launched activity can vary, on average, from once a week to once a year. If there are significant changes to the launch vehicle, launch site, or flight trajectory this could lead to the permitted or licensed applicant providing updated information to the FAA. The FAA will use the updated collected information to revise the financial responsibility results.

Respondents: 10 commercial space launch services providers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 1,000 hours.

Issued in Washington, DC, on August 21, 2018.

Robin Darden,

Management Support Specialist, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–18509 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 28, 2018. The collection involves the reporting of unauthorized illumination of aircraft by lasers. The information to be collected will be used to assist law enforcement and provide support for recommended mitigation actions to be taken to ensure continued safe and orderly flight operations.

DATES: Written comments should be submitted by September 24, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of

information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0698.

Title: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft.

Form Numbers: Advisory Circular 70–2A, Reporting of Laser Illumination of Aircraft.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 28, 2018 (83 FR 30474). Advisory Circular 70–2A provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations. Information is collected from pilots and aircrews that are affected by an unauthorized illumination by lasers. The requested reporting involves an immediate broadcast notification to Air Traffic Control (ATC) when the incident occurs, as well as a broadcast warning of the incident if the aircrew is flying in uncontrolled airspace. In addition, the AC requests that the aircrew supply a written report of the incident and send it by fax or email to the Washington Operations Control Complex (WOCC) as soon as possible.

Respondents: Approximately 1,100 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 183 hours.

Issued in Washington, DC, on August 21, 2018.

Robin Darden,

Management Support Specialist, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–18502 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Intent To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property; Nome Airport (OME), Nome, Alaska.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Nome Airport, Nome, Alaska.

DATES: Comments must be received on or before September 27, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Anchorage Airports Regional Office, Molly Lamrouex, Compliance Manager, 222 W 7th Avenue, Anchorage, AK. Telephone: (907) 271–5439/Fax: (907) 271–2851 and the State of Alaska Department of Transportation and Public Facilities, Fairbanks Office, 2301 Peger Road, Fairbanks, AK. Telephone: (907) 451–5226.

Written comments on the Sponsor's request must be delivered or mailed to: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Airports Anchorage Regional Office, 222 W 7th Avenue, Anchorage, AK 99513, Telephone Number: (907) 271–5439/ FAX Number: (907) 271–2851.

FOR FURTHER INFORMATION CONTACT: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Alaskan Region Airports District Office, 222 W 7th Avenue, Anchorage, AK 99513. Telephone Number: (907) 271–5439/FAX Number: (907) 271–2851.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 2.15 acres of airport property (lots 2 and 2B) at the Nome Airport (OME) under the provisions of 49 U.S.C. 47107(h)(2). The State of Alaska Department of Transportation has requested from the FAA that approximately 2.15 acres of airport property south of the river be released for sale to the City of Nome for utilities infrastructure needs. The FAA has determined that the release of the property will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than 30 days after the publication of this notice.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Issued in Anchorage, Alaska, on August 22, 2018.

Patrick Zettler,

Acting Director, Airports Division, FAA, Alaskan Region.

[FR Doc. 2018–18642 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Repair Stations, Part 145 of Title 14 CFR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Persons requesting to obtain an initial air agency certificate for a repair station or changes to an existing repair station (air agency) certificate are required to submit this request in a format acceptable to the FAA. Repair stations perform maintenance, preventive maintenance, alterations of aircraft and aircraft components and parts thereof. In order to remain consistent and provide ease of application, the FAA designed and made available to the public the FAA Form 8310–3 Application for Repair Station Certificate and/or Rating. The form provides space for the applicant to provide certification information such as, but not limited to, ratings sought, physical place of business, ownership, and request to contract maintenance functions. The applicants submit FAA Form 8310–3 to the FAA Flight Standards Office closest to the proposed place of business for initial certification. The information collected is necessary to obtain repair station certification or if currently certificated, a change in ratings, changes in ownership, changes in the physical location of the repair station, or any other purpose the applicant deems appropriate.

DATES: Written comments should be submitted by October 29, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–

110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0682.

Title: Certification of Repair Stations, Part 145 of Title 14 CFR.

Form Numbers: FAA Form 8310–3.

Type of Review: Renewal of an information collection.

Background: 14 CFR part 145 prescribes the requirements for the issuance of repair station certificates. The FAA Form 8310–3, Application for Repair Station Certificate and/or Rating is available to the applicant who wishes to obtain initial repair station certification or submit changes to an existing air agency certificate. The applicant submits this application to the appropriate FAA office by mail or email for review and acceptance. Information entered onto the application consists of, official name of repair station, location where business is conducted, official mailing address, any doing business as name, changes in ratings, or if initial certification, ratings sought, changes in location or housing and facilities, change in name or ownership, or any other purpose for which the applicant requests, including a request for approval to contract maintenance functions to outside entities. Once the FAA reviews the submitted application and finds by inspection that the applicant has the ability to comply with the 14 CFR part 145 requirements for certification, an air agency certificate and ratings is issued. The FAA retains a copy of the application in the FAA office that issued the certificate for an indefinite time or a time-period specified by mandated file retention laws after the certificate is revoked or surrendered.

Respondents: Approximately 4,820 maintenance and alteration organizations.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 723 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 22, 2018.

Robin Darden,

Management Support Specialist, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–18643 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement; Multiple Counties, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the 2002 Notice of Intent (NOI) published in the **Federal Register** for Federal-aid project HPP–1602(507), the Dothan to I–10 corridor, in multiple counties in Alabama is being rescinded. A final environmental impact statement (EIS) will not be prepared for this project.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Division Administrator, Federal Highway Administration, 9500 Wynlakes Place, Montgomery, Alabama 36117; Email: *mark.bartlett@dot.gov;* Telephone: (334) 274–6350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, is rescinding the NOI to prepare an EIS for Federal-aid project HPP–1602(507). The proposed project was to construct a multi-lane, limited access roadway from the Florida state line at U.S. 231 to the City of Dothan and connecting to U.S. 231 north of the City. The study area included Dale, Houston and Geneva Counties.

The NOI for the project was published in the **Federal Register** on November 18, 2002. A draft EIS was released in November 2007. The FHWA has determined, in conjunction with ALDOT, the NOI for the project shall be rescinded due to difficulties coordinating termini, design decisions and environmental efforts with the Florida Department of Transportation. ALDOT decided not to advance this project.

Any future Federal-aid actions within this corridor will comply with environmental review requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321, *et seq.*), FHWA environmental regulations (23 CFR 771) and related authorities, as appropriate.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 20, 2018.

Mark Bartlett,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 2018–18666 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement; Huntsville, Madison County, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the 1996 Record of Decision (ROD) and the Final Environmental Impact Statement (FEIS) for projects M–8508(1) and ST–697–7, the Huntsville Southern Bypass and Weatherly Road Extension, in Madison County, Alabama is rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Division Administrator, Federal Highway Administration, 9500 Wynlakes Place, Montgomery, Alabama 36117; Email: *mark.bartlett@dot.gov;* Telephone: (334) 274–6350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation (ALDOT), is rescinding the ROD and FEIS for projects M–8508(1) and ST–697–7, the Huntsville Southern Bypass and Weatherly Road Extension. The proposed project was to construct a Southern Bypass of Huntsville from Memorial Parkway near Hobbs Island Road to Interstate Highway 565 (I–565) and to construct an extension of Weatherly Road to the proposed bypass. The proposed Southern Bypass would have been a controlled access divided roadway with frontage roads.

The ROD for the project was issued in July 19, 1996. The FHWA has determined, in conjunction with ALDOT, the ROD and the FEIS for the project shall be rescinded due to

objections raised by Redstone Arsenal. The Arsenal objected to a public roadway passing through Arsenal property due to increased security concerns.

Any future Federal-aid actions within this corridor will comply with environmental review requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321, *et seq.*), FHWA environmental regulations (23 CFR 771) and related authorities, as appropriate.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 20, 2018.

Mark Bartlett,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 2018–18665 Filed 8–27–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transit Advisory Committee for Safety; Re-Establishment of Charter

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of re-establishment of Transit Advisory Committee for Safety.

SUMMARY: The Federal Transit Administration (FTA) announces the re-establishment of the Transit Advisory Committee for Safety (TRACS) via a new charter. TRACS is a Federal Advisory Committee established by the U.S. Secretary of Transportation (Secretary) in accordance with the Federal Advisory Committee Act to provide information, advice and recommendations to the Secretary and the Administrator of FTA on matters relating to the safety of public transportation systems. This charter will be effective for two years from the date it is filed with Congress.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan, TRACS Designated Federal Officer, Acting Associate Administrator, FTA Office of Transit Safety and Oversight, (202) 366–4020; or Adrianne Malasky, FTA Office of Transit Safety and Oversight, (202) 366–1783.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2). Please see the TRACS website for additional information at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.*

Issued in Washington, DC.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2018–18541 Filed 8–27–18; 8:45 am]

BILLING CODE P

UNITED STATES SENTENCING COMMISSION

Final Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2018, the Commission published a notice of proposed policy priorities for the amendment cycle ending May 1, 2019. *See* 83 FR 30477 (June 28, 2018). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to Congress not later than the first day of May each year pursuant to 28 U.S.C.994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2019. Other factors, such as legislation requiring Commission action, may affect the Commission's ability to complete work on any or all identified priorities by May 1, 2019. Accordingly, the Commission may continue work on any or all identified priorities after that date or may decide not to pursue one or more identified priorities.

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission has identified the following priorities:

(1) Continuation of its multiyear examination of the structure of the guidelines post-*Booker* and consideration of legislative recommendations or guideline amendments to simplify the guidelines, while promoting proportionality and reducing sentencing disparities, and to account appropriately for the defendant's role, culpability, and relevant conduct.

(2) Continuation of its work with Congress and others to implement the recommendations of the Commission's 2016 report to Congress, *Career Offender Sentencing Enhancements,* including its recommendations to revise the career offender directive at 28 U.S.C. 994(h) to focus on offenders who have committed at least one ''crime of violence'' and to adopt a uniform definition of ''crime of violence'' applicable to the guidelines and other recidivist statutory provisions.

(3) Consideration of possible amendments to § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to (A) allow courts to consider the actual conduct of the defendant, rather than only the elements of the offense (*i.e.,* ''categorical approach''), in determining whether an offense is a crime of violence or a controlled substance offense; and (B) address various application issues, including the meaning of ''robbery'' and ''extortion,'' and the treatment of inchoate offenses and offenses involving an offer to sell a controlled substance.

(4) Continuation of its work with Congress and others to implement the recommendations of the Commission's 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*—including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the ''safety valve'' at 18 U.S.C. 3553(f), and elimination of the mandatory ''stacking'' of penalties under 18 U.S.C. 924(c)—and preparation of a series of publications updating the data in the report.

(5) Continuation of its comprehensive, multiyear study of recidivism, including the circumstances that correlate with increased or reduced recidivism.

(6) Implementation of any legislation warranting Commission action.

(7) Study of Chapter Four, Part A (Criminal History), focusing on (A) how the guidelines treat revocations under

§ 4A1.2(k) for conduct constituting a violation of a condition of supervision that does not result in an arrest, criminal charge, or conviction for a federal, state, or local offense punishable by a term of imprisonment (other than an arrest for the violation of the condition of supervision itself); and (B) whether a downward departure may be warranted in cases in which prior sentences for misdemeanor and felony offenses arising from the same arrest or criminal conduct are considered separate sentences under § 4A1.2(a)(2).

(8) Resolution of circuit conflicts as warranted, pursuant to the Commission's authority under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991).

(9) Consideration of other miscellaneous issues, including possible amendments to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) in light of *Koons* v. *United States,* 138 S. Ct. 1783 (2018).

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

William H. Pryor Jr.,

Acting Chair.

[FR Doc. 2018–18647 Filed 8–27–18; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Request for Applications; Victims Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: In view of upcoming vacancies in the membership of the Victims Advisory Group, the United States Sentencing Commission hereby invites any individual who has knowledge, expertise, or experience in federal crime victimization to apply to be appointed to the advisory group. An applicant for membership in the Victims Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the addresses section below. Application materials should be received by the Commission not later than October 31, 2018.

DATES: Application materials for membership in the Victims Advisory Group should be received not later than October 31, 2018.

ADDRESSES: An applicant for membership in the Victims Advisory Group should apply by sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov.* The regular mail address is United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—VAG Membership.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov.* More information about the Victims Advisory Group is available on the Commission's website at *www.ussc.gov/advisory-groups.*

SUPPLEMENTARY INFORMATION: The Victims Advisory Group is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments, as they relate to victims of crime; (3) to disseminate information regarding sentencing issues to organizations represented by the Victims Advisory Group and to other victims of crime and victims advocacy groups, as appropriate; and (4) to perform any other functions related to victims of crime as the Commission requests. The advisory group consists of not more than nine members, each of whom may serve not more than two consecutive three-year terms. Each member is appointed by the Commission.

The Commission invites any individual who has knowledge, expertise, or experience in federal crime victimization to apply to be appointed to the Victims Advisory Group by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.4.

William H. Pryor Jr.,

Acting Chair.

[FR Doc. 2018–18646 Filed 8–27–18; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Advisory Committee on Women Veterans (Committee) will conduct a site visit on September 10–14, 2018, in Chicago, IL. Sessions are open to the public, except when the Committee is conducting tours of VA facilities, participating in off-site events, and participating in workgroup sessions. Tours of VA facilities are closed, to protect Veterans' privacy and personal information. The site visit will also include a town hall meeting for women Veterans and those who provide services to women Veterans.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On Monday, September 10, the Committee will convene an open session at the Edward Hines Junior Hospital; 5000 5th Avenue Hines, IL 60141, from 8:30 a.m. to 3:00 p.m. in Room E471. The agenda will include overview briefings from the Edward Hines Junior Hospital leadership on the facilities, programs, demographics, women Veterans programs, and other services available for Veterans in Chicago. In the afternoon, the Committee will reconvene a closed session, as it tours the Edward Hines Junior Hospital.

In the morning of Tuesday, September 11, the Committee will convene an open session at Captain James A. Lovell Federal Health Care Center; 30001 Green Bay Road, North Chicago, IL 60064, from 8:30 a.m. to 3:00 p.m. The agenda will include overview briefings from the Captain James A. Lovell Federal Health Care Center leadership on the facilities, programs, demographics, women Veterans programs, and other services available for Veterans. In the afternoon, the Committee will reconvene a closed session, as it tours the Captain James A. Lovell Federal Health Care Center.

On Wednesday, September 12, the Committee will convene closed sessions, as it tours the Chicago Regional Benefits Office (2122 West Taylor Street Chicago, IL 60612) and the

Abraham Lincoln National Cemetery (20953 West Hoff Road, Elwood, IL 60421).

On Thursday, September 13, the Committee will convene an open session at the Jesse Brown VA Medical Center; 820 South Damen Avenue, Chicago, IL 60612, from 8:30 a.m. to 3:00 p.m. in the Prescription Conference Room JB 2446B (2nd Floor, Damen Building). The agenda will include overview briefings from the Jesse Brown VA Medical Center leadership on the facilities, programs, demographics, women Veterans programs, and other services available for Veterans in Chicago. In the afternoon, the Committee will reconvene a closed session, as it tours the Jesse Brown VA Medical Center.

In the morning of Friday, September 14, the Committee will convene an open session at the Jesse Brown VA Medical Center; 820 South Damen Avenue, Chicago, IL 60612, from 8:00 a.m. to 9:00 a.m. in the Prescription Conference Room JB 2446B (2nd Floor, Damen Building), as it conducts an out-briefing with leadership from the Jesse Brown VA Medical Center / Edward Hines Junior Hospital / Captain James A. Lovell Federal Health Care Center / Chicago Regional Benefits Office / Abraham Lincoln National Cemetery. The Committee will reconvene an open session in the Prescription Conference Room JB 2446B (2nd Floor, Damen Building), as it participates in a town hall meeting with the women Veterans and other stakeholders. The town hall meeting will begin at 9:30 a.m. and end promptly at 11:00 a.m.

With the exception of the town hall meeting, there will be no time for public comment during the meeting. Members of the public may submit written statements for the Committee's review to *00W@mail.va.gov,* or by fax at (202) 273–7092. Any member of the public and media wishing to attend or seeking additional information should contact Shannon L. Middleton at (202) 461–6193, or *00W@mail.va.gov.*

Dated: August 23, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–18626 Filed 8–27–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cost-Based and Inter-Agency Billing Rates for Medical Care or Services Provided by the Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document updates the Cost-Based and Inter-Agency billing rates for medical care or services provided by the Department of Veterans Affairs (VA) furnished in certain circumstances.

DATES: The rates set forth herein are effective August 28, 2018 and until further notice.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Office of Community Care, Revenue Operations, Payer Relations and Services, Rates and Charges (10D1C1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 382–2521. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: VA's methodology for computing Cost-Based and Inter-Agency rates for medical care or services provided by VA is set forth in 38 CFR 17.102(h). Two sets of rates are obtained by applying this methodology, Cost-Based and Inter-Agency.

In accordance with 38 CFR 17.102(a), (b), (d), and (g) respectively, Cost-Based rates apply to medical care and services that are provided by VA:

- In error or based on tentative eligibility,
- In a medical emergency,
- To pensioners of allied nations; and
- For research purposes in circumstances under which the medical care appropriation shall be reimbursed from the research appropriation.

In accordance with 38 CFR 17.102(c) and (f), Inter-Agency rates apply to medical care and services that are provided by VA to beneficiaries of the Department of Defense or other Federal agencies, when the care or services provided is not covered by an applicable sharing agreement, unless otherwise stated.

The calculations for the Cost-Based and Inter-Agency rates are the same with two exceptions. Inter-Agency rates are all-inclusive, are not broken down into three components (Physician; Ancillary; and Nursing, Room, and Board), and do not include standard fringe benefit costs that cover Government employee retirement, disability costs, and return on fixed assets. When VA pays for medical care or services from a non-VA source under circumstances in which the Cost-Based or Inter-Agency rates would apply if the care or services had been provided by VA, the charge for such care or services will be the actual amount paid by VA for the care or services. Inpatient charges will be at the per diem rates shown for the type of bed section or discrete treatment unit providing the care.

The following table depicts the Cost-Based and Inter-Agency rates that are effective upon publication of this notice and will remain in effect until the next **Federal Register** notice is published. These rates supersede those established by the **Federal Register** notice published on August, 29 2017, at 82 FR 41093.

	Cost-Based rates	Inter-Agency rates
A. Hospital Care per inpatient day:		
General Medicine:		
All Inclusive Rate	$4,025	$3,882
Physician	482	
Ancillary	1,049	
Nursing Room and Board	2,494	
Neurology:		
All Inclusive Rate	3,805	3,664
Physician	557	
Ancillary	1,005	
Nursing Room and Board	2,243	
Rehabilitation Medicine:		
All Inclusive Rate	2,749	2,641
Physician	312	
Ancillary	840	
Nursing Room and Board	1,597	

	Cost-Based rates	Inter-Agency rates
Blind Rehabilitation:		
All Inclusive Rate	1,843	1,770
Physician	148	
Ancillary	916	
Nursing Room and Board	779	
Spinal Cord Injury:		
All Inclusive Rate	2,431	2,338
Physician	301	
Ancillary	612	
Nursing Room and Board	1,518	
Surgery:		
All Inclusive Rate	6,832	6,590
Physician	753	
Ancillary	2,072	
Nursing Room and Board	4,007	
General Psychiatry:		
All Inclusive Rate	1,993	1,913
Physician	188	
Ancillary	314	
Nursing Room and Board	1,491	
Substance Abuse (Alcohol and Drug Treatment):		
All Inclusive Rate	1,963	1,884
Physician	187	
Ancillary	454	
Nursing Room and Board	1,322	
Psychosocial Residential Rehabilitation Program:		
All Inclusive Rate	768	740
Physician	48	
Ancillary	81	
Nursing Room and Board	639	
Intermediate Medicine:		
All Inclusive Rate	2,483	2,388
Physician	122	
Ancillary	364	
Nursing Room and Board	1,997	
Poly-trauma Inpatient:		
All Inclusive Rate	3,113	2,981
Physician	354	
Ancillary	951	
Nursing Room and Board	1,808	
B. Nursing Home Care, Per Day:		
All Inclusive Rate	1,268	1,218
Physician	39	
Ancillary	172	
Nursing Room and Board	1057	
C. Outpatient Medical Treatments:		
Outpatient Visit (to include Ineligible Emergency Dental Care)	362	350
Outpatient Physical Medicine & Rehabilitation Service Visit	223	213
Outpatient Poly-trauma/Traumatic Brain Injury	602	580

Note: Outpatient Prescriptions will be billed at Drug Cost plus Administrative Fee.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on August 22, 2018, for publication.

Dated: August 22, 2018.

Jeffrey M. Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018–18555 Filed 8–27–18; 8:45 am]

BILLING CODE 8320–01–P

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